# The Armidale School’s Child Protection Policy

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a. “Assisting a child or young person who has disclosed abuse”

b. The Association of Independent Schools N.S.W. and The Independent Education Union of Australia - Recommended Protocols for Internal Investigative and Disciplinary Proceedings – 2001 (Amended to incorporate legislative changes)

c. The new Working with Children Fact Sheet Phase in schedule for existing workers (valid until 31 Dec 2017);

d. Notification Form- Reporting a Reportable Allegation to the Ombudsman
The Armidale School’s Child Protection Policy and Procedures

1. Introduction

The Armidale School (‘the School’) places fundamental importance on the safety, welfare and well being of all students. This policy and the accompanying procedures outline the School’s approach to Child Protection.

Duty of Care:

The School’s duty of care to ensure that reasonable steps are taken to prevent harm to students. The School will take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.

In order effectively protect children from harm, the School requires the support and cooperation of all staff and other members of its Community.

This Policy outlines the key concepts, agencies and definitions under the relevant legislation, including mandatory reporters, reportable conduct, and risk management. This policy also sets out expected standards of behaviour in relation to employees and contractors and their relationships with students.

Distribution of this document:

This Policy document will be provided to all staff including employees, volunteers and contractors at the commencement of their employment or engagement with the School.

2. 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) provides that all mandated employees must report any children or young people whom they suspect to be ‘at risk of significant harm’;

2. the Child Protection (Working With Children) Act 2012 (NSW) (the WWC Act)- the object of the WWC Act is to protect children:

   (a)  by not permitting certain persons to engage in child-related work; and

   (b)  by requiring persons engaged in child-related work to have working with children check clearances.

3. the Ombudsman Act 1974 (NSW) (the Ombudsman Act) – which requires Headmaster to respond to allegations against employees and to notify the Ombudsman of reportable convictions or allegations.
3. Roles and Responsibilities

A collaborative approach between the School, community, key staff members and various government agencies is required to ensure the safety of children and to address any child protection concerns.

It is imperative that all staff are familiar with the people and agencies responsible under this policy, including:

3.1 THE ARMIDALE SCHOOL:

Role: The School has obligations to the NSW Ombudsman, Community Services and Office of Children’s Guardian in meeting its legal obligations relating to Child Protection.

Responsibility: The School’s Headmaster or his nominee (the Business Manager) will liaise with these authorities, and in addition will seek advice from the School’s solicitors, the police and the Association of NSW Independent Schools as required.

In the event that the School is required to respond to any Child Protection allegations, the procedures followed will be in accordance with all relevant legislation.

The School will ensure all staff (including mandatory reporters and those that have contact with children) are informed annually of their obligations and legal responsibilities relating to child protection, mandatory reporting, and other relevant School expectations, and the School’s process for mandatory reporting.

3.2 THE NEW SOUTH WALES OMBUDSMAN (‘THE OMBUDSMAN’)

The Armidale School is a ‘Designated non-government agency’ and the Headmaster is the ‘Head of a designated non-government agency’ for the purposes of the Ombudsman Act.

Role:

The Ombudsman:

a) must receive and assess notifications from non-government schools concerning reportable conduct or reportable convictions;

b) is required to oversee or monitor the conduct of investigations by non-government schools into allegations of reportable convictions;

c) 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;

d) may directly investigate an allegation of reportable conduct or reportable conviction against an employee of a non-government school, or the handling of or response to such a matter (eg arising out of complaints by the person who is the subject of an allegation); and
e) 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.

3.3 THE OFFICE OF CHILDREN’S GUARDIAN (‘OCG’)

Role: The Office of the Children’s Guardian (OCG) is responsible for employment screening for child related employment. It is imperative that each staff member liaises with the OCG to obtain a Working With Children’s Check.

Please see 6. ‘Working with Children’s Check’ for further information.

3.4 COMMUNITY SERVICES

Role: Community Services (Previously known as the Department of Community Services) is a division of Family and Community Services. Community Services play a large role in child protection in NSW, as it has broad investigative powers, which enables it to discharge its responsibilities.

Responsibility: The Headmaster has an obligation to notify Community Services of any child at risk of significant harm, and to assist the agency with its investigations.

3.5 THE HEADMASTER:

The Headmaster is responsible for ensuring processes are in place to record and respond to all allegations or convictions against an employee, including all matters that must be notified to the Ombudsman, OCG and Community Services.

Contact for parents

The Headmaster is the contact point for parent and staff if they wish to report an allegation of reportable conduct against an employee.

Headmaster’s procedure once notified of allegations:

If the Headmaster is notified of any allegations against employees, volunteers or contractors of the School, it is the responsibility of the Headmaster to either respond to such allegations, or arrange for the Headmaster’s nominee (presently the Business Manager) to respond accordingly.

The Headmaster also undertakes inquiries and investigations into all convictions or allegations. As a result of these investigations and inquiries, the Headmaster will take appropriate action, which may include reporting to Community Services, the OCG and the Ombudsman’s office.

If a child discloses abuse while at school the Headmaster should make sure that the child is supported and cared for at school until the Community Services officers advise the Headmaster on the course to be taken. The Headmaster and any relevant staff member must not make any contact with parents or caregivers regarding the notification. It is the role of Community Services to investigate notifications and inform parents or caregivers that a notification has been made.
The Headmaster must inform the person who raised the concern whether or not a notification has been made. If the Headmaster decides that, in his or her opinion, reasonable grounds do not exist then it is **essential** that the Headmaster advises the person raising the concern that, under the legislation, given that person believes reasonable grounds exist, then the person must notify.

3.6 **STAFF**

All Staff members, volunteers and contractors (‘staff’) are responsible for Child Protection at the School. The key responsibilities of you, as staff, are as follows:

1) **Reporting Child Protection Concerns:**

Reporting any Child Protection concerns you may have is a fundamental responsibility of all staff. Please see 4. **Reporting Child Protection Concerns** and 5. **Reportable Conduct and the NSW Ombudsman** below for the School’s policies and procedures regarding staff obligations, and how to report such concerns.

