



Contents

Section	Item	Page Number
1	Overview	2
2	General principles	3
3	Legitimate Authority of the College	3
4	Procedures for reporting suspected abuse/risk of significant harm under the <i>Children and Young Persons (Care and Protection) Act 1998</i>	4
5	Reportable allegations and reportable convictions against employees	6
6	Employee induction/development	8
7	Supporting documents/resources	9
8	About this Statement	9

Annexure 1	NSW Child Protection legislation package	10
Annexure 2	Flow chart – Process for notifying suspected abuse/risk of significant harm under the <i>Children and Young Persons (Care and Protection) Act 1998</i>	11
Annexure 3	Some definitions relevant to the <i>Children and Young Persons (Care and Protection) Act 1998</i>	12
Annexure 4	Procedure for notifying and handling a reportable allegation or reportable conviction against an employee	14
Annexure 5	Some definitions relevant to Part 3A of the <i>Ombudsman Act 1974</i>	16
Annexure 6	Some definitions relevant to the <i>Child Protection (Working with Children) Act 2012</i>	18

## 1. Overview

1.1 St Aloysius' College ("**the College**") is committed to the security and well being of its students. These Child Protection Guidelines acknowledge such continued commitment and set out information, processes and procedures to comply with NSW Child Protection legislation.

1.2 The NSW Child Protection legislation consists of the following Acts:

(a) *Children and Young Persons (Care and Protection) Act 1998*

This Act requires employees who, in the course of their work, have reasonable grounds to suspect that a child or young person has been abused/is at risk of significant harm, to report the name or description of the child or young person and the reasonable grounds for suspecting that the child or young person is at risk of significant harm.

(b) Part 3A of the *Ombudsman Act 1974*

Part 3A of this Act relates to the NSW Ombudsman's child protection jurisdiction. It addresses the subject of reportable allegations and reportable conduct against an employee.

The Act mandates notification to the NSW Ombudsman of any reportable allegation or conviction against an employee, whether in the course of their employment or outside working hours, of which an employer becomes aware.

(c) *Child Protection (Working with Children) Act 2012*

This Act introduces a process for helping employers to decide whether people are suited to work in child-related positions in NSW.

The Act prohibits certain persons from engaging in child-related work and requires persons engaged in child-related work to have Working With Children clearances. A Working with Children Check involves a national criminal history check and review of reported workplace misconduct findings.

1.3 The aim of the Child Protection legislation is to put in place consistent processes and procedures to ensure that children and young persons are protected, and the legitimate rights of parents, employees and employers are maintained and protected.

1.4 The Provincial of the Society of Jesus in Australia ("**the Provincial**") has issued guidelines for the development by each Jesuit School of arrangements which take into account the requirements of State law and which ensure:

- that Jesuit schools are and remain institutions in which the security and total well being of students committed to the care of the Society and its companions are safeguarded by all prudent means; and
- that companions in the works of a Jesuit school continue to perform their vocation in the confidence that they will be appropriately safeguarded against allegations that may be false or injurious.

1.5 It is the responsibility of the Principal to ensure that Child Protection arrangements in the College are consistent with the policy and procedures as laid down in the Provincial's guidelines and in accordance with the laws of the State.

## 2. General principles

2.1 The College's Statement on Child Protection and the procedures to be followed at the College are based on the following principles:

- (a) All adults have the responsibility to care for children and young persons, and to protect them from any kind of abuse/risk of harm.
- (b) In every preventative and/or protective action related to abuse/risk of harm, the total well-being of the child or young person is the primary concern.
- (c) The value of the family unit is respected but not to the detriment of the well-being of the child or young person.
- (d) In following this Statement the prime concern at all times must be the safety and care of all children and young persons at the College. It is not the intention of the Statement to be punitive towards an employee or to pre-judge the outcome of any legal processes.
- (e) If an allegation is from an ex-student or otherwise relates to conduct alleged to have involved a former student of an employee at the College, the same processes will be followed as for a current student.
- (f) All persons involved in situations where abuse/risk of harm is disclosed or suspected are to be treated with sensitivity, dignity and respect, and the College shall offer the provision of pastoral support as deemed appropriate by the Principal.
- (g) As the Principal is responsible for compliance with the terms of the Child Protection legislation, he is to be informed of all matters concerning the welfare of children and young persons, including suspected or disclosed incidents of abuse/risk of harm.
- (h) Employees who have access to information regarding suspected or disclosed abuse/risk of harm have the obligation to observe appropriate confidentiality in relation to the entire matter.
- (i) The Principal is to ensure that the College's pastoral care structures address issues of abuse/risk of harm, making appropriate provision for the support of children and young persons, families and employees directly involved.

## 3. Legitimate Authority of the College

3.1 The Child Protection legislation directs that ownership be taken by the Legitimate Authority of the College or other agency to ensure that its provisions are implemented.

3.2 For the College, the Legitimate Authority of the College with respect to this legislation is as follows:

- (a) *Children and Young Persons (Care and Protection) Act 1998*

The Principal, representing the Provincial.

- (b) *Part 3A of the Ombudsman Act 1974*

The Provincial, who serves as the "Head of Agency". The Provincial has appointed the Principal to act as his representative in any Child Protection issues which may arise in the College.

- (c) *Child Protection (Working with Children) Act 2012*

The Principal, representing the Provincial.

#### 4. Procedures for reporting suspected abuse/risk of significant harm under the *Children and Young Persons (Care and Protection) Act 1998*

- 4.1 It is the responsibility of the Principal to ensure that all issues of notification are notified, as soon as practicable, to the appropriate authorities as designated by the Child Protection legislation.
- 4.2 These procedures refer to circumstances where a person has reasonable grounds to suspect that a child or young person or a class of children or young persons have been abused/are at risk of significant harm because of the presence of any one or more of the following circumstances:
- (a) The child 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 the necessary medical care;
  - (c) The child or young person is at risk of being physically or sexually abused or ill-treated;
  - (d) 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;
  - (e) A parent or other caregiver has behaved in such a way towards a child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm.
- 4.3 Notification on reasonable grounds that a child (under the age of 16 years) is at risk of significant harm is **mandatory** for the following persons:
- (a) a person, who in the course of their professional work or paid employment delivers health care, welfare, education, children's services residential services, or law enforcement, wholly or partly, to children; and
  - (b) a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children.
- 4.4 Notification that a young person (16 or 17 years of age) who is suspected of being at risk of significant harm is **voluntary**.
- However, consideration may need to be given to any possible legal duty to report knowledge of a crime to the NSW Police under the *Crimes Act 1900*.
- When considering notifying young persons to the appropriate authorities, the notifier needs to consider the young person's wishes, their level of maturity and the personal situation as well as ensuring that the decision about their safety in such circumstances is not left entirely to them.
- 4.5 In the case of a child or young person enrolled at the College, the employee or other person engaged at the College must as soon as practicable notify the Head of Junior School or Head of Senior School, as applicable, of the name or a description of the child or young person and the grounds for suspecting that the child or young person is at risk of significant harm. Where considered appropriate, the Principal is then informed.

4.6 For notifications to the appropriate authorities, it is the College's preferred process that the employee or other person, through the Principal, notifies those authorities as required. For example, the NSW Department of Family and Community Services ("**FACS**"), the NSW Police, and the NSW Ombudsman.

#### 4.7 **Establishing reasonable grounds**

Reasonable grounds may be found where, for eg:

- (a) A person witnesses an incident which may generate suspicion that a child or young person could be at risk of significant harm;
- (b) A child or young person speaks about being abused;
- (c) Someone else (perhaps a relative, friend, acquaintance or sibling of the child or young person) informs an employee or other person;
- (d) A child or young person tells an employee or other person that he/she knows someone who has been abused (often a child is referring to her/himself);
- (e) An employee or other person observes a particular child or young person's behaviour or his/her knowledge of children generally leads to suspicion of abuse.

If there is concern about a child or young person but the potential notifier does not feel confident enough that the suspicions constitute reasonable grounds, it is advised that the matter be discussed in private with the Head of Junior School or Head of Senior School, as applicable.

4.8 Employees or other persons must not undertake any investigation of suspected abuse/risk of significant harm.

Responsibility for the conduct of the child protection investigation lies with FACS in the first instance.

4.9 Employees or other persons are not to inform parents or other caregivers that a report to FACS has been made.

#### 4.10 **Protection for notifier**

The legislation provides protection for the notifier as follows:

- (a) The notification will not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
- (b) No liability for defamation is incurred for the person making the notification;
- (c) The notification will not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;
- (d) The notification will not be admissible in evidence in any proceedings before a court, tribunal or committee and no evidence of its contents will be admissible;
- (e) No person can be compelled in any court or tribunal to produce the notification or part thereof or to give evidence of its contents except in a children's court dealing with the subject child or young person.

#### 4.11 Flow chart

Annexure 2 is a flow chart outlining the process for notifying suspected abuse/risk of significant harm under the *Children and Young Persons (Care and Protection) Act 1998*.

4.12 While the *Children and Young Persons (Care and Protection) Act 1998* outlines a mandatory reporter's obligation to report to FACS, employees or other persons must report any concern regarding the safety, welfare and well-being of a student to the Head of Junior School or Head of Senior School, as applicable.

4.13 At all stages it is essential that:

- (a) The child or young person is protected;
- (b) The Principal is kept informed;
- (c) The anonymity of the notifier is maintained;
- (d) The rights of any alleged offender are respected.

#### 4.14 Definitions

Some definitions relevant to the *Children and Young Persons (Care and Protection) Act 1998* are provided in Annexure 3.

## 5. Reportable allegations and reportable convictions against employees

5.1 As with notifications under the *Children and Young Persons (Care and Protection) Act 1998*, it is the responsibility of the Principal to ensure that all issues of notification under the Part 3A of the *Ombudsman Act 1974* and the *Child Protection (Working with Children) Act 2012* are notified to the appropriate authorities as designated by the legislation.

5.2 Under Part 3A of the *Ombudsman Act 1974*, the Principal must report to the NSW Ombudsman any reportable allegation or reportable conviction against a person employed or engaged by the College – hereafter referred to as an employee.

5.3 The Principal must notify the NSW Ombudsman within 30 days of becoming aware of a reportable allegation or reportable conviction relating to an employee.

5.4 For a reportable allegation to be notified to the NSW Ombudsman, the following components are necessary:

- a) The person who is the subject of the allegation must be a current employee of the College or have been an employee at the time the allegation was made and must be identifiable. This does not necessarily mean identified by name, as a person may be identifiable by other information including their description and work schedules;
- (b) The alleged victim must have been under 18 years of age at the time of the alleged incident; and
- (c) The allegation must be an allegation of reportable conduct.

5.5 Certain allegations do not need to be notified to the NSW Ombudsman, viz:

- (a) An allegation that on face value is reasonable for the care and discipline and management of a child, having regard to the age, maturity, health or other characteristics of the children and to the College's *Child Protection Professional Standards*; or

- (b) An allegation of the use of physical force that, in all the circumstances, is trivial and negligible, and the College investigates the complaint and records the result of the investigation under workplace employment procedures; or
- (c) An allegation of conduct that falls within a Class or Kind Determination with the NSW Ombudsman that applies to the College.

Even if an allegation is not notifiable to the NSW Ombudsman, the College is still required to investigate the allegation and respond to its finding(s) through the implementation of action(s) as deemed appropriate by the College.

- 5.6 In the case of a reportable allegation or reportable conviction against an employee, it is the responsibility of the Principal to assess and monitor the risk of continued access of the employee to children in the College's care. Depending on the nature of the allegation and all other relevant factors, the Principal may take such action as is considered necessary to minimise such risk.
- 5.7 Administrative steps may be necessary to remove some or all of the responsibilities of an employee who is accused of wrong-doing. Any such action should be limited to the minimum considered necessary, should be private and temporary and must not be understood or depicted as implying guilt. Such measures are intended for the protection of the employee as well as the child and to facilitate a prompt resolution.
- 5.8 All practicable measures shall be taken to preserve the good name of the employee affected and to maintain his/her professional standing and self-esteem.
- 5.9 The College will inform employees that it will regard false allegations against them as a grave wrong.

**5.10 Principles to be observed**

Where a reportable allegation or reportable conviction is made against an employee, the College shall observe certain principles, viz:

- (a) The well-being of the child/children is of paramount concern;
- (b) A reportable allegation is a statement which is, at that point, unproven;
- (c) The dignity and privacy of all those involved, directly or indirectly, shall be maintained;
- (d) Care shall be given to ensuring the continuing trust and confidence of the College community.

**5.11 Procedure where allegation is made**

- 5.11.1 The College has established a procedure for notification of a reportable allegation or reportable conviction against an employee. Annexure 4 outlines this procedure.
- 5.11.2 Allegations will generally be dealt with in accordance with that procedure and this Statement. The procedure and this Statement should be referred to when making an allegation or if further information is needed.
- 5.11.3 The College will take whatever action it considers appropriate if the employee's conduct/actions is reportable to the NSW Ombudsman, including disciplining or dismissing offenders.

## 5.12 Notifying the Office of the NSW Children’s Guardian of Investigation Findings of Misconduct Involving Children

- 5.12.1 The College will report to the Office of the NSW Children’s Guardian (“OCG”) where an investigation finding has been made that the person (a College employee) subject to the finding engaged in:
- (a) sexual misconduct committed against, with or in the presence of a child, including grooming of a child; or
  - (b) any serious physical assault of a child.
- 5.12.2 The College will advise the employee that the OCG has been notified of a finding of misconduct involving children.
- 5.12.3 The *Child Protection (Working with Children) Act 2012* enables an employee who has a finding referred to the OCG under that Act to request access to the records held by the College in relation to the finding of misconduct involving children.

## 5.13 Definitions

Some definitions relevant to Part 3A of the *Ombudsman Act 1974* are provided in Annexure 5.

Some definitions relevant to the *Child Protection (Working with Children) Act 2012* are provided in Annexure 6.

## 6. Employee induction/development

- 6.1 Before taking up their appointment, new teaching, support and operational employees will be provided with a copy of this Statement and the College’s *Child Protection Professional Standards* which defines standards of decorum and prudential conduct in force at the College.
- 6.2 Each employee is required to sign an acknowledgment of having read, understood and agrees to support and comply with this Statement and the College’s *Child Protection Professional Standards*.
- 6.3 In-service instruction will be provided from time to time to all employees on statutory obligations binding on them, and on the implementation of this Statement and the *Child Protection Professional Standards*.
- 6.4 Other persons defined as employees under the Child Protection legislation will be provided with the appropriate statements, directions and protocols.



## 7. Supporting Documents/Resources

7.1 Include the following:

- (a) The applicable legislation;
- (b) *Keep Them Safe: A Shared Approach to Child Wellbeing – NSW Government and Response*;
- (c) *Child Wellbeing and Child Protection – NSW Interagency Guidelines*;
- (d) *Memorandum of Understanding between Department of Family & Community Services and Catholic Education Commission NSW and The Association of Independent Schools of NSW on Centralised Mandatory Reporting*;
- (e) NSW Ombudsmen Class or Kind Determination concerning Independent Schools represented by The Association of Independent Schools of NSW Ltd;
- (f) NSW Ombudsmen – Advice/Updates;
- (g) *The College’s Child Protection Professional Standards*;

and any other requirements prescribed by the relevant authorities for the purposes of ensuring the College’s compliance to the Child Protection legislation.

## 8. About this Statement/Review

- 8.1 This Statement is not a term of any contract, including any contract of employment.
- 8.2 The College reserves the right from time to time, to review and update this Statement to take into account new laws, changes to the College’s operations and practices, and to make sure it remains appropriate to the changing College environment.
- 8.3 This Statement replaces all previous arrangements and policies at the College in relation to Child Protection.

**Purpose:** set out information, processes and procedures to comply with NSW Child Protection legislation

**Responsible Executive:** Principal

**Contact Officer:** Principal

**Modification History:** Edited: August 2015

**Last edited:** 20 July 2016

**Next Review Date:** 30 June 2017



**NSW Child Protection legislation package**

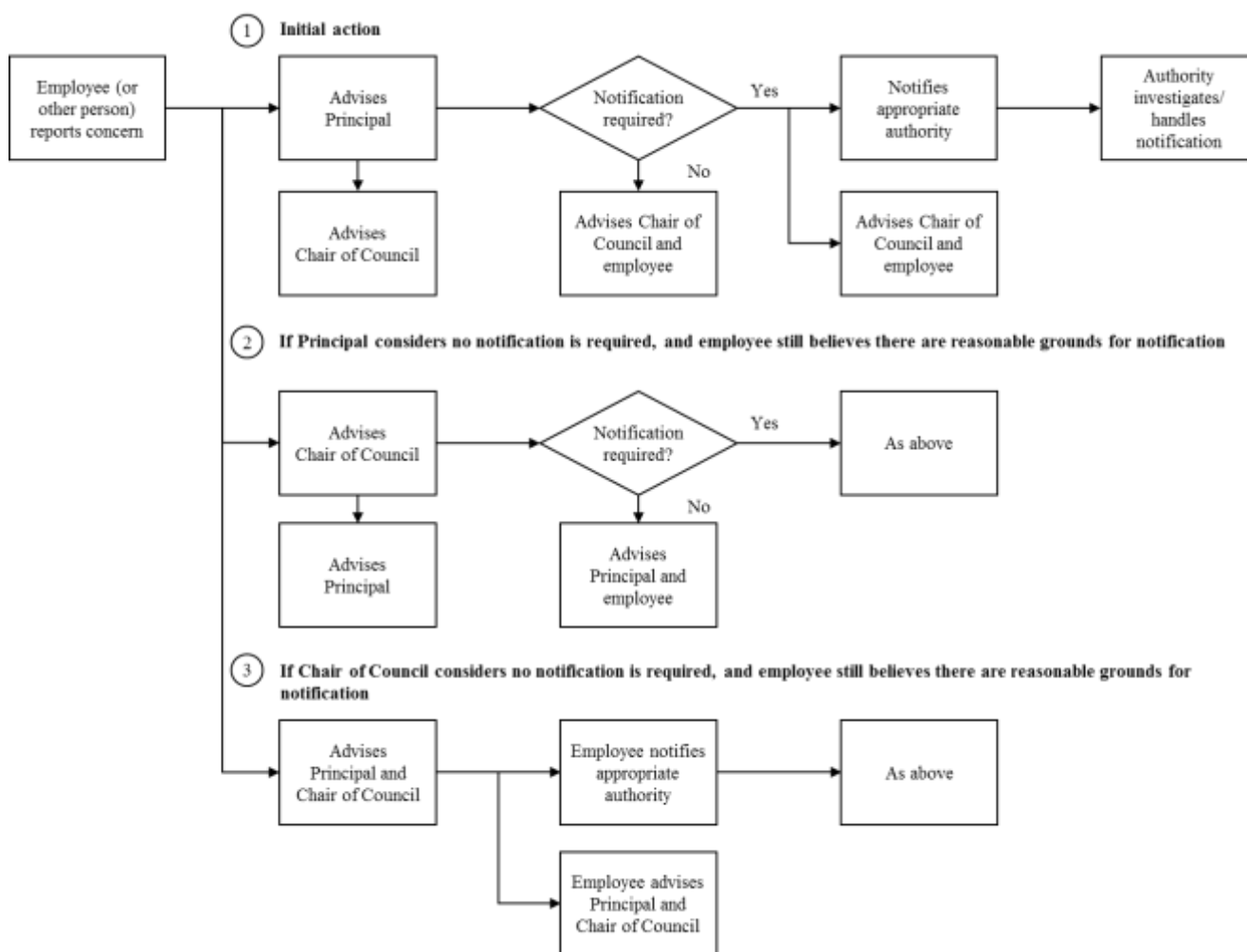
Legislation	<i>Children and Young Persons (Care and Protection) Act 1998</i>	Part 3A of the <i>Ombudsman Act 1974</i>	<i>Child Protection (Working with Children) Act 2012</i>
<b>Effects</b>	<p>Provides a framework for cooperative and coordinated work between Government, community sector agencies and families in the care and protection of children and young persons.</p> <p>Requires reporting to FACS of children and young persons who are suspected on reasonable grounds of being abused/at risk of significant harm.</p>	<p>NSW Ombudsman's jurisdiction covers the oversight, monitoring and investigation of child protection matters in certain designated agencies including non-government schools, health services, licenced child care centres and substitute child care services.</p>	<p>Prohibits certain persons from engaging in child-related work and requires persons engaged in child-related work to have Working with Children Clearances.</p>
<b>Obligations of employers</b>	<p>Mandatory reporting to FACS regarding a <b>child</b> who is suspected on reasonable grounds of being at risk of significant harm.</p> <p>Voluntary reporting to FACS regarding a <b>young person</b> who is suspected on reasonable grounds of being at risk of significant harm.</p> <p>Work with Government and non-government agencies to plan and provided services for the care and protection of children and young persons.</p> <p>Retain relevant records.</p>	<p>Notify the NSW Ombudsman of any reportable allegation or reportable conviction against an employee of which an employer becomes aware.</p> <p>Retain relevant records.</p>	<p>Verify online whether a person has a clearance to work with children.</p> <p>Not employ any person who is prohibited from working with children.</p> <p>Report to the Office of the NSW Children's Guardian certain conduct of an employee.</p>
<b>Obligations of employees</b>	<p>As per employers.</p>	<p>Inform local manager (Principal/director) of any allegation of reportable conduct or reportable conviction within their workplace.</p>	<p>Obtain a Working with Children Check clearance before being engaged in child-related work.</p> <p>Not apply for or remain in child-related employment if barred from working with children.</p> <p>Disclose to employer their status relating to their clearance to work with children.</p>



**Flow chart: Process for notifying suspected abuse/risk of significant harm under the Children and Young Persons (Care and Protection) Act 1998**

**Step 1:** If an employee or other person has a concern about a child or young person being at risk of significant harm, they should immediately inform the Head of Junior School or Head of Senior School, as applicable.

**Step 2:** Where considered appropriate, the process below then applies:



- In those cases where allegations of abuse/risk of significant harm are directed against the clergy, or members of religious organisations, the notification procedures adopted are to be consistent with those outlined in these Guidelines.
- However, in the case where an allegation is directed against the Principal, the first point of reference will be the Chair of Council.
- In all other respects, the procedures to be adopted are to be consistent with those outlined in these Guidelines.



**Some definitions relevant to the *Children and Young Persons (Care and Protection) Act 1998***

**Child**

A person who is under 16 years of age.

**Young person**

A person who is aged 16 years or above but who is under the age of 18 years.

**Class of children or young persons**

Refers to more than one (1) child or young person who may be at risk of significant harm from abuse because of a person or situation. Eg: children in a school where a person in charge is suspected of abuse or known to have abused a child.

**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:

- (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 *Children and Young Persons (Care and Protection) Act 1998* 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.

**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 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 abuse and neglect**

There are different forms of child abuse. These include neglect, physical, sexual 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 when 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 affections, 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 well-being concerns are safety, welfare or well-being concerns for a child or young person that do not meet the mandatory reporting threshold, risk of significant harm.



**Procedure for notifying and handling a reportable allegation or reportable conviction against an employee**

Where an allegation is made against an employee, the following procedure shall be followed by the College:

Person who is the subject of an allegation	Referred to
All employees (including Jesuits)	Principal
Principal	Chair of Council
Chair of Council	Principal

- In the first instance, the Principal will determine whether the complaint is a reportable allegation, notifiable to the NSW Ombudsman.
- The Principal will inform the complainant of the consequent processes which are required by law and by this Statement.
- Where the allegation is judged to be a reportable allegation, the Provincial shall notify the NSW Ombudsman of the allegation as soon as practicable, and in any event, within 30 days of becoming aware of the allegation, or within a period agreed to by the NSW Ombudsman.
- The Principal shall instigate an investigation of the allegation. The seriousness of the allegation shall guide the level of investigation undertaken.
- With regard to the investigation, the Principal (or as delegated) shall:
  - Remind the employee who is the subject of the allegation of their right to contact a representative of their choosing, and provide an opportunity for the employee to respond to the allegation;
  - Make reasonable inquiries before reaching a finding;
  - Consider all relevant available evidence;
  - Act fairly and without bias/conflict of interest;
  - Conduct the investigation without undue delay.
- The College shall maintain clear documentation of any investigation.
- The College shall provide support to all parties throughout an investigation.
- Where required, the Provincial shall notify the NSW Ombudsman whether or not the College proposes to take any disciplinary or other action in relation to the employee who is the subject the allegation, and the reasons why it intends to take or not to take any such action. Such notification shall be made as soon as practicable.
- Where an allegation does not need notifying to the NSW Ombudsman, the College’s usual Grievance/inquiry processes shall be adopted.

- Where after investigation of a reportable allegation, the College conducts an employment proceeding against the person who is the subject of the allegation, the Principal shall communicate the outcome of the employment proceeding to the Office of the NSW Children's Guardian.
- \* **Where the person who is the subject of the allegation is the Principal, this procedure will be conducted by the Chair of Council.**

#### **Documentation**

- Where an allegation is deemed not notifiable to the NSW Ombudsman, a copy of the file is retained at the College, and, where applicable, specific details at the office of The Association of Independent Schools of NSW Ltd.
- Where an allegation is deemed notifiable to the NSW Ombudsman, a copy of the file is retained at the College, the Province Office and at the office of NSW Ombudsman.
- All documents shall be stored securely.



**Some definitions relevant to Part 3A of the *Ombudsman Act 1974***

**Child**

Is a person under the age of 18 years for the purposes of the *Ombudsman Act 1974*.

**Reportable Conduct**

Reportable conduct is defined as:

- (a) any sexual offence or sexual misconduct committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material);
- (b) any assault, ill-treatment or neglect of a child; and
- (c) any behaviour that causes psychological harm to a child whether or not, in any case, with the consent of the child.

Reportable conduct does not extend to:

- (a) 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 of professional standards; or
- (b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- (c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under Section 25CA of the *Ombudsman Act 1974*.

**Ill-Treatment**

Captures those circumstances where a person treats a child in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner. The focus is on the alleged conduct rather than the actual effect of the conduct on the child.

Ill-treatment can include disciplining or correcting a child in an obviously unreasonable and seriously inappropriate manner; making excessive and/or degrading demands on a child; hostile use of force towards a child; and/or pattern of hostile or unreasonable and seriously inappropriate, degrading comments or behaviour towards a child.

**Neglect**

Includes either an action or inaction by a person who has care responsibility towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.

1. Supervisory neglect:
  - an intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or
  - an intentional or reckless failure to adequately supervise a child or a significantly careless act or failure to act, that:
    - involves a gross breach of professional standards; and
    - has the potential to result in the death or significant harm to a child.
2. Carer neglect:
  - grossly inadequate care that involves depriving a child of the basic necessities of life; such as the provision of food and drink, clothing, critical medical care or treatment, or shelter.
3. Failure to protect from abuse:
  - an obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.
4. Reckless act (or failure to act):
  - a reckless act, or failure to act, that:
    - involves a gross breach of professional standards, and
    - has the potential to result in the death of, or significant harm to, a child.



## Physical Assault

Is any act by which a person intentionally inflicts unjustified use of physical force against another. An assault can also occur if a person causes another person to reasonably apprehend that unjustified force is going to be used against them. Even if a person who inflicts physical harm or causes another person to reasonably apprehend physical harm does not actually intend to inflict the harm or cause fear, they may still have committed an assault if they acted 'recklessly'.

'Recklessness' in this context relates to circumstances when the person ought to have known that their actions would cause a person physical harm or cause them to fear injury.

Assaults can include hitting, pushing, shoving, throwing objects or making threats to physically harm a child.

## PSOA

'Person subject to the allegation'.

## Reportable conviction

Means a conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.

## Sexual Misconduct

Has two categories which include:

- (1) crossing professional boundaries; and
- (2) sexually explicit comments and other overtly sexual behaviour.

The alleged conduct must have been committed against, with or in the presence of a child.

## Crossing professional boundaries

Sexual misconduct includes behaviour that can reasonably be construed as involving an inappropriate and overly personal or intimate:

- relationship with;
- conduct towards; or
- focus on;

a child or young person, or a group of children or young persons.

Codes of conduct that outline the nature of the professional boundaries which should exist between employees and children/young people can be particularly useful. For employees who either intentionally breach such codes or have demonstrated an inability to apply them appropriately, it may be

necessary to provide more detailed written advice about what constitutes appropriate behaviour.

## Sexually explicit comments and other overtly sexual behaviour

Behaviour involving sexually explicit comments and other overtly sexual behaviour which can constitute sexual misconduct. Some forms of this behaviour also involve crossing professional boundaries. This conduct may include:

- (a) inappropriate conversations of a sexual nature;
- (b) comments that express a desire to act in a sexual manner;
- (c) unwarranted and inappropriate touching;
- (d) sexual exhibitionism;
- (e) personal correspondence (including electronic communications such as e-mails and text messages) with a child or young person in relation to the adult's sexual feelings for a child or young person;
- (f) exposure of children and young people to sexual behaviour of others including display of pornography; and
- (g) watching children undress. For example, in change rooms or toilets when supervision is not required or justified.

## Sexual Offences

Encompasses all criminal offences involving a sexual element that are 'committed against, with or in the presence of a child'.

These offences include (but are not limited to) the following:

- (a) indecent assault;
- (b) sexual assault;
- (c) aggravated sexual assault;
- (d) sexual intercourse and attempted sexual intercourse;
- (e) possession / dissemination / production of child pornography or child abuse material;
- (f) using children to produce pornography;
- (g) grooming or procuring children under the age of 16 years for unlawful sexual activity; and
- (h) deemed non-consensual sexual activity on the basis of special care relationships.



## Some definitions relevant to *Child Protection (Working with Children) Act 2012*

### Bars

- **Final Bar**

This bar is applied based on a decision made by the Office of the NSW Children's Guardian ("OCG"), following a risk assessment. This person is barred against working with children.

- **Interim bar**

An interim bar is issued to high risk individuals to prevent them from continuing to work with children while a risk assessment is conducted. An interim bar may be applied for up to 12 months. If an interim bar remains in place for six months or longer, it may be appealed against through the NSW Civil and 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.

Interim bars are issued only for risks considered likely to result in a final bar.

### Child-related work

Child-related work includes, but not limited to work in the following sectors:

- (a) early education and child care including education and care service, child care centres and other child care;
- (b) education 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; or
- (e) transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings.

### Child-related worker

A person who has physical contact or face to face contact with children in work outlined above, including schools. This may include volunteer work.

A child-related worker may commence work once they have completed the Working with Children Check application process. An application is completed when the online application form is complete and the worker's identity has been proven at the NSW motor registry or Council Agency and the fee has been paid (if in paid work).

### 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 the *Child Protection (Working with Children) Act 2012*.

A disqualified person is a person who has a bar preventing them from working with children in child-related work.

It is an offence for an employer to knowingly engage a child-related worker when they do not hold a Working with Children Check or who has a bar or an interim bar.

It is an offence for an employee to engage in child-related work when they do not hold a Working with Children Check or who has a bar or an interim bar.

### Reporting body

Independent Schools which are members of the Association of Independent Schools of NSW are defined as a reporting body by the *Child Protection (Working with Children) Act 2012*.

Section 35 of the Act requires the College to notify the OCG findings of misconduct involving children made against a child-related worker. The College may also be obliged to report, amend or provide additional information to the OCG as outlined in the Act.

## **Risk assessment**

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, findings of misconduct involving children or notification made to the OCG by the NSW Ombudsman.

## **Working with Children Check Clearance**

A Working with Children Check means authorisation under the *Child Protection (Working with Children) Act 2012* to engage in child-related work. An employee will be issued with a number which is to be provided to the College to verify the status of an employee's Check.