



**HAWKESBURY**  
INDEPENDENT SCHOOL

Child Protection Policy

September 2024

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# Introduction

Hawkesbury Independent School is committed to providing education and care to children and young people to assist them to develop into high achieving, supported students, positively connected to each other and to the communities in which they live and which they will serve. The School is committed to **ensuring the safety, welfare and wellbeing of all children** and young people at the School and is dedicated to **protecting them from abuse and harm**. At Hawkesbury Independent School, we have a zero tolerance for child abuse. The School regards its child protection responsibilities with the utmost importance, and as such is committed to providing the necessary resources to ensure compliance with all relevant child protection laws and regulations and to maintain safe and supportive School physical and online environments for all children and young people.

## 1. Background

### 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. Staff members who fail to adhere to this policy **may be in breach of their terms of employment**. This policy **applies to all staff** (employees), and to **volunteers and contractors** at the School

### 1.2 Key Legislation

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

- i. the *Children and Young Persons (Care and Protection) Act 1998* ("Care and Protection Act");
- ii. *Child Protection (Working with Children) Act 2012* ("WWC Act");
- iii. the *Children's Guardian Act 2019* (NSW) ("The Children's Guardian Act");
- iv. Part 3A Child Safe Scheme ("Children's Guardian Act") and
- v. the *Crimes Act 1900* (Crimes Act)

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:**

- i. Child safety is embedded in organisational leadership, governance and culture.
- ii. Children participate in decisions affecting them and are taken seriously.
- iii. Families and communities are informed and involved.
- iv. Equity is upheld, and diverse needs are taken into account.

- v. People working with children are suitable and supported.
- vi. Processes to respond to complaints of child abuse are child focused.
- vii. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.
- viii. Physical and online environments minimise the opportunity for abuse to occur.
- ix. Implementation of the Child Safe Standards is continuously reviewed and improved.
- x. 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):

- i. the *Code of Conduct* which sets out information about the standards of behaviour expected of all staff members;
- ii. the *Work Health and Safety Guidelines* which includes the obligations imposed by work health and safety legislation on the school and staff members;
- iii. the *Supervision of Students Guidelines* which provides requirements related to supervising students;
- iv. the *Anti-bullying Policy* which deals with bullying;
- v. the *Excursion Guidelines* which includes requirements relating to the duty of care for students on excursions and working with children checks for parents and volunteers attending excursions; and
- vi. the *Responding to Suggestions, Complaints and Allegations Procedures* which provides the steps taken by the school in addressing complaints

### 1.4 Compliance and Records

The **Principal/Delegate monitors compliance** with this policy and securely maintains school records relevant to this policy, which includes:

- i. **register of staff members who have read** and acknowledged that they read and understood this policy and its procedures;
- ii. working with children **check clearance** (WWCC clearance) verifications;
- iii. **mandatory reports** to Department of Communities and Justice (DCJ), previously known as Family and Community Services; and
- iv. **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:

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

### 2.1 Child Protection Concerns

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

- i. **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.
- ii. **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.
- iii. **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.
  - a. Injuries include bruising, lacerations or welts, burns, fractures or dislocation of joints.
  - b. Hitting a child around the head or neck and/or using a stick, belt or other object to discipline or punish a child (in a non-trivial way) is a crime.
- iv. **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
- v. 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, and exposure to domestic or family 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 or significant harm in section 5.2.2 below.

## 2.3 Staff member Responsibilities

- i. 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 wellbeing concerns about safety, welfare or wellbeing of a child or young person **to the Principal**.
- ii. If the allegation **involves the Principal**, a **report should be made to the Convenor** of the School Management Committee

## 3. Training

### 3.1 The School

- i. 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

- i. All staff members **must participate in annual child protection training** and additional training, as directed by the Principal.
- ii. All **staff members must read** this policy and **sign the acknowledgement** that they have read and understood the policy and procedures. This includes all new staff members.
- iii. The additional training compliments this policy and provides information to staff about their **legal responsibilities related to child protection and school expectations**, including:
  - mandatory reporting
  - reportable conduct
  - working with children check, and
  - professional boundaries.