2) **Obtaining and Maintaining a Working With Children’s Check:**

All Staff are responsible for obtaining a current **CHECK** upon the commencement of employment with the School. Please see 6. **Working with Children’s Check** below for the School’s policy and procedures.

4. **Reporting Child Protection Concerns**

It is important to understand that failure to report allegations of child sexual abuse or a suspicion of child sexual abuse of a child who is under 16 years of age, based on reasonable grounds, is an offence under Section 316 of the NSW Crimes Act (1900).

You should also note that Section 73 of the *Crimes Act* states that any person that has sexual intercourse with another person who is under his or her special care, and is of or above the age of 16 years and under the age of 18 years is liable to imprisonment for up to 8 years.

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

4.1 **Mandatory Reporting:**

a) **Who is a mandatory reporter?**

Under the Care and Protection Act persons who:

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

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

b) When must a report be made to Community Services? What is the threshold?

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

In addition, while not mandatory, the School considers that a report should also be made to Family and 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.

c) 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:

a) First hand observations of the child, young person or family;

b) What the child, young person, parent or another person has disclosed; and

c) 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.

d) 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:
a) The child’s or young person’s basic physical or psychological needs are not being met or are at risk of not being met,

b) The parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,

c) In the case of a child or young person who is required to attend School in accordance with the Education Act 1990, the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,

d) The child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,

e) The child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,

f) A parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,

g) The child was the subject of a pre-natal report under section 25 of the Care and Protection Act and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

**e) Other relevant definitions:**

**Policy definition of significant harm**

A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or 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.
In the case of an unborn child, what is significant is not minor or trivial, and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child after the child's birth.

The significance can result from a single act or omission or an accumulation of these.

Child is a person under the age of 16 years for the purposes of the Care and Protection Act.

**Child abuse and neglect**

There are different forms of child abuse. These include neglect, 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 punish a child (in a non-trivial way) is a crime.

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

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

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

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

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

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

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

Reporting by the School about these matters to Community Services and, where necessary, the police, is generally undertaken by the Headmaster or his nominee (presently the Business Manager). This is in accordance with best practice principles and is the expectation and practice of the School.

If you have a concern that a child or young person is at risk of significant harm you should contact the Headmaster or his nominee 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.

### 4.3 Immediate danger:

If there is an immediate danger to the child or young person and the Headmaster or next most senior member of staff is not contactable you should speak to the Police and/or the Child Protection Helpline (**ph. 133 627**) directly and then advise the Headmaster, the Business Manager or next most senior member of staff at the School 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.

### 4.4 Confidentiality:

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.
4.5 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 Community Services, as an employee of The School, 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 confidentiality 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.
5. Reportable Conduct and the NSW Ombudsman

5.1 Overview:

Part 3A of the Ombudsman Act requires the Heads of 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 School'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.

5.2 The Head of Agency

The Headmaster of The Armidale School is the Head of Agency.

In accordance with The Ombudsman Act the Head of Agency must:

a) Set up systems within their organisation to ensure that they are advised of any allegations of reportable conduct against employees;

b) Notify the Ombudsman as soon as possible and no later than thirty days after being made aware of an allegation;

c) Notify the Ombudsman whether or not the School 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; and

d) 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.

5.3 Your obligations to report

You must report any concerns you 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 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 you.

If the allegation involves the Headmaster, you are required to report to the Chairman of the School Board.

5.4 Contact for parents

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

5.5 What is 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 or 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.

a) 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. There are 2 types of neglect:

1. **Supervisory neglect:**
   1) An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or
   2) An intentional or reckless failure to adequately supervise a child or a significantly careless act or failure to act, that:
      1) Involves a gross breach of professional standards; and
      2) 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;
   - 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;
• 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’) is a term the school uses in its investigations.

**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.

**Sexually explicit comments and other overtly sexual behavior:** behaviours 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 emails 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.

**Grooming Behaviour**

Grooming or procuring a child under the age of 16 years for unlawful sexual activity is a sexual offence. However, Schedule 1(2) of the *Working with Children Act* also recognises grooming as a form of sexual misconduct.

The types of grooming behaviour may include (but are not limited to) the following: Persuading a child or group of children that they have a “special” relationship, for example by:

- Undressing in front of a child;
- Encouraging inappropriate physical contact;
- Talking about sex;
- “Accidental” intimate touching;
- Inappropriately extending a relationship outside of work (except where it may be appropriate – for example where there was a pre-existing friendship with the child’s family or as part of a normal social interactions in the community);
- Inappropriate personal communication (including emails, telephone calls, text messaging, social media and web forums) that explores sexual feelings or intimate personal feelings with a child; and
- An adult requesting that a child keep any aspect of their relationship secret or using tactics to keep any aspect of the relationship secret, would generally increase likelihood that grooming is occurring.

**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:

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.

5.6 What happens when an allegation of reportable conduct is made?

a) Initial steps

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

a. Determine on face value whether it is an allegation of reportable conduct;

b. Assess whether 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);

c. Notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by Community Services or the Police);

d. Depending on the allegation, notify the Ombudsman within 30 days;

e. Carry out a risk assessment and take action to reduce/remove risk, where appropriate; and,

f. Investigate the allegation.

b) The Investigation:

i. Investigation principles
The School will be guided by the process outlined in ‘The Association of Independent Schools NSW and the NSW / ACT Independent Education Union- Recommended Protocols for Internal Investigative and Disciplinary Proceedings’ attached as Appendix B.

During investigation, the School will:

a. Be mindful of the principles of procedural fairness;

b. Inform the employee of the substance, with as much detail as possible, of the allegation(s) made against them;

c. Provide the employee with a reasonable opportunity to put their case, either in writing, at a hearing or otherwise;

d. Make reasonable inquiries or investigations before making a decision;

e. Consider all relevant available evidence, including exculpatory evidence;

f. Inform the PSOA of the substance of any allegations made against them and provide them with a reasonable opportunity to respond to the allegations;

g. Make reasonable enquiries or investigations before making a decision;

h. Avoid conflicts of interest;

i. Conduct the investigation without unjustifiable delay;

j. Handle the matter as confidentially as possible; and

k. Provide appropriate support for all parties including the child/children, witnesses and the PSOA.

ii. Investigation steps

The steps outlined below may be varied to meet particular circumstances, as required. For example it may be necessary to take different steps where the matter is also being investigated by Community Services or the NSW Police.

In an investigation, the investigator will generally:

1. Interview relevant witnesses and gather relevant documentation;
2. Provide a letter of allegation to the PSOA;

3. Interview the PSOA; *

4. Consider relevant evidence and make a preliminary finding in accordance with the NSW Ombudsman guidelines;

5. Inform the PSOA of the preliminary finding and provide them with an opportunity to respond;

6. Consider any response provided by the PSOA;

7. Make a final finding in accordance with the NSW Ombudsman Guidelines;

8. Decide on the disciplinary action, if any, to be taken against the PSOA;

9. Apply the NSW Office of the Children’s Guardian (OCG) Guidelines and decide if the matter is reportable to the OCG; and

10. Send the final report to the Ombudsman and report to the OCG (where required).

* Please note, 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.

### 5.7 Support available for all parties

The School’s wellbeing Team comprises the Director of Pastoral Care, the School Counsellor, the School Chaplain, Senior School nurse at the Health Centre, the Girls Education Director, and the Director of Boarding (who may liaise with Heads of House as required).

The Wellbeing Team members are available to support the child/ren and staff in these matters.

The School will also acknowledge the anxiety and stress that may be placed upon the child/ren, as it relates to academic performance and co-curricular commitments, and the overall wellbeing of the student.
5.8 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.

a) The Risk Management Process

i. Initial risk assessment

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

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

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

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

The Headmaster 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 School 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.

ii. Ongoing Risk Management

The Headmaster will continually monitor risk during the investigation including in the light of any new relevant information that emerges.
iii. Risk Management at the Conclusion of the Investigation

At the completion of the investigation, a finding will be made in relation to the allegation 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.

5.9 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); and

- Of the substance of the allegation, or of any preliminary finding and the final finding.

The PSOA does not automatically have the right to:

- Know or have confirmed the identity of the person who made the allegation; or

- Be shown the content of the 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 School in relation to the finding of misconduct involving children.

5.10 Disciplinary Action

As a result of the allegations, investigation or final findings, the School may take disciplinary action against the PSOA (including termination of employment). In relation to any disciplinary action the School will:

a) Give the PSOA details of the proposed disciplinary action; and

b) Give the PSOA a reasonable opportunity to respond before a final decision is made.

5.11 Confidentiality and Information Management

It is important when dealing with allegations of reportable conduct that the matter be dealt with as confidentially as possible. The Headmaster may disclose to a child allegedly the subject of reportable conduct, or to a parent of the child, information about the progress of the investigation into the allegation, the investigation findings
and any action taken in response to those findings.

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

Records about allegations of reportable conduct against employees will be kept in a secure place in the Headmaster’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 to do so by the Headmaster.

If you become aware of a breach of confidentiality in relation to a reportable conduct allegation you must advise the Headmaster.
6. Working with Children’s Checks

From 1 April 2016 it will be mandatory for all employees of The Armidale School to have applied for a Working with Children Check. The Check will form part of each employee’s personal record.

Working with Children Check (Check) means authorisation under the Working With Children Act to engage in child-related work. An employee will be issued a number that is to be provided to the School, in order to verify the status of an employee’s Check.

A Check involves a national criminal history check and a review of findings of workplace misconduct. 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 and any relevant new records that appear next to a cleared applicant’s name may lead to the clearance being revoked.

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

The School Council must verify that the Headmaster holds a Working with Children Check Clearance.

6.1 Background:

The Working with Children Act states a Check is a prerequisite for anyone who works or volunteers in ‘child-related work’.

**Child-related work** includes, but is 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.

**Note:** The Armidale School’s policy applies to all paid employee’s, whether they are considered to be Child-related workers or not, together with eligible volunteers.
6.2 Exemptions from Working With Children’s Check Requirement:

The Child Protection (Working with Children) Regulations 2013 provide that the following are exempt from requiring a Working With Children Check:

- Children (persons under the age of 18);
- Volunteering parents or close relatives (except where the work is part of a formal mentoring program or involves intimate, personal care of children with a disability):
  - with the child’s school, early education centre or other educational institution;
  - with a team, program or other activity in which the child usually participates or is a team member.

6.3 The Armidale School’s Check Requirement:

If you are an existing employee, employed at this school in paid work prior to the commencement of the new Working With Children system, or you are an eligible volunteer, you will need to have obtained a Check 1 April 2016.

If you are commencing paid employment with the School, you will need to have applied for a Check prior to starting work.

a) Requirements for School Employees and eligible volunteers:

1. hold and maintain a valid Check;
2. not engage in child-related work at any time that they are subjected to an interim bar or bar; and
3. 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.

b) Requirements for all volunteers:

1. Read and acknowledge receipt of the School’s Child Protection Policy. All volunteers involved in roles associated with high risk will be required to have a Check;
2. be aware and follow the expectations of conduct expressed in the School Staff Code of Conduct.

6.4 The Armidale School’s procedures:

The Armidale School will:
(a) verify online and record the status of each employees Check;
(b) only employ or engage employees or eligible volunteers who have a valid Check; and
(c) report findings of misconduct involving children made against workers or volunteers.

6.5 Maintenance of Records:

The Check forms part of each staff member’s personal records, maintained by the School’s finance department. Further, the number, expiration date and outcome of each staff member’s Check is noted on the personal staff record on the School’s database.

6.6 Relevant Definitions for Working with Children’s Checks:

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

ii. Interim bar: 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.

iii. Disqualified person: 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 worker when they do not hold a Check or has a bar or an interim bar.

6.7 Findings of misconduct involving children

The school will report to the OCG when a finding has been made that the person (an employee of the school) 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.
The School will advise the person that the OCG has been notified of a finding of misconduct involving children.

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

6.9 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.

Please see Child Protection (Working With Children) Act 2012 - Schedule 2 for a list of offences that disqualify a person from receiving a clearance.
7. Prevention:

The Armidale School clearly and strongly opposes any practice involving reportable conduct. In order to prevent instances of reportable conduct, or harm for those children in its care, the School has implemented several measures and strategies. These include the School:

- Requiring every paid staff member has a current Working With Children’s Check (not just ‘child-related workers’);

- Ensuring that this policy is provided to each employee and volunteer involved with the School, and that each person signs off that they have read and understood the contents;

- During the employment process, identifying people who are not appropriate to work with children, through reference checking, interviewing, WWCC checks and pre employment screening;

- Ensuring this policy is easily accessible on the School’s website; and

- Training personnel in best practices to ensure a safe environment;

- Reviewing any matters arising, to identify contributing factors to minimise the chance of reoccurrence; and

- Ensuring the School’s Code of Conduct is provided to all new employees, contractors and volunteers alongside this document, to ensure employees, contractors and all volunteers are aware of what constitutes appropriate and inappropriate behaviour.
8. **Other policies**

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

1) The **Code of Conduct** which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the School;

2) Corporal Punishment Policy;

3) Child Sexual Assault Education and Communication Policy

4) The Work **Health and Safety Statement** which summarises the obligations imposed by work health and safety legislation on the school and workers; and

5) The School’s Bullying Policy; and

6) The **Discrimination, Harassment and Bullying Statement**, which summarises your obligations in relation to unlawful discrimination, harassment and bullying.

9. **Policy Version**

**Date of Policy:** March 2016

**Policy Review Date:** March 2017

**Reviewers:** Headmaster or the Business Manager (as the Headmaster’s nominee)
ACKNOWLEDGEMENT

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

_____________________________  ________________________________
Signed                        Dated

REFERENCES

NSW Family and Community Services
www.community.nsw.gov.au

NSW Ombudsman
www.ombo.nsw.gov.au

The Children’s Guardian (formerly the NSW Commission for Children and Young People)
www.kids.nsw.gov.au

Department of Premier and Cabinet – Keep Them Safe
www.keepthemsafe.nsw.gov.au


2 The New Working With Children system commenced in NSW on 15 June 2013. The previous Working With Children system ceased 7 June 2013.

3 As of 15 June 2013, existing employees and volunteers are subjected to a phase in schedule developed by the OCG. This can be found at www.kids.gov.nsw.au or at Annexure C (which may be updated from time to time by the OCG).

4 Further details of obligations of employers can be found in the Information for Employers guidelines and/or Information for reporting bodies factsheet developed by the OCG found at w Appendices:
Annexures:

The following documents are annexed to this policy:

a. “Assisting a child or young person who has disclosed abuse”

b. The Association of Independent Schools N.S.W. and The Independent Education Union of Australia - Recommended Protocols for Internal Investigative and Disciplinary Proceedings – 2001 (Amended to incorporate legislative changes)

c. The new Working with Children Fact Sheet *Phase in schedule for existing workers* (valid until 31 Dec 2017);

d. Notification Form Parts A and B - Reporting a Reportable Allegation to the Ombudsman

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**Annexure A**

**Assisting a child or young person who has disclosed abuse**

When a student discloses abuse, staff need to be well prepared so that they can be supportive of the student and at the same time be very clear about their responsibility which in the first instance is to report to the Headmaster and not investigate. However, when in a one-to-one situation, children generally disclose with great hesitation and often with a mix of intense emotions, including fear, embarrassment and guilt. Sometimes they may only hint at or tell a small part of their experience to see how the staff member reacts before fully disclosing. It is essential that the staff member remains calm and supportive of the student.

The staff member should:

a) actively listen to the student and *never* probe for details or ask leading questions. Eg. “Did s/he touch your vagina/penis?”

b) refrain from questioning excessively through fear of making a mistake in deciding to notify

c) talk gently and reassuringly, in private, pointing out that you are there to help

d) only ask questions that are open-ended and designed to provide sufficient information to decide whether the suspicion of abuse is sufficiently strong to warrant a report being made.
Members of staff will help a student making a disclosure by:

a) listening in a calm way
b) reassuring the student that you believe him/her
c) saying that you are pleased that the student has told you as it was the right thing to do
d) avoiding any reaction that could make the student regret having talked about the experience
e) emphasising that what has happened is definitely not the student’s fault
f) acknowledging that it is very hard to talk about such things
g) telling the student that the best way to stop the abuse happening is to report it to the people who have the responsibility for the care and protection of children.

When a student discloses:

a) do not make promises that you will not tell anyone; you must tell the child that you have a responsibility to tell the Headmaster.
b) never assure the child that the abuse will stop, as that cannot be guaranteed.
c) Inter-agency Guidelines emphasise the importance of “being honest with the child about your responsibility for taking action to protect them and what is likely to happen. However it is important not to do anything that may make the situation worse and cause further harm to the child by asking probing questions, accusing parents or discussing the circumstances of the notification with potential witnesses or colleagues” (Inter-agency Guidelines for Child Protection Intervention).

Staff response to a disclosure made in a group or classroom

If any student begins to make a disclosure in a group or class situation, use the ‘protective interruption strategy’ by:

a) acknowledging that you have heard the student; and
b) indicating your support for the student, explain that you think what they are saying sounds important and that it would be better to talk about it later.
Annexure B

The Association of Independent Schools N.S.W. and The Independent Education Union of Australia

Recommended Protocols for Internal Investigative and Disciplinary Proceedings – 2001

Introduction

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

Outline of Obligations under the Legislation

Upon receipt of an allegation of reportable conduct against an employee, the head of agency should determine whether or not it is an allegation about reportable conduct that may involve misconduct.

All allegations against employees that involve reportable conduct must be reported within 30 days of receipt of the allegation to the Ombudsman. The allegations should also be reported to the Community Services (CS) if there is a current concern for the safety, welfare and well being of the child. The head of agency will need to:

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

At the conclusion of the investigation and the decision regarding disciplinary action, a complete report including the findings, disciplinary action decided upon and any other recommendations must be forwarded to the Ombudsman together with any information which the accused person requires to be included.
Completed relevant disciplinary proceedings should be reported to the Office of Children’s Guardian (OCG) unless the allegation was found to be false, vexatious or misconceived.

**Risk Assessment**

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

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

This may result, for example, in the employee being temporarily relieved of some duties, being required to avoid certain pupils or, in some special cases, being suspended from duty. Any decision to take action as a result of a risk assessment is in no way an indication of the guilt of the employee concerned.

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

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

Risk should be continually monitored throughout the investigation.

**The Investigation**

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

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

All investigations must be conducted in an impartial, independent and objective manner and be open and transparent. The investigator must not show bias or favour to the alleged victim(s), the person the subject of the allegation, nor in outcomes which might affect the reputations of the particular agency.
In some instances the head of agency may call on an external expert to undertake the investigation. This may be the case where the agency determines that it does not have the expertise to satisfactorily conduct the investigation or in cases where a conflict of interest or bias may arise.

The mere perception of a conflict of interest by an accused person is not sufficient in itself to require the appointment of an external investigator. However, if there is a clear history of conflict between the proposed investigator and the employee it would be advisable for another investigator to be appointed.

2. Confidentiality

Heads of agency and persons conducting investigations should maintain a high level of confidentiality throughout the investigation phase. Action for defamation could result in situations in which agencies have published allegations of reportable conduct against an employee.

The person making the allegation also has a right to protection, and if appropriate, confidentiality. In a limited number of circumstances it may be inappropriate to advise the accused person of the identity of the person making the allegation.

The employee should not discuss the allegations with students (including the alleged victim) nor with parents without the approval of the school.

Steps in the Investigative Process

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

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

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

While it is desirable for an employee to be given reasonable notice before being required to respond to an allegation, what constitutes reasonable notice will depend on the circumstances of the situation.
Employees may wish to have someone support them during the interview process. The support person may be a friend on staff or the chapter representative. However, such a person is there for support only and as a witness to the proceedings, and not as an advocate or to take an active role in the proceedings.

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

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

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

**Findings**

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

1. the allegation was false; or
2. the allegation was vexatious, that is, was made without substance and with the intent of being malicious or to cause distress to the person against whom the allegation was made;

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

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

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

**Disciplinary Proceedings**

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

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

When the Investigation has been completed:

- the employee is entitled to ask the Ombudsman to review the investigation and findings if the employee believes the investigation was unfair, biased, incomplete or suffered some other deficiency giving rise to an incorrect finding.
- the employee must be advised if the employer has notified completed disciplinary proceedings to the Commission for Children and Young People.
- if the completed disciplinary proceedings are notified to the Commission for Children and Young People, the employee is entitled to inspect the employer file in accordance with Freedom of Information Principles, subject to any exemptions which may apply under that Act.

**Notification to the Commission for Children and Young People***

The Ombudsman Act requires all completed investigations into allegations of reportable conduct to be reported to it. It is an offence under the Act to fail to report unless the allegation is found to be either:
• false (the alleged conduct did not occur);
• vexatious (without substance, malicious intent);
• misconceived (not reasonably be considered to be reportable conduct).

In the findings listed above only findings 4 and 6 need be reported to the CCYP.

The Armidale School Notes:

• The School will be mindful of this Protocol whenever it is necessary to undertake an investigation into relevant allegations.
• The suitability of this Protocol to the School’s needs and its legislative obligations will be reviewed on a regular basis and generally at the same time as the School’s “Child Protection Policy”.
• Since the publication of this Protocol it should be noted that any reference is made to the Commission for Children and Young People should be replaced with the Office of Children’s Guardian.
• It should also be noted that only sustained findings of serious physical assault or sexual misconduct need be reported by the School to the Office of Children’s Guardian.

ww.kids.nsw.gov.au
## FACT SHEET: Which sector do I belong to?


### Check with child protection

- **Already working with children? You will be phased in between now and 2018.** Find your industry sector in the chart below.

- **Starting a new job? Apply before you start work.**

- **Already employed? Apply when your Certificate for Self Employed People (CSEP) expires, or if you do not have a CSEP.** When your sector is phased in, you should complete the FACT SHEET which sector do I belong to? to help identify your new sector.

### Industry Sectors - Phase-in dates

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### Exceptions

- **Special needs workers:** No need to apply if your role is already covered by your provider or home of an authorised carer.

- **Youth workers:** No need to apply if your role is already covered by your provider or home of an authorised carer.

- **Religious services:** Work as mufti or other like religious leader or spiritual officer of religious services (work as a leader or spiritual officer of the organisation).

- **Transport services for children:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Services to children (including sporting and dance schools):** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Children’s Health services:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Justice health services:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Children’s health services:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Ambulance Services of NSW:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Mental health services:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Mental Health Network:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Educational and care services based on the child’s home:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Private tuition:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Residential services:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Social services to children:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Religious services:** Work as mufti or other like religious leader or spiritual officer of religious services (work as a leader or spiritual officer of the organisation).

- **Transport services for children:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Services to children (including sporting and dance schools):** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Children’s Health services:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Justice health services:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Ambulance Services of NSW:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Mental health services:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Mental Health Network:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Educational and care services based on the child’s home:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Private tuition:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Residential services:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Social services to children:** You will be phased in between now and 2018. Find your industry sector in the chart below.

- **Religious services:** Work as mufti or other like religious leader or spiritual officer of religious services (work as a leader or spiritual officer of the organisation).
Annexure D

Notification form

Part A

Instructions for completing and sending the notification form to the Ombudsman

Completing the form

This form is to be used for reporting a reportable allegation to the Ombudsman’s office. A reportable allegation is defined in s2(6)A of the Ombudsman Act. The Ombudsman Act states that a reportable allegation means either:

- an allegation of reportable conduct against a person (see Practice Update 2013/1: Defining Reportable Conduct for the current definitions of reportable conduct), or
- an allegation of misconduct that may involve reportable conduct.

Part A of the notification form, relating to the details of the people involved, the allegation and the agency’s initial response, is to be sent to the Ombudsman’s office within 30 days of the head of agency becoming aware of the reportable allegation or conviction against an employee.

If the investigation has been completed within those 30 days, please also complete Part B of the notification form which details the findings of the investigation. Part B should be accompanied by copies of all documentation relevant to the investigation and decision making. This material should be secured but does not need to be bound or contained in a folder.

Delivery instructions

To maintain a high level of confidentiality, the notification form and any other documents relating to the investigation of a reportable allegation or conviction against an employee must only be sent to the Ombudsman by:

- registered mail
- hand delivery, or
- courier.

Addressed to:

Attention – Employment Related Child Protection Division
NSW Ombudsman
Level 24
580 George Street
Sydney NSW 2000

NSW Ombudsman
Employment related child protection – December 2016
### PART A

1. **Agency details**

1.1 Your case/reference number: 

1.2 If this notification relates to any other notification(s) or inquiries made to the Ombudsman, please provide our reference number(s) or other details:

1.3 **Agency type**

- [ ] Ageing, Disability & Home Care
- [ ] Agency that provides substitute residential care through Camps
- [ ] NGO Sport and/or Recreation (specify)
- [ ] Religious Denominations (specify)
- [ ] Other (specify)
- [ ] Health (including Dept of Health, Local Health District and other Health services)
- [ ] Juvenile Justice
- [ ] Local Government
- [ ] Non Government OOHCC
- [ ] Non Govt School - Catholic
- [ ] Non Govt School - Independent
- [ ] Other Public Authority
- [ ] Department of Sport & Recreation
- [ ] Specialist Homelessness Services
- [ ] Voluntary OOHCC
- [ ] Registered agency
- [ ] Designated agency

1.4 Name of agency (if not specifically named in 1.3)

1.5 Head of agency name: 

1.6 Position title: 

1.7 Telephone: 

1.8 **Agency Postal Address:**

   (not a home address)

   Signature: 

   Date: 

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**INFORMATION**

The Armidale School

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If another officer is preferred as the contact for any inquiries, please provide their details below. Unless other arrangements have been made, formal correspondence from the Ombudsman will be addressed to the nominated head of agency.

1.9 Contact officer / delegate name:  
   (if different from Head of Agency)

1.10 Position title:

1.11 Address: (if different to 1.8)

1.12 Telephones:  
   E-mail address:

2. Details of the employee subject of allegation (Please complete this section for each employee)

2.1 Does this notification contain allegations of reportable conduct against more than one employee?  
   Yes - how many?  
   No

2.2 Family name:  
   Given names:

2.3 Gender:  
   Male  
   Female  
   Date of birth:

2.4 Home address:

2.5 Position title with agency at the time the allegation was made:

2.6 Working with Children Check clearance number:

2.7 Employment status with agency at the time the allegation was made:

   Employed:  
   Permanent – full time  
   Permanent – part time  
   Casual

   Engaged:  
   Foster carer  
   Volunteer  
   Contractor  
   Tutor  
   Other (specify):

1 Please follow the Carex Register processes as outlined in the Regulations and Business Rules. Please see www.kidsguardian.nsw.gov.au for more information.
2.8 Is the employee aware that a reportable allegation has been made against them?

- Yes – date informed: ____________

Who informed them?
- Your agency
- NSW Police Force
- Community Services
- Other
- Unknown

Is the employee aware of:

- Details of the reportable allegation
- Type of reportable allegation only
- Only that there has been a reportable allegation - not the type

- No – reason:
  - Police advice
  - Community Service advice
  - Unable to contact employee
  - Need to make further inquiries
  - May compromise investigation
  - Unknown

2.9 Has support been offered/ provided to the employee?

- Yes – what kind: ____________

- No – why not: ____________

- Unknown

3. Details of the alleged victim(s) (Please complete this section for each child)

3.1 Does this notification contain allegations of reportable conduct involving more than one child or young person?

- Yes – how many: ____________ No

- Unknown

3.2 Family name: ____________

Given names: ____________

3.3 Gender: 
- Male
- Female

Date of birth: ____________
3.4 Age of the child at the time of the alleged reportable conduct (if different from above):

3.5 Is the child: Aboriginal or Torres Strait Islander?  
☐ Yes  ☐ No  ☐ Unknown
Culturally & linguistically diverse (CALD) background?  
☐ Yes  ☐ No  ☐ Unknown

3.6 Does the child have a disability?

☐ No (go to section 3.7)

☐ Not applicable (Where the alleged victim's disability may be unknown, for example, child pornography notifications.)

☐ Unknown
(Where the alleged victim's identity may be unknown, however whether or not they have a disability is unknown and the agency either cannot obtain, or it would be inappropriate to seek to obtain, that information. For example, historical matters where the alleged victim is now an adult, certain matters notified by organisations that have limited contact with the alleged victim.)

☐ To be advised
(Information about the alleged victim's disability status should be provided as soon as practicable after notification.)

☐ Yes – complete below (select all that apply)?

☐ Physical
The total or partial loss of part of the body; the presence in the body of organisms causing disease or illness; the presence in the body of organisms capable of causing disease or illness; the malfunction, malformation or disfigurement of a part of the person's body.

☐ Cognitive
The total or partial loss of the person’s bodily or mental functions; or a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction.

☐ Sensory
The total or partial loss of the person’s bodily or mental functions; or the malfunction, malformation or disfigurement of a part of the person’s body.

☐ Social/Emotional
A disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour.

3.7 Is parental responsibility for the child with the Minister for Community Services?  
☐ Yes  ☐ No  ☐ Unknown  ☐ Shared responsibility

3.8 Are the child’s parents or guardian aware of the allegations?  
☐ Yes  ☐ Unknown

☐ No - why?

☐ Not applicable - why?

3.9 Has support been offered/provided to the alleged victim?

☐ Yes – what kind?

☐ No – why not?

☐ Unknown

2 Derived from section 4 Interpretation in the Disability Discrimination Act 1992
4. Details of the allegation(s) or conviction(s)
(Please complete this section for each type of reportable allegation)

4.1 Does this notification concern more than one reportable allegation?

☐ Yes – how many?
☐ No

4.2 Date of alleged incident: ____________________ Or period from: ___________ to ___________

4.3 Detailed description of reportable allegation or conviction as described by the person making the allegation (or from any other source). Please attach all documentation where available:
4.4  Type of reportable allegation, including conduct that may involve:

**Physical assault**
- Hitting/kicking/punching
- Shoving
- Pushing/shoving/grabbing/throwing a child
- Inappropriate restraint/excessive use of force
- Use of object
- Perceived threat of harm (including in the context of domestic violence)*
- Other deliberate/hostile/reckless application of force

**Sexual offence**
- Sexual assault
- Sexual intercourse with a 16-17 yr old child in the context of a 'special care relationship'
- Indecent assault
- Act of indecency
- Production, dissemination or possession of child pornography
- Procuring or grooming children under the age of 16 years for unlawful sexual activity
- Other (specify)

**Sexual misconduct**
- Crossing professional boundaries
- Sexually explicit comments
- Other sexually overt behaviour

**Psychological harm**
- Persistent hostility/rejection
- Exposure to violence or self-destructive/antisocial behaviour (including domestic violence)*
- Scapegoating
- Humiliation/bullying
- Other (specify)

---

3 A reportable allegation is defined in sE3A of the Ombudsman Act. The Ombudsman Act stated that a reportable allegation means either:
   * an allegation of reportable conduct against a person (see Practice Update 2013/1: Defining Reportable Conduct for the current definitions of reportable conduct), or
   * an allegation of misconduct that may involve reportable conduct.
4 Use of object includes the use of an implement or throwing an object towards a child.
5 Exposure to domestic violence can be categorised as either behaviour causing psychological/trauma or a physical assault (threat of harm) to a child.
6 There must be a claim of related harm to the child that was alleged to have been caused by the employee.
7 In terms of further advice on domestic violence and psychological harm; see Practice Update 2013/1: Defining Reportable Conduct (behaviour that causes psychological harm to a child).
Neglect
- Clothing/food
- Medical care
- Shelter
- Supervision
- Environment not supportive (includes failing to intervene to ensure a child’s safety)
- Exposure to actual risk of harm
- Provision of drugs/alcohol

Ill-treatment
- Excessive discipline/punishment
- Other excessive behaviour

Reportable Conviction
- Sexuax offence
- Physical assault
- Other (specify) [ ]

4.5 Date your agency became aware of the allegation(s): [ ]

5. Interim action taken or proposed in respect of the reportable allegation(s)

5.1 Have prior reportable allegations been made against the employee?
- Yes – please answer the following questions:
  - When was the most recent?
    - Within 2 yrs
    - 2-5 yrs
    - More than 5 yrs ago
  - No
  - Unknown

  - What was the result or finding of that investigation?
    - Sustained
    - Not sustained – insufficient evidence
    - Not sustained – lack of evidence or weight
    - Not reportable conduct
    - False

8 This category is only applicable when a matter has been proven at court.

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8 NMH Ombudsman
Employment related child protection – December 2018
5.2 Did your agency undertake an initial risk assessment when the **current allegation** was made?

☐ Yes – Please provide a copy of the risk assessment

☐ No – Why?

5.3 What action has been taken or is proposed in respect to the employee while the **current allegation** is being investigated and until final decisions are made?

☐ No action (state the current reason)

☐ Increased supervision (describe)

☐ Restriction on current duties (specify)

☐ Transferred to alternate duties (specify)

☐ Suspended with pay  ☐ Suspended without pay  ☐ Not re-engaged

☐ Dismissed  ☐ Allowed to resign

☐ Agency advised Office of the Children’s Guardian (OCG) of interim risks

☐ Interim bar by the OCG  ☐ Final bar by the OCG

6.4 Has Community Services been informed of the current allegation?*

☐ Yes – Date of report:  ☐ Reference number:  

☐ No (please go to 5.5)  ☐ Unknown  ☐ Not applicable

5.5 Is Community Services investigating this reportable allegation?

☐ Yes  ☐ No  ☐ Unknown

---

* Agencies may provide information to the Office of the Children’s Guardian (OCG) under Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 if the investigation/disciplinary proceeding has not been completed and the information relates to the safety, welfare or well-being of a particular child or young person or class of children if the provider reasonably believes that the provision of the information would assist the recipient to commence or investigate, provide a service or manage the risk to children.

** Agencies must report suspected risk of significant harm to the Community Services’ Helpline. The main purpose of a Community Services investigation is to identify whether a child is at risk of significant harm and whether any care and support issues exist. Advice should be obtained from Community Services before commencing an employment related child protection investigation.
5.6 Has the NSW Police Force been informed of the current allegation? 

☐ Yes - Date of report: __________ Event number: __________ 

☐ No (please go to 5.7) ☐ Unknown ☐ Not applicable

5.7 Is the NSW Police Force investigating this reportable allegation?

☐ Yes ☐ No ☐ Unknown

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12 Agencies must report allegations of a criminal nature to the NSW Police Force. The main purpose of a police investigation is to make inquiries to determine whether there is sufficient evidence to charge a person with a criminal offense. Advice should be obtained from the NSW Police Force prior to commencing an employment-related child protection investigation. Agencies are encouraged to refer police to the NSW Police Force’s Standard Operating Procedures Regarding Employment-Related Child Abuse Allegations, which require that the employing agency be kept informed of the police investigation and any action that can be taken by the employing agency during the police investigation.

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NSW Ombudsman
Employment-related child protection – December 2015
Notification form

Part B

Instructions for completing and sending the notification form to the Ombudsman

Completing the form

Part A of the notification form, relating to the details of the people involved, the allegation and the agency’s initial response, is to be sent to the Ombudsman’s office within 30 days of the head of agency becoming aware of the reportable allegation or conviction against an employee.

Part B of the notification form, which details the findings of the investigation, should be completed when the investigator is finalised. Part B should be accompanied by copies of all material relevant to the investigation and decision making. This includes records of interview, memoranda, emails, file notes of conversations, and copies of correspondence to/from persons or agencies.

The notification form can be photocopied for multiple use.

Delivery instructions

To maintain a high level of confidentiality, the notification form and any other documents relating to the investigation of a reportable allegation or conviction against an employee must only be sent to the Ombudsman by:

• registered mail
• hand delivery, or
• courier.

Addressed to:

Attention – Employment Related Child Protection Division
NSW Ombudsman
Level 24
580 George Street
Sydney NSW 2000

The Armidale School
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PART B

Outcome of the Investigation

To be completed at the conclusion of the investigation of the reportable allegation(s) or conviction(s). Please attach copies of supporting documentation and complete the following.

1. Agency details
   
   Name of agency:
   
   Your case/reference number:
   
   Ombudsman reference:
   
   Employee the subject of the allegations:

2. Procedural fairness

2.1 Describe the allegation(s) that you put to the employee. Attach copies of all relevant documents, including correspondence, emails and records of interview with the employee.

2.2 How was the employee informed of and asked to respond to the allegation(s)?
   
   □ In writing
   □ Verbally
   □ Not informed – Reason:

2.3 By what method did the employee respond to the allegation(s):
   
   □ Written statement
   □ Interview
   □ Did not provide a response

2.4 If the employee was interviewed, was the employee invited to have a support person attend the interview with them?
   
   □ Yes
   □ No – why?

2.5 Did the employee opt for a support person?
   
   □ Yes
   □ No

---

NSW Ombudsman

Employment related child protection – January 2015
2.6 What was the employee’s response to the allegation(s) that were put to them?

3. Charges and convictions

3.1 Was the employee charged?

☐ Yes  ☐ No (please go to 4.1)

3.2 Please list each specific charge:

3.3 What was the outcome of court proceedings for each specific charge (if known)?

4. Agency finding and reporting to the Office of the Children’s Guardian

Reporting bodies have a legal obligation to report findings of sexual misconduct and serious physical assault involving children by a child-related worker to the Office of the Children’s Guardian (OCG), although the Ombudsman may report other misconduct to the Office of the Children’s Guardian. Further information about reporting bodies and relevant definitions can be found on the Office of the Children’s Guardian’s website at www.kidsguardian.nsw.gov.au

4.1 Does this notification concern more than one reportable allegation?

☐ Yes* – how many? __________

☐ No

*NOTE: PLEASE COMPLETE SECTION 4.2 FOR EACH ALLEGATION
4.2 Summary of allegation

<table>
<thead>
<tr>
<th>Finding</th>
<th>Category of conduct</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alleged conduct was found to be:</td>
<td></td>
</tr>
<tr>
<td>Sustained[1]</td>
<td>Sexual offence</td>
</tr>
<tr>
<td>Not sustained - insufficient evidence</td>
<td>Sexual misconduct</td>
</tr>
<tr>
<td>Not sustained - lack of any evidence of weight</td>
<td>Physical assault</td>
</tr>
<tr>
<td>False</td>
<td>Behaviour causing psychological harm to a child[2]</td>
</tr>
<tr>
<td>Not reportable conduct</td>
<td>Neglect</td>
</tr>
<tr>
<td></td>
<td>Ill-treatment</td>
</tr>
</tbody>
</table>

4.3 Was the matter sent to the OCG?

- Yes
- No (please go to 5.1)

4.4 Date sent to the OCG: 

Available findings

<table>
<thead>
<tr>
<th>Sustained</th>
<th>There is sufficient evidence that the reportable conduct occurred.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not sustained – insufficient evidence</td>
<td>There is some evidence that reportable conduct occurred, however, there is not enough evidence to make a conclusive finding.</td>
</tr>
<tr>
<td>Not sustained – lack of evidence of weight</td>
<td>A reportable allegation has been made, however, there is no evidence of weight that the reportable conduct occurred.</td>
</tr>
<tr>
<td>False</td>
<td>There is clear evidence to show that the alleged conduct did not occur. Some of these matters may be vexatious, for example, where inquiries into the matter show the allegation was made without substance and to cause distress to the person against whom the allegation was made.</td>
</tr>
<tr>
<td>Not reportable conduct</td>
<td>Inquiries show that the conduct was not reportable conduct. For example, conduct that constituted misconduct but did not reach the threshold of reportable conduct, the use of force that was trivial or negligible in the circumstances, conduct that was reasonable in the circumstances or accidental. This may also include ‘misconceived’ matters, where inquiries show that, even though the allegation was made in good faith, it was based on a misunderstanding of what actually occurred and the incident was not reportable conduct.</td>
</tr>
</tbody>
</table>

[1] Although there may be some circumstances where a sexual offence or physical assault may be sustained on the basis of probabilities, taking into account the Benjamin Principle, caution should be exercised when reaching a sustained finding of a sexual offence or physical assault in the absence of a conviction. If a court has not found that such an offence has occurred, agencies can consider whether or not sexual misconduct or ill-treatment (the inappropriate use of physical force) has occurred.

[2] In certain circumstances where a child has been exposed to prolonged and serious domestic violence it may be appropriate to infer psychological harm; however, in such cases it would be appropriate to discuss the proposed findings with this office prior to making a determination.

NSW Child Protection
Employment related child protection – January 2015
5. Final action taken at the end of the agency investigation

5.1 Describe the action taken by your agency (including risk assessment and management) at the conclusion of the investigation in respect to the employee who was the subject of the reportable allegation.

Relevant disciplinary action:
- [ ] No action after investigation
- [ ] Caution or warning
- [ ] Training
- [ ] Performance monitoring
- [ ] Restrict/change duties
- [ ] Other disciplinary action
- [ ] Dismissed
- [ ] Allowed to resign
- [ ] Other - specify:

5.2 What other action has been taken or is proposed by your agency as a result of the investigation? (e.g. review of procedures, training, changes to policies).

5.3 What other issues arose during the investigation that your agency considers relevant?

5.4 Date investigation completed:

5.5 Name, title and signature of person completing notification to Ombudsman:

Name:

Title:

Signature: