



**The Small School**

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# Child Protection Policy

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## Section 1

# Purpose and Scope

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The purpose of this policy is to outline the statutory framework for protecting children that The Small School (TSS) operates within. It is aimed at providing a clear guide for the whole school community in the child protection processes and practices that keep children and young people safe at TSS.

It sets out the legal obligations of staff, contractors, volunteers, parents, board members and other adults to protect children and young people at The Small School (TSS) and describes the processes for reporting and investigating allegations of misconduct at the School. This includes:

- Who can work with children and how the school ensures they have been checked for criminal and other relevant activity.
- Who is a mandatory reporter and in what circumstances and how they make a report.
- What and how conduct must be reported to the Office of the Children’s Guardian.
- The responsibilities of all staff; and
- Compliant record management for child protection records.

This policy applies to all staff members, which includes employees, contractors and volunteers.

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## Section 2

# Overview

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### 2.1 Key Legislation

There are four key pieces of child protection legislation in New South Wales that provides the overarching framework for the statutory protection of children. They are:

- The *Child Protection (Working With Children) Act 2012 (NSW)*, referred to here as the Working with Children Act, protects children by identifying who is permitted to work with children.
- The *Children and Young Persons (Care and Protection) Act 1998 (NSW)*, referred to here as the Care and Protection Act, sets out the circumstances for mandatory reporting in which

some staff are required to report a situation of a child at significant risk to children's services and/or police.

- The *Children's Guardian Act 2019* (the Children's Guardian Act) defines 'reportable conduct' that must be investigated and reported in accordance with the Act.
- Part 3A Child safe scheme (of the Children's Guardian Act).
- The *Crimes Act 1900* (Crimes Act).

## 2.2 Office of the Children's Guardian

The Office of the Children's Guardian (OCG) is an independent statutory body that promotes the interests, safety and rights of children and young people in NSW.

The core functions of the OCG include administering Working With Children Checks (WWCC), Reportable Conduct Scheme and implementation of the Child Safe Standards.

The OCG manages all WWCC processes, including applications, renewals, compliance, risk assessment and ongoing monitoring of Check holders.

## 2.3 Child Safe Scheme and Child Safe Standards

The Child Safe Scheme gives the OCG additional powers to monitor and investigate how organisations implement the Child Safe Standards to support the safety and wellbeing of children and young people.

Under the Scheme, certain child-related organisations including those in the Education, Early Childhood, Health and Youth Justice sectors, must implement the Child Safe Standards.

The Child Safe Standards are enshrined in the Children's Guardian Act. They are:

1. Child safety is embedded in organisational leadership, governance and culture.
2. Children participate in decisions affecting them and are taken seriously.
3. Families and communities are informed and involved.
4. Equity is upheld, and diverse needs are taken into account.
5. People working with children are suitable and supported.
6. Processes to respond to complaints of child abuse are child focused.
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.
8. Physical and online environments minimise the opportunity for abuse to occur.

9. Implementation of the Child Safe Standards is continuously reviewed and improved.
10. Policies and procedures document how the organisation is child safe.

## 2.4 Working With Children

The Working with Children Act aims to protect children by requiring a worker to have a Working With Children Check (WWCC) clearance or current application to engage in child-related work. Failure to do so may result in a fine or imprisonment. It involves a national criminal history check and review of reported workplace misconduct findings.

The OCG is responsible for determining applications for a WWCC clearance. The result of a WWCC is either a clearance to work with children for five years, or a bar against working with children (see below). In addition, the OGC may impose an interim bar on engaging in child related work for both applicants and WWCC clearance holders.

WWCC clearance holders are subject to ongoing monitoring by the OCG.

### 2.4.1 Barred Workers

A person may receive a barred status on their WWCC. A bar may be final following a risk assessment conducted by the OCG. This means the person is barred from working with children or applying for a new WWCC for 5 years.

An interim bar is issued to high-risk individuals to prevent them from continuing to work with children while the OCG risk assessment is conducted.

The interim bar may be applied for up to 12 months. If an interim bar is in place for six months or longer, it can be appealed against through the Administrative Decisions Tribunal. Not everyone who is subject to a risk assessment receives an interim bar; only those who represent a serious and immediate risk to children. Interim bars are only issued for risks considered likely to result in a final bar.

It is an offence to engage a barred or interim-banned person in a child-related role and penalties apply.

### 2.4.2 Child-Related Workers

A 'child-related worker' is a person who has physical contact or face-to-face contact with children in environments including schools. Child-related work includes childcare, private coaching and tuition, overnight camps and transport services for children including school bus services, taxi services for children and supervision of school road crossings.

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

If you are a child-related worker, you are required to:

- Hold and maintain a valid WWCC clearance.
- Not engage in child-related work at any time that you are subjected to an interim bar or a bar.
- Report to the Principal if you are no longer eligible for a WWCC clearance, the status of your clearance changes or you are notified by the OCG that you are subject to a risk assessment.

An application is completed when the online application form is complete, and the worker's identity has been proven at the NSW Motor Registry and the fee has been paid (if in paid work).

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 WWCC being revoked.

Further information about applying for your WWCC is available on the Office of the Children's Guardian website at <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/working-with-children-check>.

## Section 3

# Responsibilities

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Protection of children from harm and exercising a duty of care and kindness is the responsibility of all adults in our school community. The Guiding Principles which underpin the philosophy of TSS are specifically aimed at providing an environment which is safe and empowering for children.

All staff at TSS have a responsibility to identify and manage risks that may lead to harm to children across all its activities.

### 3.1 School Principal Responsibilities

#### 3.1.1 TSS Philosophy and Culture

The Principal coordinates the child-safe culture of TSS and champions child protection across the school. The Principal ensures that the democratic forums which are part of the school's philosophy, and which give children a say in decision making, are available to children throughout the school.

The democratic forums in the school include Daily Circle, fortnightly Whole School Meetings (all staff and students) and Special Circles (staff facilitated meetings or conversations in which restorative justice principles are used to remedy behaviour of students or relationship problems between students).

In the democratic forums (and elsewhere across the school's activities) children are to be made aware of the school's responsibilities for the safety, welfare and wellbeing of children in their care and that they have a voice in decision making at the school.

Across school settings, both formal (democratic forums and protective behaviours curriculum) and informal (everyday conversations across the school) children are encouraged to participate in decisions that affect them, to speak up about their concerns or ideas, to develop their ability to speak up, and to seek the support of a trusted adult when they need help speaking up.

### 3.1.2 Working With Children Checks

The Principal is responsible for:

- Verifying and recording the status of WWCCs on the OCG website for those engaged to start as employees, volunteers or contractors in child-related work at the school.
- Carrying out the verification of the WWCC prior to the person commencing employment or volunteer duties.
- Keeping WWCC records for the school (see Appendix 1) including advice of a valid WWCC for all child-related workers and the date renewal is due. Renewal dates are maintained in the school's central calendar with an alert sent to staff electronically, four weeks prior to the expiry date.

### 3.1.3 Induction

The Principal must ensure all employees engaged in child-related work at the school are provided with training in relation to child protection awareness, mandatory reporting and reportable conduct as part of their initial induction by reviewing this policy and through the online resources available on the NSW Association of Independent Schools (AIS) or the OCG websites or other training resources.

As part of their induction, the Principal must ensure staff and some volunteers (see section 3.3) understand their obligation to have and maintain a valid WWCC.

### 3.1.4 TSS Child Protection Policy

The Principal is responsible for reviewing and updating this Child Protection Policy every two years, as well as after a child protection incident, as regulatory changes arise, or improvements are identified in child protection practice.

The review process should include input from the school community including staff, students and the School Board.

The Principal also ensures that:

- The policy is reviewed by the School Board according to the review schedule recorded on the policy.
- All staff and volunteers who have mandatory reporting responsibilities review this policy annually and that new staff review this policy before they commence employment. On each occasion, the staff member, after reading the policy must sign the acknowledgment on the last page and return that page to the Principal by the end of Term 2 each year.
- A register of staff members and volunteers who have read and acknowledged that they have read and understood this policy is maintained and is audited annually to ensure that all staff have returned their signed acknowledgment (see Appendix 1).

### 3.1.5 Training

The Principal must:

- Maintain the register of annual training for staff in child protection awareness and responsibilities and audit the register annually to ensure all staff complete annual training (see Appendix 1).
- Ensure that staff attend child protection training on their legal responsibilities in relation to child protection, mandatory reporting and reportable conduct annually.

### 3.1.6 Reporting

The Principal is responsible for:

- Assessing whether a child is at risk of significant harm (see Significant Harm in Section 4) and for employing the Mandatory Reporter Guide (MRG) to help with decision making: <https://www.facs.nsw.gov.au/families/Protecting-kids/mandatory-reporters/what-when-to-report/chapters/mandatory-reporter-guide>
- Keeping file notes, including the MRG record, in confidential student files.
- Making mandatory reports to the Department of Communities and Justice (DCJ).
- Receiving allegations of reportable conduct and advising the OCG of the findings they have

made after completing a reportable conduct investigation, including whether they have made a finding of reportable conduct. A finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault must be referred to the OCG's Working with Children Check Directorate (WWCC Directorate). It is an offence for an employer to knowingly engage a child-related worker who does not hold a WWCC clearance or who has a bar.

## 3.2 Staff Responsibilities

### 3.2.1 Working With Children Check

All staff at TSS must ensure the following in relation to their WWCC:

- Prior to carrying out any work at TSS, a new employee or contractor must provide their WWCC number to the Principal. The Principal will verify the WWCC number prior to the person commencing employment or volunteer duties.
- That they hold and maintain a valid WWCC and when their Check is up for renewal they do so and inform the Principal of the renewal. Renewal dates will be recorded in the school's central calendar and staff will receive a reminder four weeks before their WWCC expires. Despite this, it is the responsibility of all staff to know when their renewal is due and to act to complete their renewal.
- That they do not engage in child-related work when they do not hold a WWCC clearance or if they are subject to a bar. It is an offence for an employee to engage in child-related work when they do not hold a WWCC clearance or if they are subject to a bar.
- That when they are organising any volunteer or external provider for child-related work, they inform the Principal that a WWCC verification will be required, before the volunteer or external provider interacts with children and remain present with any volunteers or other visitors to the school involved in child-related work.
- That they report to the Principal if they are no longer eligible for a WWCC clearance, the status of their WWCC clearance changes or if they are notified by the OCG that they are subjected to a risk assessment.

Staff must also notify the OCG of any change to their personal details within 3 months of the change occurring. Failure to do so may result in a fine.



### 3.2.2 Child Protection Policy

It is important for all staff to understand the school's child-safe culture and their obligations for mandatory reporting and reportable conduct set out in this policy and act in accordance with those obligations.

All staff should:

- Review this policy before commencing work at TSS and return the signed acknowledgment to the Principal.
- Review this policy annually thereafter while employed at TSS, and return the signed acknowledgement to the Principal, by the end of Term 2 each year.

### 3.2.3 Teaching and Learning

- Teachers should deliver developmentally appropriate protective behaviours curriculum material to children attending the school.
- Teachers should use TSS bi-annual parent information sessions to consult with parents about the nature of protective behaviours material to be covered.
- All staff should uphold the culture of children having a voice through the various democratic forums at TSS and generally across all school activities.

### 3.2.4 Training

There are important child protection training obligations for all staff in child-related roles. All staff must undertake induction and annual training in child protection awareness, mandatory reporting and their responsibilities under child protection legislation. Staff should provide training updates and certificates to the Principal.

### 3.2.5 Reporting Child Protection Concerns

- Advise the Principal of any concern that a child is at risk of significant harm.
- Advise the Principal of any concerns in relation to reportable conduct under this policy.
- Maintain confidentiality during any investigation of reportable conduct undertaken by the school.
- Staff members with a concern about mandatory reporting or reportable conduct should advise the Principal.
- If the matter concerns the Principal, they should advise the Chairperson of the School Board. The Principal / Chairperson of the School Board then takes action as prescribed by relevant legislation and set out in this policy.

- If a person with mandatory reporting responsibilities is not satisfied with the action taken by the Principal/ Chairperson of the School Board, they must make a mandatory report themselves in accordance with this policy.

### 3.3 Parents and Volunteers Responsibilities

The Working with Children Act provides for exemptions for some people in child-related roles to hold a WWCC. Part 4, Clause 20 of the Working with Children Act exempts parents or close relatives volunteering at the school from the requirement to apply for a WWCC. Parents at TSS who are assisting in the classroom, on excursions or in the kitchen do not require a WWCC.

From time-to-time parents may work at the school in an ongoing and advanced voluntary capacity in a child-related position. These roles are defined by the Principal and may require a WWCC.

Any volunteer at The Small School who is not a parent or direct relative of a child at the school, must hold and maintain a valid WWCC and complete the School's induction process for volunteers including a briefing on the school's child-safe culture and child protection obligations.

Prior to carrying out any work at The Small School, a new volunteer must provide their WWCC number to the Principal. The Principal will verify the WWCC number prior to the person commencing employment or volunteer duties.

It is your responsibility to ensure that when you are eligible to apply for a WWCC clearance or when your clearance is up for renewal you do so.

Volunteers with a concern about mandatory reporting or reportable conduct should advise the Principal.

If the matter concerns the Principal, they should advise the Chairperson of the School Board. The Principal / Chairperson of the School Board then takes action as prescribed by relevant legislation and set out in this policy.

If a person with mandatory reporting responsibilities is not satisfied with the action taken by the Principal/ Chairperson of the School Board, they must make a mandatory report themselves in accordance with this policy.

## Section 4

# Mandatory Reporting

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The Care and Protection Act provides for mandatory reporting of children at risk of significant harm. Significant harm is defined under the Act, along with the process for reporting.

Under the Care and Protection Act anyone who either delivers services to children or manages or supervises the provision of services to children, including healthcare, welfare, education, children's services and residential services, is a mandatory reporter.

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 Principal.

### 4.1 Reporting to the Department of Communities and Justice

Under the Act, 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 DCJ 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.

At TSS, young people (16 or 17 years of age) are also considered to be children in relation to these arrangements.

#### 4.1.1 Centralised Reporting

In the independent school sector, a mandatory reporter will meet their obligation if they report to the Principal in the School. This centralised reporting model ensures that a person in the School has all of the information that may be relevant to the circumstances of the child at risk of significant harm and addresses the risk of the School not being aware of individual incidences that amount to cumulative harm.

#### 4.1.2 Reasonable grounds

Having 'reasonable grounds' means having an objective basis for suspecting that a child may be at risk of significant harm, based on:

- First-hand observations of the child or family.
- What the child, parent or another person has disclosed.
- What can reasonably be inferred based on professional training and/ or experience.

Having reasonable grounds does not mean you are required to confirm your suspicions or have clear proof before making a report.

### 4.1.3 Significant harm

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

- The child'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 to receive necessary medical care.
- In the case of a child who is required to attend school in accordance with the Education Act 1990 (NSW)—the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child to receive an education in accordance with that Act.
- The child has been, or is at risk of being, physically or sexually abused or ill-treated.
- The child is living in a household where there have been incidents of domestic violence and, as a consequence, the child is at risk of serious physical or psychological harm.
- A parent or other caregiver has behaved in such a way towards the child that the child 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.

A child is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or wellbeing of the child are present to a significant extent. What is meant by 'significant' 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'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.

## 4.2 Child Protection Concerns

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

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

**Physical abuse** is a non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or any other person. It includes but is not limited to injuries which are caused by excessive discipline, severe beatings or shakings, cigarette burns, attempted strangulation and female genital mutilation. Injuries include bruising, lacerations or welts, burns, fractures or dislocation of joints. Hitting a child around the head or neck and/or using a stick, belt or other object to discipline or punishing a child (in a non-trivial way) is a crime.

**Emotional abuse** can cause serious psychological harm which can occur where the behaviour of a parent or caregiver damages the confidence and self-esteem of the child, resulting in serious emotional deprivation or trauma. Although it is possible for 'one-off' incidents to cause serious harm, in general it is the frequency, persistence and duration of the parental or carer behaviour that is instrumental in defining the consequences for the child. This can include a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or threatening behaviour.

**Sexual abuse** is when someone involves a child 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. It is possible to have child wellbeing concerns for safety, welfare or wellbeing that do not meet the mandatory reporting threshold, which is risk of significant harm.

## 4.2 Process for Mandatory Reporting

### 4.2.1 Staff Members

Staff members must raise concerns about a child or young person who may be at risk of significant harm with the Principal as soon as possible to discuss whether the situation reaches the threshold of 'risk of significant harm' under the Act and the steps required to report the matter.

However, if there is an immediate danger to the child or young person and the Principal or next most senior member of staff (Head of Primary or Secondary) is not contactable, staff members

should contact the Police (Tweed Heads Police 07 5506 9499 or 000) and/or the Child Protection Helpline (13 21 11) and then advise the Principal or next most senior staff member as soon as possible.

Staff members are not required to, and must not, undertake any investigation of the matter. Staff members are not to inform the parents or caregivers that a report to DCJ has been made.

Staff members are required to deal with the matter confidentially and only disclose it to the persons referred to above or as required to comply with mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this policy, it could also expose you to potential civil proceedings for defamation.

#### 4.2.2 The Principal

In general, the Principal will report these matters to the DCJ and where necessary, the Police. This is supported by the DCJ in accordance with best practice principles.

### 4.3 Process for reporting concerns about children

#### 4.3.1 Staff members

The Care and Protection Act outlines a mandatory reporter's obligation to report to the DCJ concerns about risk of significant harm. However, to ensure centralised reporting, all staff members are required to report any concern regarding the safety, welfare and wellbeing of a student to the Principal.

Staff members who are unsure as to whether a matter meets the threshold of 'risk of significant harm', should report their concern to the Principal regardless.

Staff members are required to deal with all reports regarding the safety, welfare or wellbeing of a student confidentially and only disclose it to the Principal and any other person the Principal nominates.

## Section 5

# Reportable Conduct

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Section 29 of the *Children's Guardian Act 2019* requires the Principal to notify the OCG of all allegations of reportable conduct and convictions involving an 'employee' and the outcome of the School's investigation of these allegations.

Under the *Children's Guardian Act 2019*, allegations of child abuse only fall within the reportable conduct jurisdiction if the involved individual is an employee of the relevant entity at the time when the allegation becomes known by the Principal.

Reportable Conduct:

- Involves a child (a person under the age of 18 years) at the time of the alleged incident; and
- involves certain defined conduct as described in the *Children's Guardian Act 2019* (see below).

The OCG:

- 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); and
- may investigate the way in which a relevant entity has dealt with, or is dealing with, a report, complaint or notification, if the OCG considers it appropriate to do so.

## 5.1 Reportable Conduct

Under the *Children's Guardian Act 2019*, reportable conduct is defined as:

- A sexual offence;
- sexual misconduct;
- an assault against a child;
- ill-treatment of a child;
- neglect of a child;
- an offence under section 43B (failure to protect) or section 316A (failure to report) of the *Crimes Act 1900*; and
- behaviour that causes significant emotional or psychological harm to a child.

Reportable conduct does not extend to:

- conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards; or
- the use of physical force that, in all the circumstances, is trivial or negligible and the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures; or
- conduct of a class or kind exempted from being reportable conduct by the *Children's Guardian Act 2019* under section 30.

### 5.1.1 Definitions

The following definitions relate to reportable conduct:

**Sexual offence:** an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child, such as:

- sexual touching of a child;
- a child grooming offence;
- production, dissemination or possession of child abuse material.

Definitions of 'grooming', within child protection legislation, are complex. Under the *Crimes Act*, grooming or procuring a child under the age of 16 years for unlawful sexual activity is classed as a sexual offence. The *Crimes Act* (s73) also extends the age of consent to 18 years when a child is in a 'special care' relationship. Under Schedule 1(2) of the *WWC Act*, grooming is recognised as a form of sexual misconduct. The *Children's Guardian Act 2019* and this Child Protection Policy reflect these definitions within the context of the Reportable Conduct Scheme (Division 2).

An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of sexual offence.

**Sexual misconduct:** conduct with, towards or in the presence of a child that is sexual in nature (but not a sexual offence). The *Children's Guardian Act 2019* provides the following (non-exhaustive) examples:

- descriptions of sexual acts without a legitimate reason to provide the descriptions;
- sexual comments, conversations or communications;
- comments to a child that express a desire to act in a sexual manner towards the child, or another child.



*Note* - crossing professional boundaries comes within the scope of the scheme to the extent that the alleged conduct meets the definition of sexual misconduct. That is, the conduct with, towards or in the presence of a child that is sexual in nature (but is not a sexual offence).

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

- applies physical force against a child without lawful justification or excuse – such as hitting, striking, kicking, punching or dragging a child (actual physical force); or
- causes a child to apprehend the immediate and unlawful use of physical force against them – such as threatening to physically harm a child through words and/or gestures regardless of whether the person actually intends to apply any force (apprehension of physical force).

**Ill-treatment:** is defined as conduct towards a child that is:

- unreasonable; and
- seriously inappropriate, improper, inhumane or cruel.

Ill-treatment can include a range of conduct such as making excessive or degrading demands of a child; a pattern of hostile or degrading comments or behaviour towards a child; and using inappropriate forms of behaviour management towards a child.

**Neglect:** defined as a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for a child that causes or is likely to cause harm - by a person who has care and/or has responsibility towards a child.

Neglect can be an ongoing situation of repeated failure by a caregiver to meet a child's physical or psychological needs, or a single significant incident where a caregiver fails to fulfill a duty or obligation, resulting in actual harm to a child where there is the potential for significant harm to a child. Examples of neglect include failing to protect a child from abuse and exposing a child to a harmful environment.

**Emotional or Psychological Harm:** Behaviour that causes significant emotional or psychological harm to a child is conduct that is intentional or reckless (without reasonable excuse), obviously or very clearly unreasonable and which results in significant emotional harm or trauma to a child.

For a reportable allegation involving psychological harm, the following elements must be present:

- An obviously or very clearly unreasonable or serious act or series of acts that the employees knew or ought to have known was unacceptable, and
- Evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self-harm, and

- An alleged causal link between the employee's conduct and the significant emotional or psychological harm to the child.

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

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

**Employee** of an entity includes:

- an individual employed by, or in, the entity
- a volunteer providing services to children
- a contractor engaged directly by the entity (or by a third party) where the contractor holds, or is required to hold, a WWCC clearance for the purposes of their work with an entity; and
- a person engaged by a religious body where that person holds, or is required to hold, a WWCC clearance for the purposes of their work with the religious body.

**ESOA** refers to *Employee Subject Of the Allegation*.

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

### 5.2.1 Staff members

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

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

If the allegation involves the Principal, the staff member must report to the Chairperson of the School Board.

### 5.2.2 Parents, Carers and Community Members

Parents, carers and community members are encouraged to report any conduct that is in their view inappropriate, reportable or criminal conduct to the Principal or their delegate. All such reports will be dealt with in accordance with the School's complaint handling procedures.

### 5.2.3 The Principal

The Principal, as the Head of Entity under the Children's Guardian Act 2019, must:

- Ensure specified systems are in place for preventing, detecting and responding to reportable allegations or convictions
- Submit a 7-day notification form to the OCG within 7 business days of becoming aware of a reportable allegation or conviction against an employee of the entity (unless the Principal has a reasonable excuse).

The notification should include the following information:

- a) that a report has been received in relation to an employee of the School, and
- b) the type of reportable conduct, and
- c) the name of the employee, and
- d) the name and contact details of School and the Principal, and
- e) for a reportable allegation, whether it has been reported to Police, and
- f) if a report has been made to the Child Protection Helpline, that a report has been made, and
- g) the nature of the relevant entity's initial risk assessment and risk management action.

The notice must also include the following, if known to the Principal:

- a) details of the reportable allegation or conviction considered to be a reportable conviction,
- b) the date of birth and working with children number, if any, of the employee the subject of the report,
- c) the police report reference number (if Police were notified),
- d) the report reference number if reported to the Child Protection Helpline,
- e) the names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or contractor.

Maximum penalty for failure to notify within 7 business days – 10 penalty units.

### 5.3 Process for investigating an allegation of reportable conduct

The Principal is responsible for ensuring that the following steps are taken to investigate an allegation of reportable conduct.

#### 5.3.1 Initial steps

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

- Determine whether it is an allegation of reportable conduct;
- assess whether the DCJ or the Police need to be notified (i.e. if reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence). If they have been notified, seek clearance from these statutory agencies prior to the School proceeding with the reportable conduct investigation;
- notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by the DCJ or Police);
- notify the OCG within **7 business days** of receiving the allegation;
- carry out a risk assessment and take action to reduce/remove risk, where appropriate; and
- provide an initial letter to the ESOA advising that an allegation of reportable conduct has been made against them and the School's responsibility to investigate this matter under Section 34 of the Children's Guardian Act 2019; and
- investigate the allegation or appoint someone to investigate the allegation.

#### 5.3.2 Investigation Principles

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

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

### 5.3.3. Investigation Steps

In an investigation the Principal or appointed investigator will generally:

- Interview relevant witnesses and gather relevant documentation;
- provide a letter of allegation to the ESOA;
- provide the ESOA with the opportunity to provide a response to the allegations either in writing or at Interview;
- consider relevant evidence and make a preliminary finding in accordance with the OCG guidelines;
- inform the ESOA of the preliminary finding in writing by the Head of Entity and provide them with a further opportunity to respond or make a further submission prior to the matter moving to final findings;
- consider any response provided by the ESOA;
- make a final finding in accordance with the OCG guidelines;
- decide on the disciplinary action, if any, to be taken against the ESOA;
- if it is completed, send the final report to the OCG **within 30 days** after having received the allegation, as per section 36 of the Children’s Guardian Act 2019.
- should the final report be unfinished within 30 days, the Principal must provide, at minimum, an **interim report** to the OCG within 30 days of having received the allegation, as per section 38 of the Children’s Guardian Act 2019.

Submission of an interim report must include;

- a reason for not providing the final report within 30 days and an estimated time frame for completion of the report.
- specific information, including (if known); the facts and circumstances of the reportable allegation; any known information about a reportable conviction; action taken since the OCG received a notification about the reportable allegation or reportable conviction; further action the Principal proposes to take in relation to the reportable allegation or reportable conviction; including if the Principal proposes to take no further action; the reasons for the action taken and the action proposed to be taken or the reasons for the decision to take no further action; other information prescribed by the regulations; and
- be accompanied by copies of documents in the School's possession, including transcripts of interviews and copies of evidence.

The steps outlined above may need to be varied on occasion to meet particular circumstances. For example, it may be necessary to take different steps where the matter is also being investigated by the DCJ or Police.

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

## **5.4 Risk management throughout an investigation of a reportable conduct allegation**

Risk management means identifying the potential for an incident or accident to occur and taking steps to reduce the likelihood or severity of its occurrence.

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

### **5.4.1 Initial Risk Assessment**

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

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

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

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

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

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.

#### **5.4.2 Ongoing Risk Assessment**

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

#### **5.4.3 Findings**

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

#### **5.4.4 Information for the ESOA**

The ESOA 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 ESOA does not automatically have the right to:

- know or have confirmed the identity of the person who made the allegation; or
- be shown the content of the OCG notification form or other investigation material that reveals information provided by other employees or witnesses.

The WWC Act enables a person who has a sustained finding referred to the OCG to request access to the records held by the School in relation to the finding of misconduct involving children, once final findings are made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made.

#### **5.4.5 Disciplinary Action**

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

In relation to any disciplinary action the School will give the ESOA:

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

### 5.4.6 Confidentiality

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

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 the Principal's external hard drive and will be accessible by the Principal or with the Principal's express authority.

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

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

## Section 6

# Criminal Offences

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In 2018 the Crimes Act was amended to adopt recommendations of the *Royal Commission into Institutional Responses to Child Sexual Abuse*. The new offences are designed to prevent child abuse and to bring abuse that has already occurred to the attention of the Police.

### 6.1 Failure to protect offence (Crimes Act 1900 – NSW)

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

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

### 6.2 Failure to report offence (Crimes Act 1900 – NSW)

Any adult, and therefore all staff members, will commit an offence if they know, believe or reasonably ought to know that a child abuse offence has been committed and fail to report that information to Police, without a reasonable excuse. A reasonable excuse would include where the



adult has reported the matter to the Principal and is aware that the Principal has reported the matter to the Police.

### **6.3 Special Care Relationships (Crimes Act 1900 – NSW)**

It is a crime in NSW for a staff member, volunteer or contractor to have a sexual relationship with a student where there is a special care relationship. The Act provides that a young person is under an adult's special care if the adult is a member of the teaching staff of the School at which the young person is a student; or has an established personal relationship with the young person in connection with the provision of religious, sporting, musical or other instruction.

The Special Care (sexual intercourse) offence under s73 was supplemented by an additional special care offence involving sexual touching now under s73A of the Crimes Act. The new offence under s73A will expand special care offences to also apply to non-penetrative sexual touching. The offence will protect children aged 16-17 years from inappropriate sexual contact with teachers and others who have special care of the child.

## ACKNOWLEDGEMENT

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I, .....

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

<i>Signature</i>	<i>Date</i>
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## **APPENDIX 1: CHILD PROTECTION RECORD MANAGEMENT**

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The Principal or delegate maintains a Child Protection (CP) Register. This register is contained in the main computer storage system filed under: Child Protection > Child Protection Registers. It contains:

- **WWCC Register** – using the template from the OCG, the WWCC number, clearance status, verification and renewal dates for every child-related worker at the school are recorded here, filed under: Child Protection > Child Protection Registers > WWCC Register. The WWCC Register is retained for seven years.
- **The Register of CP Policy Acknowledgement** - contains the signed Child Protection Policy Acknowledgment of each staff member, scanned and filed electronically under: Child Protection > Child Protection Registers > Register of CP Policy Acknowledgment.
- **Register of Child Protection Training** - contains an annual record of training in child protection undertaken by staff. This is filed electronically under: Child Protection > Child Protection Registers > Register of CP Training.

### **TSS Central Calendar**

The Principal keeps a record of the date WWCC are due for renewal and links the renewal dates to the online central school calendar – TSS Calendar in Microsoft Outlook.

## APPENDIX 2: INCIDENT REPORT FORM



**The Small School**  
 8 King Street, Murwillumbah, NSW 2484  
 ☎ 02 6672 1018 ✉ admin@thesmallschool.org.au  
 🌐 www.thesmallschool.org.au

### Incident Report Form

<b>Incident Report filed by</b>			
<b>Person involved in incident</b>			
Student name			
Staff Member name			
Other Person Name (parent/volunteer, please specify)			
<b>Date and Time Incident Occurred</b>	DD/MM/YYYY	Time	
<b>Name(s) of other people involved, present, witnessed incident (if applicable):</b>			
<b>What happened?</b>			
<b>Actions Taken</b>			
<b>Recommendations</b>			
<b>Signature</b>	Signature	DD/MM/YYYY	
<b>Principal's response</b>			
<b>Signature of Principal</b>	Signature	DD/MM/YYYY	

## REFERENCES

NSW Department of Communities and Justice ..... <https://www.dcj.nsw.gov.au>

The Office of the Children’s Guardian ..... <https://ocg.nsw.gov.au/>

Department of Premier and Cabinet – Keep Them Safe ..... [www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au)