



**BROUGHTON**  
ANGLICAN COLLEGE

## **CHILD PROTECTION PROTOCOLS**

<b>VERSION</b>	<b>10</b>
<b>LAST REVIEWED</b>	<b>February 2019</b>
<b>NEXT REVIEW</b>	<b>September 2019</b>

<b>Written</b>	<b>October 2005</b>
<b>Version 5</b>	<b>October 2009</b>
<b>Version 6</b>	<b>March 2014</b>
<b>Version 7</b>	<b>May 2014</b>
<b>Version 8</b>	<b>October 2015</b>
<b>Version 9</b>	<b>August 2018</b>
<b>Version 10</b>	<b>February 2019</b>

## Table of Contents

1. Rationale.....	5
2. Key Legislation.....	5
3. Other Policies.....	6
4. Reporting Obligations.....	6
5. The Care and Protection Act.....	6
5.1 Mandatory Reporters.....	6
5.2 Reporting to Family and Community Services.....	7
5.3 Determining Reporting Options at Broughton.....	8
5.4 Reasonable Grounds.....	8
5.5 Significant Harm.....	8
5.6 Policy Definition of Significant Harm.....	9
5.6.1 Child Abuse and Neglect.....	9
5.7 What should you do if you consider that a mandatory report is required?.....	10
5.8 What should you do if you have a concern that is below the mandatory reporting threshold?.....	11
6. The Ombudsman Act.....	11
6.1 Responsibilities.....	11
6.1.1 General.....	11
6.1.2 The Ombudsman.....	12
6.1.3 Head of Agency.....	12
6.1.4 Child Protection Investigators.....	13
6.1.5 Reporting Obligations.....	13
6.2 Responsibilities and Rights Relating to Reporting.....	14
6.2.1 Informing Staff of their Responsibilities Relating to Reporting.....	14
6.2.2 Informing Parents of their Responsibilities Relating to Reporting.....	15
6.3 What is Reportable Conduct?.....	15
6.4 Other Relevant Definitions.....	16
6.5 What happens when an allegation of reportable conduct is made?.....	20
6.5.1 Initial Steps.....	20
6.5.2 Investigation Principles.....	20
6.5.3 Investigation Steps.....	21
6.5.4 Risk management.....	23

6.5.5	What information will be provided to the PSOA?.....	24
6.5.6	Disciplinary Action.....	25
6.5.7	Confidentiality.....	25
7.	Working With Children Act.....	25
7.1	General.....	25
7.2	Responsibilities.....	26
7.3	Relevant Definitions.....	27

## 1. Rationale

Broughton Anglican College is committed to ensuring the safety and wellbeing of all of its students and staff. By providing a learning environment that is safe, supportive and caring, we seek to recognise promptly when any of our students are at risk of harm and to take appropriate action to protect students where there may be a risk of harm, either within the College or external to the College.

The purpose of this Child Protection Policy is to ensure that procedures are established to allow the College to fulfil its moral and legal obligations to protect children and young people from abuse and/or neglect through the prevention of, and response to, reports of such abuse/neglect. The College is committed to investigating all allegations promptly and fairly.

The College is committed to complying with its obligations under the NSW Child Protection legislation and to educating its staff as to those obligations. The College expects all staff to honour the College's commitment in this Policy in order to achieve a safe learning environment. Accordingly, reportable conduct by staff towards students will not be tolerated under any circumstances.

The College continually develops strategies to create a safe learning environment. These include educating all members of the College community about child protection issues. The strategies developed by the College are monitored continuously and reviewed regularly.

The College and its staff 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.
- 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.

## 2. Key Legislation

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

1. The *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the **Care and Protection Act**).
2. The *Child Protection (Working With Children) Act 2012* (NSW) (the **WWC Act**).
3. The *Ombudsman Act 1974* (NSW) (the **Ombudsman Act**).

### 3. 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):

- Code of Conduct - which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the College.
- Work Health and Safety Manual - which summarises the obligations imposed by work health and safety legislation on the College and workers.
- Unlawful Discrimination, Harassment and Bullying Statement for Employees, Contractors and Volunteers - which summarises your obligations in relation to unlawful discrimination, harassment and bullying.
- Anti-Bullying Protocols Junior School.
- Anti-Bullying Protocols Senior School.

### 4. Reporting Obligations

The College requires **all** staff members to report **any concern** they may have about the safety, welfare or wellbeing of a child or young person **to the Headmaster, or his delegate, immediately.**

If the allegation involves the Headmaster, you are required to report to the Chairman of Schools Council.