## 4. Working with Children (WWC)

- i. The **WWC Act** protects children by **requiring a worker** to have a **Working with Children Check clearance** or current application to engage in child related work. Failure to do so may result in a fine or imprisonment.
- ii. The Office of the Children's Guardian (OCG) is responsible for determining applications for a Working with Children Check clearance (WWCC clearance). It **involves a national criminal history check** and review of reported workplace misconduct findings. The result is either to:
  - a. **grant** a WWCC clearance (generally valid for 5 years); or
  - b. **refuse** a WWCC clearance (further applications cannot be made for 5 years)

- c. In addition, the OCG may **impose an interim bar** on engaging in child related work for both applicants and WWCC clearance holders.
- iii. WWCC clearance holders are subject to **ongoing monitoring** by the OCG.

## 4.1 Responsibilities for working with children checks

### 4.1.1 Staff members

- i. Staff members who engage in child-related work and eligible volunteers (including those volunteers working at overnight camps) are required to:
  - a. **hold and maintain** a valid WWCC clearance;
  - b. **not engage in child-related work** at any time that they are subjected to an interim bar or a bar;
  - c. **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 Office of the Children's Guardian (OCG) that they are subjected to a risk assessment; and
  - d. **notify the Office of the Children's Guardian (OCG)** of any change to their personal details within 3 months of the change occurring. Failure to do so may result in a fine.
- ii. 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. It is a condition of employment at Hawkesbury Independent School, that staff obtain and maintain a valid WWCC clearance.
- iii. It is the **responsibility of the staff member**:
  - a. to **renew** their WWCC prior to expiry
- iv. **All volunteers are required**:
  - a. to be **aware and follow** the expectations of conduct expressed in the School Staff Code of Conduct
  - b. to **hold and maintain** a valid WWCC if they are engaged in child-related work

### 4.1.2 The School

- i. The **school is required**:
  - a. to **verify online and record** the status of each child-related worker's WWCC. Online verification is the responsibility of the Principal/Delegate;
  - b. to **only employ or engage child-related workers** or eligible volunteers who have a **valid WWCC clearance**; and
  - c. 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 Working with Children Check Directorate (WWCC Directorate).



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

## 4.2 Working with Children Check Clearance

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

### 4.2.1 Child-related work

- i. 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:
  - a. early education and childcare including education and care service, childcare centres and other child care;
  - b. **schools** and other educational institutions and private coaching or tuition of children;
  - c. religious services;
  - d. residential services including boarding schools, homestays more than three weeks, residential services and **overnight camps**;
  - e. transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings; and
  - f. counselling, mentoring or distance education not involving direct contact
- ii. Any **queries** about whether particular roles/duties engage in child-related work should be **directed to the Principal**.

### 4.2.2 Application/Renewal

- i. An application or renewal can be made through **Service NSW** or its replacement agency.
- ii. The process for applying for and renewing a WWCC clearance with the Office of the Children's Guardian (OCG) involves a **national police check** and a review of findings of misconduct
- iii. 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
- iv. The School will **verify the status** of a staff member's WWCC clearance (using the number provided), online

### 4.2.3 Refusal/Cancellation

- i. 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.
- ii. **Employers are notified by the OGC** and instructed to **remove such persons from child-related work**.

#### 4.2.4 Interim Bar

- i. 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.
- ii. Not everyone who is subject to a risk assessment will receive an interim bar; only those representing a serious and immediate risk to children
- iii. Interim bars are issued only for risks considered **likely to result in a final bar**.

#### 4.2.5 Disqualified person

- i. 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.
- ii. A disqualified person **cannot be granted a WWCC clearance** and is therefore restricted from engaging in child related work

### 4.3 Ongoing Monitoring

- i. 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

- i. A risk assessment is an **evaluation of an individual's suitability** for child-related work.
- ii. **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 Office of Children's Guardian (OCG)

#### 4.4.1 The School

- i. **Independent Schools are defined as a reporting body** by the WWC Act.
- ii. 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.
- iii. 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**.
- iv. 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.

- v. The School **may also be obliged to report, amend or provide additional information** to the OGC as outlined in the WWC Act and the Children’s Guardian Act.

#### 4.4.2 Finding of misconduct involving children

- i. The School **will report any finding of reportable conduct** to the OGC.
- ii. 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.
- iii. The WWC Act enables a person who has a sustained finding referred to the OGC 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 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.

### 5.1 Who is a mandatory reporter?

- i. Under the Care and Protection Act mandatory reporting applies to persons who:
  - a. in the course of their employment, deliver services including health care; welfare, **education**, children's services and residential services, to children; or
  - b. **hold a management position in an organisation**, the duties of which include direct responsibility for, or direct supervision of, the provision of services including health care, welfare, education, children's services and residential services, to children, are mandatory reporters.
- ii. **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.

### 5.2 Reports to Department of Communities and Justice (DCJ)

- i. 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:

- a. the name, or a description, of the child and
  - b. the grounds for suspecting that the child is at risk of significant harm.
- ii. In addition, while not mandatory, **the School may choose** to make a report to 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.
- iii. 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.

### 5.2.1 Reasonable grounds

- i. 'Reasonable grounds' refers to **the need to have an objective basis** for suspecting that a child or young person may be at risk of significant harm, based on:
  - a. **first-hand observations** of the child, young person or family
  - b. what the child, young person, parent or another person **has disclosed**
  - c. what **can reasonably be inferred** based on professional training and/or experience.
- ii. 'Reasonable grounds' **does not mean a person is required to confirm their suspicions** or have clear proof before making a report.

### 5.2.2 Significant harm

- i. A child or young person is 'at risk of significant harm' if **current concerns exist** for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:
  - a. the child's or young person's basic physical **or psychological needs** are **not being met** or are at risk of not being met
  - b. the parents or other caregivers have not arranged and are **unable or unwilling** to arrange for the child or young person **to receive necessary medical care**
  - c. in the case of a child or young person who is required to attend school in accordance with the Education Act 1990 —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**,
  - d. the child or young person has been, or is **at risk of being**, physically or sexually **abused or ill-treated**,
  - e. the child or young person is living in a household where there have been incidents of **domestic violence** and, as a consequence, the child or young person is at risk of serious physical or psychological harm,

- f. a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious **psychological harm**,
- g. the child was the **subject of a pre-natal report** under section 25 of the Care and Protection Act and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

### 5.2.3 Definition of significant harm

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

- i. Staff members **must raise concerns** about a child or young person who may be at risk of significant harm **with the Principal or delegate as soon as possible** to discuss whether the matter meets the threshold of 'risk of significant harm' and the steps required to report the matter.
- ii. However, if you consider that there is an immediate danger to the child or young person and the Principal or his/her delegate is not immediately contactable, you should speak to the **Police and/or the Child Protection Helpline (on 132 111) directly** and then advise the Principal as soon as possible.
- iii. Staff members **are not required to, and must not, undertake any investigation** of the matter yourself.
- iv. Staff members are **not permitted to inform the parents** or caregivers that a report to DCJ has been made.
- v. 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.
- vi. 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

- i. 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**.
- ii. 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.
- iii. 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

- i. Section 29 of the Children's Guardian Act 2019 **requires the Heads** of Entities (the Principal), 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.
- ii. 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.
- iii. Reportable Conduct:
  - a. involves a child (**a person under the age of 18 years**) at the time of the alleged incident; and
  - b. involves **certain defined conduct** as described in the Act (see below).

### The Office of Children's Guardian:

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

- vi. **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 What is Reportable Conduct?

### 6.1.1 Reportable conduct is:

- i. Under the Children’s Guardian Act 2019, **reportable conduct is defined as:**
  - a. a sexual offence;
  - b. sexual misconduct;
  - c. an assault against a child;
  - d. ill-treatment of a child;
  - e. neglect of a child;
  - f. an offence under section 43B (failure to protect) or section 316A (failure to report) of the Crimes Act 1900; and
  - g. behaviour that causes significant emotional or psychological harm to a child.

### 6.1.2 Reportable conduct does not extend to:

- i. **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)
- ii. 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; (for example: touching a child in order to attract the child’s attention; momentarily restraining a child to prevent the child hurting themselves or others; touching a child to guide or comfort the child)
- iii. conduct of a class or kind exempted from being reportable conduct by the Children’s Guardian under section 30.

### 6.1.3 Definitions

The following **definitions relate to reportable conduct**:

#### Sexual Offence

- i. **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:
  - a. **sexual touching** of a child;





- b. a **child grooming** offence;
- c. 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).

- ii. 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

- i. **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:
  - a. descriptions of sexual acts without a legitimate reason to provide the descriptions;
  - b. sexual comments, conversations or communications;
  - c. 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

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

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



- ii. 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**

- i. **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.
- ii. 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.

### **Emotional or Psychological Harm**

- i. 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.
- ii. For a **reportable allegation involving psychological harm**, the following elements must be present:
  - a. 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
  - b. 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
  - c. An alleged causal link between the employee's conduct and the significant emotional or psychological harm to the child.

### **Reportable Allegation**

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

### **Reportable Conviction**

- i. **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**

- i. **Employee** of an entity includes:
  - a. an individual employed by, or in, the entity
  - b. a volunteer providing services to children

- c. 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
- d. 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.

### **Employee Subject of the Allegation**

- i. **ESOA** (Employee Subject of the Allegation).

## **6.2 Process for Reporting Reportable Conduct Allegations or Convictions**

### **6.2.1 Staff members**

- i. 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**.
- ii. Where it is **uncertain** if the conduct is reportable conduct but is considered inappropriate behaviour, this **must also be reported**.
- iii. 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.
- iv. If the allegation involves the Principal, the staff member must report to **the Convenor of the Management Committee**

### **6.2.2 Parents, carers and community members**

- i. 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.
- ii. All such **reports will be dealt with in accordance with the School's complaint handling procedures**.

### **6.2.3 The School**

- i. **The Principal**, as the Head of Entity under the Children's Guardian Act 2019, must:
  - a. **ensure specified systems are in place** for preventing, detecting and responding to reportable allegations or convictions
  - b. **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),
- ii. **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**,
- iii. 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.
- iv. 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

- i. Once an allegation of reportable conduct against an employee is received, the **Principal is required to:**
  - a. **determine on face value** whether it is an allegation of reportable conduct;
  - b. **assess** whether 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 DCJ or the Police have been notified, **seek clearance from these statutory agencies prior to the school proceeding** with the Reportable Conduct investigation;
  - c. **get advice** from DCJ or the Police in regard to **notifying the child's parents**; (so that there is less likelihood of compromising the investigation to be conducted by DCJ or the Police)
  - d. **notify the OCJ** within 7 business days of receiving the allegation;

- e. carry out a **risk assessment** and take action to reduce/remove risk, where appropriate; and
- f. **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
- g. **investigate the allegation** or appoint someone to investigate the allegation (unless to do so would be likely to compromise any investigation by DCJ or the Police)

### 6.3.2 Investigation principles

- i. During the investigation of a reportable conduct allegation, the School will:
  - a. follow the principles of **procedural fairness**;
  - b. **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;
  - c. **make reasonable enquiries or investigations** before making a decision;
  - d. **avoid conflicts of interest**;
  - e. conduct the investigation **without unjustifiable delay**;
  - f. handle the matter **as confidentially as possible**; and
  - g. **provide appropriate support** for all parties including the child/children, witnesses and the ESOA.

### 6.3.3 Investigation steps

- i. In an investigation **the Principal or appointed investigator** will generally:
  - a. **interview** relevant witnesses and **gather relevant** documentation;
  - b. provide **a letter of allegation** to the ESOA;
  - c. provide the ESOA with the opportunity **to provide a response** to the allegations either in writing or at Interview;
  - d. consider relevant evidence and **make a preliminary finding** in accordance with the OCG guidelines;
  - e. **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;
  - f. **consider any response** provided by the ESOA;
  - g. **make a final finding** in accordance with the OCG guidelines;
  - h. decide on the **disciplinary action, if any**, to be taken against the ESOA;
  - i. 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*.

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

- i. 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.
- ii. **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

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

- a. **the child(ren)** who are the subject of the allegation;
  - b. **other children** with whom the employee may have contact;
  - c. the **ESOA**;
  - d. the **School**, and
  - e. the **proper investigation** of the allegation.
- ii. The **factors which will be considered** during the risk assessment include:
- a. the **nature and seriousness** of the allegations;
  - b. the **vulnerability of the child(ren)** the ESOA has contact with at work;
  - c. the nature of **the position** occupied by the ESOA;
  - d. the **level of supervision** of the ESOA; and
  - e. the **disciplinary history** or safety of the ESOA and possible risks to the investigation.
- iii. **The Principal** will take appropriate **action to minimise risks**. This may include:
- a. the ESOA being temporarily relieved of some duties,
  - b. the ESOA being required not to have contact with certain students,
  - c. the ESOA being asked to take paid leave, or
  - d. being suspended from duty.
- iv. When taking action to address any risks identified, the School **will take into consideration** both the needs of the child(ren) and the ESOA.
- v. Please note: A decision to take action on the basis of **a risk assessment is not indicative of the findings of the matter**. Until the investigation is completed and a finding is made, any action, such as an employee being suspended, is not to be considered to be an indication that the alleged conduct by the employee did occur.

#### 6.4.2 Ongoing risk assessment

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

#### 6.4.3 Findings

- i. 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 What information will be provided to the ESOA?

- i. The ESOA will be advised:
  - a. that **an allegation** has been made against them (at the appropriate time in the investigation); and
  - b. of **the substance** of the allegation, or of any preliminary finding and the final finding.

- ii. The ESOA **does not** automatically have the right to:
  - a. know or have confirmed the **identity of the person** who made the allegation; or
  - b. **be shown the content** of the OCG notification form or other investigation material that reveals information provided by other employees or witnesses.
- iii. 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.
- iv. 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.
- v. If the ESOA contacts the School directly, to obtain this information, **the School will contact the NSW AIS for advice.**

#### 6.4.5 Disciplinary action

- i. As a result of the allegations, investigation or final findings, the School may take disciplinary action against the ESOA (including termination of employment).
- ii. In relation to any disciplinary action the school will give the ESOA:
  - a. **details** of the proposed disciplinary action; and
  - b. a reasonable **opportunity to respond** before a final decision is made.

#### 6.4.6 Confidentiality

- i. It is important when dealing with allegations of reportable conduct that the matter be dealt with as **confidentially** as possible.
- ii. The School requires that all parties **maintain confidentiality** during the investigation including in relation to the handling and storing of documents and records.
- iii. **Records** about allegations of reportable conduct against employees **will be kept in the Principal's Office and will be accessible by Principal**, as the Head of Agency or with the Principal's express authority.
- iv. **No employee may comment to the media** about an allegation of reportable conduct unless expressly authorised by the Principal to do so.
- v. Staff members who become aware of a **breach of confidentiality** in relation to a reportable conduct allegation **must advise the Principal.**



## 7. Criminal offences

- i. 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.
- ii. 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)

- i. 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.
- ii. The offence is targeted at those in **positions of authority and responsibility** in organisations working with children who, rather than use their power to protect children turn a blind eye to a known and serious risk. This may include school management members, principals and senior executive staff who should follow the school's child protection policy if they become aware of a potential risk.

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

- i. 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**.
- ii. 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)

- i. 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.
- ii. 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.





## 8. Acknowledgement

I \_\_\_\_\_ have read, understood and agree to comply with  
the terms of Hawkesbury Independent School *Child Protection Policy*.

I \_\_\_\_\_ confirm that I continue to meet and maintain all  
*Working with Children Checks*, for my continuation of employment at Hawkesbury Independent  
School.

Name: \_\_\_\_\_

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated