



**IRFAN COLLEGE**  
**CHILD PROTECTION POLICY**

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### Rationale

Irfan College is committed to providing a safe and caring environment for every student. The College recognises the importance of adopting preventative measures in protecting students from harm and neglect and will implement programs to raise awareness of students, staff and the community about child protection issues.

### Purpose

This Child Protection Policy has been developed for implementation by all persons employed or engaged by the College in any capacity. This document sets out the College's child protection policy in broad terms. Further information and advice can be gained from the Principal. All persons employed or engaged by the College will have access to further documentation regarding:

- The course of action for staff to follow if they believe a student is being harmed, or is at risk of harm, by a person not employed or engaged by the College (such as family members or other members of the community);
- The procedures the College will follow when an allegation of "reportable conduct" is made against a person employed or engaged by the College.

### Aims

The experience of harm and neglect can prevent social, emotional and intellectual development during childhood and adolescence, which are crucial for general health and wellbeing throughout life. The impact is especially significant due to children's vulnerability and their dependence upon adults. Irfan College is concerned to prevent all forms of harm and neglect of children and, where this is not possible, to recognise harm when it is occurring and to intervene effectively to prevent the traumatic effects both in the short and long term. Thus, this policy serves to **prevent** harm from occurring and to **intervene effectively** when there is a risk of harm to a child.

### Implementation

- Prior to making a decision regarding a preferred applicant's employment at the College, the Principal conducts a working with children background check to ensure that employees have not been engaged in reportable conduct.
- The College Principal will induct staff on a per annum basis to:
  - reinforce the College's Child Protection Policy and the Staff Code of Conduct;
  - raise their awareness of child protection issues (recognition of harm and neglect);
  - advise them of their obligations under the College's policy and mandatory reporting requirements;
  - provide guidelines for appropriate and inappropriate behaviour.
  - provide access to a copy of the Child Protection Policy and will be required to formally acknowledge that they have read, understood and are willing to comply with the policy.
  - The Principal will ensure that:
    - attendance of staff for the staff development days and inductions are recorded;
    - staff sign and return an acknowledgement form once they have read and understood the relevant policies;
    - the signed documents are filed in the employees folder.

- Child protection programs will incorporate teaching and learning within three broad themes:
  - Recognising Harm - recognising situations involving potential harm;
  - Power in Relationships - discussion of power in relationships, with particular attention to building confidence in relationships which are positive and caring;
  - Protective Strategies - with knowledge about positive relationships and potential harm, children are taught appropriate actions if they are in threatening situations.

# Child Protection Policy

## Introduction

### 1.1. General

The safety, protection and well-being of all students is of fundamental importance to the College. Both Staff and the College have a range of different obligations relating to the safety, protection and welfare of students including:

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

The purpose of this Policy is to summarise the obligations imposed by child protection legislation on the College and on employees, contractors and volunteers at the College and to provide guidelines as to how the College will deal with certain matters. Child protection is a community responsibility.

### 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 *Children’s Guardian Act 2019* (“Children’s Guardian Act”)
- the *Child Protection (Working With Children) Act 2012* (“**WWC Act**”);
- the *Crimes Act 1990* (“*Crimes Act*”).

### 1.3. Your obligations to report

While we set out below circumstances in which the **legislation** requires reporting of particular child protection issues, the College requires you to report **any concern** you may have about the safety, welfare or wellbeing of a child or young person to the Principal. If the allegation involves the Principal you are required to report to the College Board Chair.

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

### 1.4. Other policies

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

- the **Code of Conduct** which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the College;
- the **Work Health and Safety Statement** which summarises the obligations imposed by work health and safety legislation on the College and workers; and
- the **Discrimination, Harassment and Bullying Statement** which summarises your obligations in relation to unlawful discrimination, harassment and bullying.
- The **Complaints and Grievances Policy** which sets guidelines and expectations for stakeholders regarding complaints or allegations of staff misconduct or reportable conduct
- The **Privacy Policy** which sets out how the College manages personal information provided to or collected by it.

Date of Policy: January 2014

Proposed review date of policy: December 2022

## PART A: The Care and Protection Act

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

NOTE: Any concern regarding the safety, welfare or wellbeing of a student must be reported to **the Principal**.

### Who is a mandatory reporter?

Under the Care and Protection Act persons who:

- in the course of their employment, deliver services including health care; welfare, education, children's services and residential services, to children; or
- hold a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of services including health care, welfare, education, children's services and residential services, to children, are mandatory reporters.

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

### When must a report be made to Department of Communities and Justice?

#### 2.1 What is the threshold?

A mandatory reporter must, where they have reasonable grounds to suspect that a child (under 16 years of age) is at risk of significant harm, report to Department of Communities and Justice as soon as practicable, the name, or a description of the child and the grounds for suspecting that the child is at risk of significant harm.

In addition, while not mandatory, the College considers that a report should also be made to Department of Communities and Justice where there are reasonable grounds to suspect a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety, welfare and well-being of the young person.

#### 2.2 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 that you are required to confirm your suspicions or have clear proof before making a report.

## 2.3 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 College 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.

## 2.4 Other relevant definitions

### **Policy definition of significant harm**

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

What is meant by 'significant' in the phrase 'to a significant extent' is that which is sufficiently serious to warrant a response by a statutory authority irrespective of a family's consent.

What is significant is not minor or trivial, and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare or well-being.

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



The significance can result from a single act or omission or an accumulation of these. Child is a person under the age of 16 years for the purposes of the Care and Protection Act.

### **Child abuse and neglect**

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

Neglect is the continued failure by a parent or caregiver to provide a child with the basic things needed for his or her proper growth and development, such as food, clothing, shelter, medical and dental care and adequate supervision.

Physical abuse is a non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or any other person. It includes but is not limited to injuries which are caused by excessive discipline, severe beatings or shakings, cigarette burns, attempted strangulation and female genital mutilation.

Injuries include bruising, lacerations or welts, burns, fractures or dislocation of joints.

Hitting a child around the head or neck and/or using a stick, belt or other object to discipline or punishing a child (in a non-trivial way) is a crime.

Serious psychological harm can occur where the behaviour of their parent or caregiver damages the confidence and self esteem of the child or young person, resulting in serious emotional deprivation or trauma.

Although it is possible for 'one-off' incidents to cause serious harm, in general it is the frequency, persistence and duration of the parental or carer behaviour that is instrumental in defining the consequences for the child.

This can include a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or threatening behaviour.

Sexual abuse is when someone involves a child or young person in a sexual activity by using their power over them or taking advantage of their trust. Often children are bribed or threatened physically and psychologically to make them participate in the activity.

Child sexual abuse is a crime.

Child wellbeing concerns are safety, welfare or wellbeing concerns for a child or young person that do not meet the mandatory reporting threshold, risk of significant harm.

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

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

Reporting by the College about these matters to Department of Communities and Justice and, where necessary, the police, is generally undertaken by the Principal. This is in accordance with best practice principles and is the expectation of the College.

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

However, if there is an immediate danger to the child or young person and the Principal or next most senior member of staff (Deputy Principal) is not contactable you should

Speak to the Police and/or the Child Protection Helpline directly, and then advise the Principal or next most senior member of staff at the College as soon as possible.

- **You are not required to, and must not, undertake any investigation of the matter yourself.**
- **You are not to inform the parents or caregivers that a report to Department of Communities and Justice has been made.**
- **You are required to deal with the matter confidentially and only disclose it to the persons referred to above or as required to comply with your mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this policy, but could expose you to potential civil proceedings for defamation.**
- **What should you do if you have a concern that is below the mandatory reporting threshold?**

While the Care and Protection Act outlines a mandatory reporter's obligation to report to Department of Communities and Justice, as an employee of this College, any concern regarding the safety, welfare and wellbeing of a student must be reported to the Principal.

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

## PART B: The Children’s Guardian Act

Section 29 of the Children’s Guardian Act 2019 requires the Heads of Entities, including non-government Colleges in New South Wales, to notify the Office of Children’s Guardian (OCG) of all allegations of reportable conduct and convictions involving an 'employee' and the outcome of the College'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 Colleges 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 Colleges concerning reportable conduct or reportable convictions;
- is required to oversee or monitor the conduct of investigations by non-government Colleges 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 College, 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.

### 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.

## 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.
- **PSOA** (Person Subject Of the Allegation).

## 2 Process for reporting of reportable conduct allegations or convictions

### 2.1 Staff members

Any concerns about any other employee engaging in conduct that is considered inappropriate, or reportable conduct, or any allegation of inappropriate or reportable conduct made to the employee or about the employee themselves must be reported to **the Principal**. Where it is uncertain if the conduct is reportable conduct but is considered inappropriate behaviour this must also be reported.

Staff members must also report to **the Principal** when they become aware that an employee has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction) involving reportable conduct. This includes information relating to the employee themselves.

If the allegation involves the Principal, the staff member must report to **the Chairman of the College Board**.

### 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 College's complaint handling procedures.

### 2.3 The College

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:

- that a report has been received in relation to an employee of the College, and
- the type of reportable conduct, and
- the name of the employee, and
- the name and contact details of College and the Head of Entity, and
- for a reportable allegation, whether it has been reported to Police, and

- if a report has been made to the Child Protection Helpline, that a report has been made, and
  - 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.

### **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.

#### **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 College 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 PSOA advising that an allegation of reportable conduct has been made against them and the College'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.

#### **3.2 Investigation principles**

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

- follow the principles of procedural fairness;

- inform PSOA of the substance of any allegations made against them, at the appropriate time in the investigation, and provide them with a reasonable opportunity to respond to the allegations;
- make reasonable enquiries or investigations before making a decision;
- avoid conflicts of interest;
- conduct the investigation without unjustifiable delay;
- handle the matter as confidentially as possible; and
- provide appropriate support for all parties including the child/children, witnesses and the PSOA.

### **3.3 Investigation steps**

In an investigation the Principal or appointed investigator will generally:

- interview relevant witnesses and gather relevant documentation;
- provide a letter of allegation to the PSOA;
- provide the PSOA with the opportunity to provide a response to the allegations either in writing or at Interview;
- consider relevant evidence and make a preliminary finding in accordance with the OCG guidelines;
- inform the PSOA 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 PSOA;
- make a final finding in accordance with the OCG guidelines;
- decide on the disciplinary action, if any, to be taken against the PSOA;
- 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 College'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.



A PSOA may have an appropriate support person with them during the interview process. Such a person is there for support only and as a witness to the proceedings and not as an advocate or to take an active role.

#### **4 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.

##### **4.1 Initial risk assessment**

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

- the child(ren) who are the subject of the allegation;
- other children with whom the employee may have contact;
- the PSOA;
- the College, and
- the proper investigation of the allegation.

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

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

The Principal will take appropriate action to minimise risks. This may include the PSOA being temporarily relieved of some duties, being required not to have contact with certain students, being asked to take paid leave, or being suspended from duty. When taking action to address any risks identified, the College will take into consideration both the needs of the child(ren) and the PSOA.

A decision to take action on the basis of a risk assessment is not indicative of the findings of the matter. Until the investigation is completed and a finding is made, any action, such as an employee being suspended, is not to be considered to be an indication that the alleged conduct by the employee did occur.

##### **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.

##### **4.3 Findings**

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

#### **4.4 Information for the PSOA**

The PSOA will be advised:

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

The PSOA does not automatically have the right to:

- know or have confirmed the identity of the person who made the allegation; or
- be shown the content of the 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 College 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.

#### **4.5 Disciplinary action**

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

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

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

#### **4.6 Confidentiality**

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

The College requires that all parties maintain confidentiality during the investigation including in relation to the handling and storing of documents and records.

Records about allegations of reportable conduct against employees will be kept [in a secure area] and will be accessible by [the Head of Entity or with the Head of Entity's express authority].

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

Staff members who become aware of a breach of confidentiality in relation to a reportable conduct allegation must advise the Principal.

## **PART C: Working with Children (WWC) Act**

The WWC 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.

### **1 Responsibilities for working with children checks**

#### **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.
- [Consider adding the additional requirement of 'sign the Volunteer Statutory Declaration. Some volunteers engaged in high risk roles may be required to have a Check']

#### **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 OGC 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 OGC'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.

## **2 Working with children check clearance**

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

### **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.

### **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.

### **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.

### **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.

### **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.

### **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.

#### **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 Process for reporting to OCG**

#### **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.

#### **4.2 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.

#### **4.3 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.

## Part D: Criminal Offences Act

### 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.

#### 1.1 Failure to protect offence

An adult working in a College, therefore all staff members, will commit an offence if they know another adult working there poses as serious risk of committing a child abuse offence and they have the power to reduce or remove the risk, and they negligently fail to do so either by acts and/or omissions.

This offence is targeted at those in positions of authority and responsibility working with children who turn a blind eye to a known and serious risk rather than using their power to protect children.

#### 1.2 Failure to report offence

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.

## **PART E: Complaint handling procedure regarding allegations of staff misconduct or reportable conduct.**

### **1 General**

Irfan College aims to provide a safe and supportive environment for all stakeholders in the College community, particularly our students. Irfan College aims to facilitate such an environment by ensuring that stakeholders have a clear understanding of the complaint handling procedure regarding allegations of staff misconduct or reportable. Definitions of 'staff misconduct' and 'reportable conduct' have been specified above, however this section of the Child Protection Policy will provide clear guidelines and expectations for stakeholders in relation to how the College will handle staff misconduct and reportable conduct complaints.

### **2 Your Obligations to Report**

Staff must report any concerns they may have about any other employee engaging in reportable conduct or any allegation of 'reportable conduct' that has been made to them, to the Principal including information about themselves. If staff is not sure whether the conduct is reportable conduct but consider that it is inappropriate behaviour they must still report it.

Staff must also report to the Principal if 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 themselves.

If the allegation involves the Principal, staffs are required to report to the College Board Chair.

### **Implementation Procedure**

Stakeholders in our College community could include staff, students, parents or any person/entity that has a formal association with the College, whether it be paid or on a volunteer basis. Stakeholders that have a concern regarding staff misconduct or reportable conduct are to adhere to the following procedure:

- All complaints regarding staff misconduct or reportable conduct are to be made to the College Principal.
- Parent complainants are to communicate their complaint using the Complaints/Grievance form located in the Appendix section of the Complaints and Grievances Policy.

- Staff and student complainants can communicate their complaints verbally to the Principal and may be required to provide a written statement either through email or the student incident report proforma.
- The Principal will conduct a meeting with the complainant to identify as to whether the complaint qualifies as staff misconduct or reportable conduct. Any information provided by the complainant and their identity will be kept confidential and written reports will be stored in a secure place that can only be accessed by the Principal.
- If the complaint meets the criteria of staff misconduct or reportable conduct, the Principal or his/her delegate will follow the investigations process mentioned in Part B of the Child Protection Policy and the Recommended Protocols for Internal Investigative and Disciplinary Proceedings provided in the Appendix.
- The Principal or his/her delegate will provide the complainant with an official response by conducting a meeting and/or providing a written response if the complaint was made through written format.
- Complaints or allegations regarding staff misconduct or reportable conduct will be kept on file by the Principal or his/her delegate for a duration of seven years for documentation purposes.



➤ **ACKNOWLEDGEMENT**

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

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated

**Appendix**

**Professional Development requirements for College Staff**

All staff are to undergo relevant professional development in order to ensure they are familiar with the current legislation. The Principal is responsible for the implementation of the following program:

- Every three years all staff will experience a PD course, conducted by an external provider, AIS (NSW) and sign a register of attendance.
- Staff who miss the refresher course, either through prolonged leave or illness, will be required to complete a refresher course later in that same calendar year, either at the College or at some external venue
- All new and existing staff has access to Child Protection Policy including mandatory reporting responsibility and other related Policies through sentral.
- Recording and monitoring attendance at these PD courses, as well as ensuring current certificates are maintained in staff files
- Will inform staff of changes to Child Protection legislation by way of email, staff meetings and staff bulletins.

## Resources:

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>

Children's Guardian Act 2019 ("Children's Guardian Act")

The Working with Children Check Guidelines:

[www.kids.nsw.gov.au/check/employer.html](http://www.kids.nsw.gov.au/check/employer.html)

Children and Young Persons (Care and Protection) Act 1998, current version for 29<sup>th</sup> October 2014

Child Protection (Working with Children) Act 2012

Child Protection (Working with Children) Regulation 2013

Child protection and child wellbeing (revised 2010)

[www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au)

Department of Premier and Cabinet – Keep Them Safe

[www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au)

## Attachment 1

The Association of Independent Colleges N.S.W. and  
The Independent Education Union of Australia  
Recommended Protocols for Internal Investigative and  
Disciplinary Proceedings – 2001

### **Introduction**

It is acknowledged that each case of alleged reportable conduct which requires internal investigation and possible disciplinary action will be quite different. These protocols have been compiled to advise how investigations and disciplinary proceedings may be conducted. They are guidelines only and in applying them one should always bear in mind the primary objectives of the relevant legislation. If adopted by a College this document should be provided to teachers who are the subject of an internal investigation into reportable conduct.

### **Outline of Obligations under the Legislation**

Upon receipt of an allegation of reportable conduct against an employee, the head of agency should determine whether or not it is an allegation about reportable conduct or misconduct that may involve reportable conduct. The allegations should also be reported to the Department of Communities and Justice(DCJ) if there is a current concern for the safety, welfare and well being of the child. The head of agency will need to:

- conduct or cause to be conducted, an investigation of the allegation;
- decide as to whether on the balance of probabilities the allegation has been sustained or not sustained;
- decide on the disciplinary action, if any, to be taken against the employee.

Completed relevant disciplinary proceedings should be reported to the Commission for Children and Young People unless the allegation was found to be false, vexatious or misconceived.

### **Risk Assessment**

Upon the receipt of an allegation of reportable conduct against an employee, the head of agency is responsible for carrying out an initial risk assessment prior to the investigation of the allegation. The purpose of the risk assessment is to identify and minimise the risk:

- to a child or children who are alleged to have been victims of the abuse;
- to the employee against whom the allegation has been made;
- to other children with whom the employee may have contact;
- to the proper investigation of the allegation.

This may result, for example, in the employee being temporarily relieved of some duties, being required to avoid certain pupils or, in some special cases, being suspended from

duty. Any decision to take action as a result of a risk assessment is in no way an indication of the guilt of the employee concerned.

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

- the nature of the allegation;
- vulnerability of children;
- nature of the position occupied by the employee;
- the level of supervision of the employee;
- disciplinary history of the employee;
- safety of the employee;
- any comments made by the employee.

Risk should be continually monitored throughout the investigation. The Investigation

In conducting an investigation into allegations of reportable conduct, the head of agency should be guided by the following principles.

### **1. Conflict of Interest and Appointment of Investigator**

All investigations must be conducted in an impartial, independent and objective manner and be open and transparent. The investigator must not show bias or favour to the alleged victim(s), the person the subject of the allegation, nor in outcomes which might affect the reputations of the particular agency.

In some instances the head of agency may call on an external expert to undertake the investigation. This may be the case where the agency determines that it does not have the expertise to satisfactorily conduct the investigation or in cases where a conflict of interest or bias may arise. The mere perception of a conflict of interest by an accused person is not sufficient in itself to require the appointment of an external investigator. However, if there is a clear history of conflict between the proposed investigator and the employee it would be advisable for another investigator to be appointed.

### **2. Confidentiality**

Heads of agency and persons conducting investigations should maintain a high level of confidentiality throughout the investigation phase. Action for defamation could result in situations in which agencies have published allegations of reportable conduct against an employee. The person making the allegation also has a right to protection, and if appropriate, confidentiality. In a limited number of circumstances it may be inappropriate to advise the accused person of the identity of the person making the allegation. The employee should not discuss the allegations with students (including the alleged victim) nor with parents without the approval of the College.

### **Steps in the Investigative Process**

A proper investigation usually requires that an employee against whom an allegation has been made, be told promptly the substance of the allegation and be given the right to reply to the allegation.

If Department of Communities and Justice(DCJ) or police are investigating the allegation, advice should be received from them about when to inform the employee about details of the allegation. Otherwise, the decision of when to inform the employee will depend on the protection of notifiers and witnesses, the quality of evidence to be obtained and the possibility of prejudicing the conduct of the investigation.

Where possible employees should be given advance notice of an interview with the head of agency or an appointed investigator, details of the allegation (sufficient to allow the employee to respond) and be advised that they may have a witness at the interview.

While it is desirable for an employee to be given reasonable notice before being required to respond to an allegation, what constitutes reasonable notice will depend on the circumstances of the situation.

Employees may wish to have someone support them during the interview process. The support person may be a friend on staff or the chapter representative. However, 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 in the proceedings.

A record should be kept of the meeting, this could be made by a tape recording, a full written record or short minutes. The form of record may be dependent on the seriousness of the allegation.

Listed below are fundamental steps in the investigative process. These may need to be varied on occasions to meet particular circumstances. The employer should normally:

- (a) clarify the allegation and determine that it is an allegation of reportable conduct;
- (b) make appropriate notifications to Department of Communities and Justice and police.
- (c) carry out a risk assessment;
- (d) collect all available relevant information (ensure full documentation);
- (e) interview all relevant witnesses (ensure all interviews are adequately recorded);
- (f) make the employee fully aware of the allegations;
- (g) possibly give the employee access to relevant documents on which the employer is relying, unless such documentation needs to be kept confidential;
- (h) interview the person the subject of the allegations (ensure procedural fairness);
- (i) consider all the evidence and make a preliminary finding as to whether the allegation is sustained or not sustained.

### **Findings**

At the conclusion of the investigation, the investigator will make a preliminary finding on the balance of probabilities that:

1. the allegation was false; or
2. the allegation was vexatious, that is, was made without substance and with the intent of being malicious or to cause distress to the person against whom the allegation was made; or
3. the allegation was misconceived, that is, whilst the allegation was made in good faith it was either without substance or a misunderstanding on behalf of the person making the allegation occurred or the incident would not reasonably be considered as reportable conduct (irrespective of the definition), sexual misconduct or an act of violence; or
4. the allegation was not sustained; or
5. the allegation was not one of reportable conduct, but might constitute a breach of professional behaviour or judgment which requires further professional disciplinary action; or
6. the allegation was sustained and the matter required disciplinary action.

A finding of 'not sustained' means that the investigator considers that there is insufficient evidence to determine that the alleged event occurred, on the balance of probabilities.

The employee should be told of the preliminary finding and given an opportunity to respond including, if they wish, in writing.

### **Disciplinary Proceedings**

For the purpose of this recommended protocol disciplinary proceedings are defined as the action taken as a consequence of the findings arising out of the investigation. When conducting disciplinary proceedings the employer should have regard to procedural fairness. This will usually involve:

- giving the employee details of the final finding;
- informing the employee of the possible action the employer may take; and
- giving the employee a right to respond including, if they wish, in writing.

### **When the investigation has been completed**

The employee must be advised if the employer has notified completed disciplinary proceedings to the Commission for Children and Young People.

If the completed disciplinary proceedings are notified to the Commission for Children and Young People, the employee is entitled to inspect the employer file in accordance with Freedom of Information Principles, subject to any exemptions which may apply under that Act.

### **Notification to the Commission for Children and Young People (CCYP)**

The Commission for Children and Young People Act requires all completed investigations into allegations of reportable conduct to be reported to it. It is an offence under the Act to fail to report unless the allegation is found to be either:

- false (the alleged conduct did not occur;
- vexatious (without substance, malicious intent;
- misconceived (not reasonably be considered to be reportable conduct.
- In the findings listed above only findings 4 and 6 need be reported to the CCYP



## ACCIDENT AND INCIDENT REPORT

Surname: \_\_\_\_\_ Given Name: \_\_\_\_\_

Classification:    Staff     Student     Visitor     Contractor

Other: \_\_\_\_\_

Gender: Male     Female

### ACCIDENT/INCIDENT DETAILS

Date of Accident/Incident: \_\_\_\_\_ Time: \_\_\_\_\_

Where did Accident/Incident Occur?

\_\_\_\_\_

Nature of Injury/ Detail of Incident:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

How did the Accident/Incident Occur?:

\_\_\_\_\_

\_\_\_\_\_

### FIRST AID / TREATMENT/ACTION

None     First Aid / Treatment Provided     Action

\_\_\_\_\_

\_\_\_\_\_

Sent Home Date: \_\_\_\_\_ Time: \_\_\_\_\_

Attended Doctor \*(attach) Date: \_\_\_\_\_

Ambulance Called Date: \_\_\_\_\_ Time: \_\_\_\_\_

First Aid Officer/ Staff: \_\_\_\_\_ Signature: \_\_\_\_\_

Date:    /    /