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

### 5. The Care and Protection Act

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

**Please note, any concern regarding the safety, welfare or wellbeing of a student must be reported to the Headmaster or his delegate if he is on leave.**

#### 5.1 Mandatory Reporters

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.

### **Mandatory Reporters at Broughton**

The College has determined that **all staff** are to be considered as being mandatory reporters and therefore must report any concern relating to the safety and wellbeing of students immediately to the Headmaster. If the Headmaster is not on-site, staff are requested to report any concerns to the relevant Head of School who will then contact the Headmaster.

The Headmaster, when receiving a concern relating to the safety or wellbeing of a student, on the first instance, should consider if this concern should be reported to the Department of Family and Community Services.

### **Informing staff of their responsibilities in relationship to mandatory reporting**

Permanent and temporary staff employed by the College will be informed of their responsibilities relating to mandatory reporting through receiving an electronic copy of this document prior to accepting a position at the College. Permanent employees will be asked to read the document prior to signing their contract of employment and to indicate they have undertaken this by providing a signed Child Protection Policy Acknowledgement form when they sign their initial contract. This form will be placed on the staff member's file.

Casual staff employed by the College will be informed of their responsibilities relating to mandatory reporting through receiving an electronic copy of this document prior to accepting a position at the College. Casual employees will be asked to read the document prior to commencing their work at the College and to indicate they have undertaken this by providing a signed Child Protection Policy Acknowledgement form when they sign their initial contract. This form will be placed on the staff member's file.

Staff will be reminded at the commencement of each academic year of their responsibilities relating to mandatory reporting and asked to re-sign the Child Protection Policy Acknowledgement form. This form will be placed on the staff member's file.

## **5.2 Reporting to Family and Community Services**

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 Community Services as soon as practicable, the name, or 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 Community Services 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 wellbeing of the young person.

### **5.3 Determining Reporting Options at Broughton**

When a staff member or student reports a concern relating to the safety or wellbeing of a student, then consideration will be given if the matter should be referred to Community Services.

The Headmaster may decide to use the Mandatory Reporting Guide found on the 'Keep Them Safe' website to determine if the matter should be reported to Community Services or the Police.

Any report from the Mandatory Reporting Guide should be placed in the confidential filing cabinet in the Headmaster's Personal Assistant's office.

### **5.4 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.

### **5.5 Significant Harm**

A child or young person is 'at risk of significant harm' if current concerns exist for the safety, welfare or wellbeing of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:

- The child's or young person's basic **physical or psychological** needs are not being met or are at risk of not being met.
- The parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary **medical care**.

- In the case of a child or young person who is required to **attend school** in accordance with the Education Act 1990 - the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act.
- The child or young person has been, or is at risk of being, **physically or sexually abused or ill-treated**.
- The child or young person is living in a household where there have been incidents of **domestic violence** and, as a consequence, the child or young person is at risk of **serious physical or psychological harm**.
- A parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of **suffering serious psychological harm**.
- The child was the subject of a pre-natal report under section 25 of the Care and Protection Act and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

## 5.6 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 wellbeing 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 wellbeing.

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.

### 5.6.1 Child Abuse and Neglect

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

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

**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 punish 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's 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.

**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.

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

Reporting by the College about these matters to Family and Community Services and, where necessary, the police, is generally undertaken by the Headmaster or his delegate. 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 Headmaster 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. If the Headmaster is not on site, report your concerns to a Head of School who will then contact the Headmaster.

However, if there is an immediate danger to the child or young person, and the Headmaster or a Head of School is not contactable, you should speak to the Police and/or the Child Protection Helpline directly and then advise the Headmaster 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 Community Services 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.

## **5.8 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 Family and Community Services, as an employee of the College, any concern regarding the safety, welfare and wellbeing of a student must be reported to the Headmaster.

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

## **6. The Ombudsman Act**

### **6.1 Responsibilities**

#### **6.1.1 General**

Part 3A of the Ombudsman Act requires the heads of certain agencies, including non-government schools in New South Wales, to notify the New South Wales Ombudsman of all allegations of reportable conduct by an '**employee**' and the outcome of the College's investigation of these allegations.

An '**employee**' includes employees, contractors, volunteers, work experience participants, clergy, ministers of religion and instructors of religion who provide pastoral or liturgical services. In this part, where there is a reference to an employee, it includes all of these persons.

### **6.1.2 The Ombudsman**

The Ombudsman:

- Must keep under scrutiny the systems for preventing reportable conduct by employees of non-government schools and the handling of, or response to, reportable allegations (including allegations which are exempt from notification) or convictions.
- Must receive and assess notifications from non-government schools concerning reportable conduct or reportable convictions.
- Is required to oversee or monitor the conduct of investigations by non-government schools into allegations of reportable conduct or reportable convictions.
- Must determine whether an investigation that has been monitored has been conducted properly, and whether appropriate action has been taken as a result of the investigation.
- May directly investigate an allegation of reportable conduct or reportable conviction against an employee of a non-government school, or the handling of or response to such a matter (e.g. arising out of complaints by the person who is the subject of an allegation).
- May undertake 'own motion' investigations of non-government schools where the Ombudsman considers it appropriate to do so, including where there is evidence of systemic failure or serious conflict of interests.

### **6.1.3 Head of Agency**

The Head of Agency is the Headmaster of the College. If the Headmaster is on extended leave, then the Acting Head of College would be deemed to be the Head of Agency.

Under the Ombudsman Act, the Head of Agency must:

- Set up systems within their organisation to ensure that they are advised of any allegations of reportable conduct against employees.
- Notify the Ombudsman (using a NSWOW Part A notification form) as soon as possible and no later than thirty days after being made aware of an allegation.
- Notify the Ombudsman whether or not the College plans to take disciplinary or other action in relation to an employee who is the subject of a reportable allegation or conviction, and the reasons for taking or not taking any such action as soon as practicable.
- Provide the Ombudsman with any documentary and other information as the Ombudsman may from time to time request to assist in the Ombudsman's monitoring of an investigation.

This will typically include the NSWOW Part B notification form and risk assessments.

All correspondence between the College and the Ombudsman will be placed in the confidential filing cabinets in the Headmaster's Personal Assistant's office.

#### **6.1.4 Child Protection Investigators**

The College has investigators, trained by the Association of Independent Schools, to undertake investigations in relation to allegations of reportable conduct. If an allegation of reportable conduct is made against the Headmaster or a Head of School, then the College will engage an external investigator to undertake the investigation.

#### **6.1.5 Reporting Obligations**

##### **6.1.5.1 Staff 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 you to the Headmaster, including information about yourself. If you are not sure whether the conduct is reportable conduct but consider that it is inappropriate behaviour, you must still report it.

You must also report to the Headmaster or his delegate if you 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 yourself.

If the allegation involves the Headmaster, you are required to report to the Chairman of the School's Council.

##### **6.1.5.2 Parents Reporting Concerns**

The Headmaster or his delegate is the contact point for parents if they wish to report an allegation of reportable conduct against an employee.

Should a parent make a report of behaviour of a staff member, another parent or a student of possible reportable conduct report a concern to a member of staff then the member of staff must advise the parent to report the matter to the Headmaster immediately.

The staff member is also required to report this matter to the Headmaster or his delegate.

##### **6.1.5.3 Students Reporting Concerns**

Students may report concerns of possible reportable behaviour relating to behaviour towards themselves, another student, a friend or a family member. They will elect to disclose these concerns to a trusted member of staff.

When a student makes a disclosure of reportable conduct they should be made aware of the staff member's legal responsibility to report this behavior to the Headmaster or his delegate on their behalf.

The staff member is to report this disclosure to the Head of Agency or his delegate as required under these protocols.

## **6.2 Responsibilities and Rights Relating to Reporting**

### **6.2.1 Informing Staff of their Responsibilities Relating to Reporting**

Staff are required to sign the College's Council protocols titled '**Staff Protocols – Code of Conduct**' prior to their commencement of duties. This document details protocols and expectations in relation to:

- Supervision of Students
- Relationships with Students
- Discipline of Students
- Communication
- Camps / Billets / Excursions
- Duty of Disclosure

Permanent staff employed by the College will be informed of their responsibilities relating to mandatory reporting through receiving an electronic copy of this document prior to accepting a position at the College. Permanent employees will be asked to read the document prior to signing their contract of employment and to indicate they have undertaken this by providing a signed Child Protection Policy Acknowledgement form when they sign their initial contract. This form will be placed on the staff member's file.

Casual staff employed by the College will be informed of their responsibilities relating to mandatory reporting through receiving an electronic copy of this document prior to accepting a position at the College. Casual employees will be asked to read the document prior to commencing their work at the College and to indicate they have undertaken this by providing a signed Child Protection Policy Acknowledgement form when they sign their initial contract. This form will be placed on the staff member's file.

Staff will be reminded at the commencement of each academic year of their responsibilities relating to mandatory reporting and asked to re-sign the Child Protection Policy Acknowledgement form. This form will be placed on the staff member's file.

The Headmaster will remind staff of their responsibilities relating to reporting Child Protection matters:

- In the Staff Induction program
- Informally through reminders at prayers.
- Informally at meetings e.g. Senior School Management Meetings.
- Through the Staff News.
- Through 'Child Protection' training in staff meetings.

The College may take the opportunity to invite external providers/trainers to update/train staff during the College Professional Development Program.

### **6.2.2 Informing Parents of their Responsibilities Relating to Reporting**

Parents will be informed of their responsibility to report disclosures of possible reportable conduct to the Headmaster or his delegate and procedures to do this through:

- the Parent and Grandparent Volunteer Protocols.
- the College Newsletter each term.

### **6.2.3 Informing Students of their Right to Report Possible Reportable Behaviour**

Students will be informed of the how they can report /disclosure inappropriate behaviour towards them which may be reportable conduct to the Headmaster or his delegate and procedures to do this through:

- Daily Notices at least once a term.
- the College Newsletter each term.

## **6.3 What is Reportable Conduct?**

The definition of reportable conduct is defined as:

- 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).
- Any **assault, ill-treatment** or **neglect** of a child; and 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:

- 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.
- 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.
- Conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

#### 6.4 Other Relevant Definitions

Set out below are definitions of the various terms referred to above in relation to reportable conduct:

- **Behaviour that causes psychological harm** to a child is behaviour that is obviously or very clearly unreasonable and results in significant harm or trauma to a child. There needs to be a proven causal link between the inappropriate behaviour and the harm, and the harm must be more than transient.
- **Child** is a person under the age of 18 years for the purposes of the Ombudsman Act.
- **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:

- Crossing professional boundaries, and
- 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:

- Inappropriate conversations of a sexual nature.
- Comments that express a desire to act in a sexual manner.
- Unwarranted and inappropriate touching.
- Sexual exhibitionism.
- 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.
- Exposure of children and young people to sexual behaviour of others including display of pornography.
- Watching children undress. For example, in change rooms or toilets when supervision is not required or justified.

**Sexual Offences** encompass 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:

- Indecent assault.
- Sexual assault.
- Aggravated sexual assault.
- Sexual intercourse and attempted sexual intercourse.
- Possession/dissemination/production of child pornography or child abuse material.
- Using children to produce pornography.
- Grooming or procuring children under the age of 16 years for unlawful sexual activity.
- Deemed non-consensual sexual activity on the basis of special care relationships.

**Grooming** refers to patterns of behaviour or conduct aimed at engaging with an alleged victim for sexual activity.

Types of grooming behaviour may include:

- Persuading child/ren that there is a 'special relationship'
- Inappropriate gift giving
- Special favours / breaking rules
- Inappropriate amounts of time
- Secret relationship, tactics to keep relationship secret
- Testing boundaries (touching, physical contact, undressing in front of child, talking about sex)
- Extending relationship outside of work
- Personal communication about personal or intimate feelings

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 *Child Protection (Working With Children) Act*, grooming is recognised as a form of **sexual misconduct**. The *NSW Ombudsman Act, 1974* and this Child Protection Policy reflect all of these definitions within the context of the Reportable Conduct Scheme (Part 3A).

## **6.5 What happens when an allegation of reportable conduct is made?**

### **6.5.1 Initial Steps**

Once an allegation of reportable conduct against an employee is received, the Headmaster or his delegate is required to:

- Determine on face value whether it is an allegation of reportable conduct.
- Assess whether Family and Community Services or the Police need to be notified (i.e., if reasonable grounds to suspect that a child is at risk of significant harm or criminal offence).
- Notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by Family and Community Services or the Police.)

If Family and Community Services or the Police have been notified, the Headmaster will seek clearance from these statutory agencies prior to the College proceeding with the Reportable Conduct investigation.

- Notify the Ombudsman within 30 days of receiving the allegation.
- Carry out a risk assessment and take action to reduce/remove risk, where appropriate.
- Appoint a trained investigator to investigate the allegation.

### **6.5.2 Investigation Principles**

The College will:

- Be mindful of the principles of procedural fairness.
- Inform the person subject of the allegation (PSOA) of the substance of any allegations made against them 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.
- Provide appropriate support for all parties including the child/children, witnesses and the PSOA.

### 6.5.3 Investigation Steps

If the Headmaster receives an allegation of reportable conduct, then he will:

- Determine if there is risk of significant harm and if the matter should be referred to the Police or Community Services.  
If the matter is referred on to the police or Community Services, then no further investigation should be undertaken without the permission of these authorities.
- Undertake a risk assessment of the situation and take appropriate action.
- The Headmaster should initiate an investigation:
  - When given permission by the Police or Community Services if the allegation had been referred to them **or**
  - on receipt of allegations of possible reportable conduct if it had been determined that the matter did not require referral to the police or Community Services.
- The Headmaster should undertake appropriate risk assessments to minimise any risk to the alleged victim of the allegation.

When the Headmaster has determined that an investigation of the allegation is required, then he will:

- consider any conflict of interests in the investigation of this matter.
- seek external advice as appropriate.
- report the matter to external agencies, if required.
- determine if the matter should be investigated as a Class or Kind Matter.
- appoint a trained investigator to undertake the investigation.

When the investigator has been appointed he/she will:

- undertake a risk assessment relating to the alleged victim, the alleged perpetrator, the investigation process, and the College.
- inform the PSOA that an allegation has been made and an investigation will be undertaken.
- offer appropriate support to the alleged victim of the allegation and the PSOA.

The trained investigator will:

- Plan investigation and interviews.
- Interview relevant witnesses and gather relevant documentation.
- Provide a draft letter of allegation for the Headmaster to approve and issue to the PSOA. The letter of allegation should be signed by the investigator.

- Allow the PSOA to give a response to the allegation through an interview and / or written response.
- The PSOA is entitled to have a support person at any interview.
- Analyse relevant evidence and make a preliminary finding in accordance with the NSW Ombudsman guidelines.
- Develop a Preliminary report for the Headmaster detailing:
  - The process and timeline of the investigation.
  - A summary of the risk assessments undertaken.
  - A summary of the evidence collected.
  - A summary of the analysis of the evidence collected.
  - A recommendation for the Preliminary Finding of the investigation for the Headmaster to consider.

After considering the report from the investigator the Headmaster will:

- Inform the PSOA of the preliminary finding and provide them with an opportunity to respond.
- Consider any response or further information provided by the PSOA.
- Make a final finding in accordance with the NSW Ombudsman Guidelines.
- Inform the PSOA the final findings of the allegation.
- Decide on the disciplinary action, if any, to be taken against the PSOA.
- Consider Section 25GA of the Ombudsman Act 1974 – Disclosure of information about the investigation to the alleged victim, parents and carers.
- Conduct a final risk assessment
- Apply the NSW Office of the Children’s Guardian (OCG) Guidelines and decide if the matter is reportable to the OCG.
- Send the final report to the Ombudsman and report to the OCG (where required).

The steps followed in the investigation process will be guided by the “Recommended Protocols for Internal Investigative and Disciplinary Proceedings 2001” (IEU/AIS) as updated from time to time.

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 Community Services or the NSW 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.

#### **6.5.4 Risk management**

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 Headmaster is responsible for risk management throughout the investigation and will assess risk at the beginning of the investigation, during and at the end of the investigation.

##### **6.5.4.1 Initial Risk Assessment**

One of the first steps following an allegation of reportable conduct against an employee is for the Head of Agency to conduct a risk assessment. The purpose of this initial risk assessment is to identify and minimise the risks to:

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

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

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

The Headmaster or his delegate 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, 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.

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

#### **6.5.4.2 Ongoing Risk Management**

The Headmaster will continually monitor risk during the investigation including in the light of any new relevant information that emerges.

#### **6.5.4.3 Risk Management at the Conclusion of the Investigation**

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

#### **6.5.5 What information will be provided to the PSOA?**

The PSOA will be advised:

- That an allegation has been made against them (at the appropriate time in the investigation).
- 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.
- Be shown the content of the Ombudsman notification form or other investigation material that reveals all information provided by other employees or witnesses.

The WWC Act enables a person who has a finding referred to the OCG under the Act to request access to the records held by the College in relation to the finding of misconduct involving children.

### **6.5.6 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.
- Give the PSOA a reasonable opportunity to respond before a final decision is made.

### **6.5.7 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 in the confidential filing cabinets in the Headmaster's Personal Assistant's office and will be accessible by the Headmaster or with the Headmaster's express authority.**

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

If you become aware of a breach of confidentiality in relation to a reportable conduct allegation, you must advise the Headmaster.

## **7. Working With Children Act**

### **7.1 General**

The Office of the Children's Guardian (OCG) is responsible for employment screening for child related employment.

A Working With Children Check is a prerequisite for anyone in child-related work. It involves a national criminal history check and review of reported workplace misconduct findings.

The result of a Check is either a clearance to work with children for five years, or a bar against working with children.

Cleared applicants are subject to ongoing monitoring by the OCG, and any relevant new records which appear against a cleared applicant's name may lead to the Check being revoked.

It is the responsibility of the child-related worker to ensure that when they are eligible to apply for a Check or when their Check is up for renewal that they do so.

## **7.2 Responsibilities**

The object of the WWC Act is to protect children:

- By not permitting certain persons to engage in child-related work.
- By requiring persons engaged in child-related work to have Working With Children Check clearances.

Schools are required to:

- Verify online and record the status of each child-related worker's Check. The check will be undertaken by the Headmaster's Personal Assistant.
- Only employ or engage child-related workers or eligible volunteers who have a valid Check.
- Report findings of misconduct involving children made against child-related workers or volunteers.

Child-related workers and eligible volunteers are required to:

- Hold and maintain a valid Check.
- Not engage in child-related work at any time that they are subjected to an interim bar or a bar.
- Report to the Headmaster if they are no longer eligible for a Check, the status of their Check changes or are notified by the OCG that they are subjected to a risk assessment.
- Volunteers are asked to provide their Working With Children's Check number and date of birth to allow the Headmaster's Personal Assistant to verify online and record the child-protection status of each child-related worker's Check.

## 7.3 Relevant Definitions

### Bars

**Final Bar** is applied based on a decision made by the OCG, following a risk assessment. This person is barred against working with children.

**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 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** includes, but not limited to work in the following sectors:

- Early education and child care including education and care service, child care centers and other child care.
- Education 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.

**Child-Related Worker** is a person who has physical contact or face to face contact with children in work outlined above in 3.2, including schools. This may include volunteer work.

A child-related worker may commence work once they have completed the Working With Children's 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).

If you are unclear if your role is child-related, you should speak with the Headmaster.

**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 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 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 Check or has a bar or an interim bar.

### **Findings of Misconduct Involving Children**

The College will report to the OCG when a finding has been made that the person (an employee of the College) subject to the finding is engaged in:

- Sexual misconduct committed against, with or in the presence of a child, including grooming of a child.
- Any serious physical assault of a child.

The College will advise the person that the OCG has been notified of a finding of misconduct involving children. The WWC Act enables a person who has a finding referred to the OCG under the Act to request access to the records held by the College in relation to the finding of misconduct involving children.

### **Reporting Body**

Independent Schools which are members of the AISNSW are defined as a reporting body by the WWC Act.

Section 35 of the WWC Act requires this 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 WWC 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 of sexual misconduct representing a risk to children, findings of misconduct involving children or notification made to OCG by the Ombudsman.

## **Working With Children Check Clearance**

A Working With Children Check means authorisation under the WWC Act 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.

At Broughton:

- i) The Working With Children Check status of preferred applicants for any permanent or temporary position will be verified by the Headmaster's Office prior to a final offer of employment being made.
- ii) The Working With Children Check status of any successful applicant for a casual position will be verified by the Headmaster's Office prior to the candidate being employed for casual work.
- iii) Persons who wish to undertake voluntary work at the College will be asked to provide a Working With Children's Check number and date of birth so that their Working With Children's Check status will be verified by the Headmaster's Office.
- iv) Persons undertaking work as a Music tutor, as coaches in our Football programs or in other tutoring / coaching capacities will be asked to provide either a current Certificate for Self Employed People or information to allow the Headmaster's Office to verify the tutor's Working With Children's Check status.
- v) A spreadsheet of staff and volunteers who have had the WWCC status verified is kept at the Headmaster's Office.
- vi) Copies of the verification of the Working With Children Check status of permanent or casual employees should be placed on the staff member's file.
- vii) Copies of the verification of the Working With Children Check status of volunteers should be placed in a folder kept in the Headmaster's Personal Assistant Office.
- viii) The Financial Assistant will record the verification date of employee's Working With Children's Check on the College's Administration data base.
- ix) The Financial Assistant will check the due date for verification of Working With Children checks for employees at the commencement of each semester.