



**LUTHERAN SCHOOL WAGGA WAGGA**  
**POLICY AND PROCEDURES**  
**CHILD PROTECTION POLICY**

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## **1. INTRODUCTION**

### **1.1. General**

The safety, protection and well-being of all students is of fundamental importance to the School. This policy sets out staff responsibilities for child protection and processes that staff must follow in relation to child protection matters. This policy applies to all staff members, which includes employees, contractors and volunteers.

Staff members who fail to adhere to this policy may be in breach of their terms of employment.

Staff members and the School have a range of different obligations relating to the safety, protection and welfare of students including:

- a) A duty of care to ensure that reasonable steps are taken to prevent harm to students.
- b) Obligations under child protection legislation.
- c) Obligations under work health and safety legislation.
- d) Child protection is a community responsibility.

### **1.2. Key legislation**

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

- a) The Children and Young Persons (Care and Protection) Act 1998 (Care and Protection Act).
- b) The Child Protection (Working With Children) Act 2012 (WWC Act).
- c) The Crimes Act 1990 (Crimes Act).
- d) The Children's Guardian Act 2019 (Children's Guardian Act).

There are also additional pieces of legislation that may impose obligations on the School in certain circumstances. These include:

- a) The Teacher Accreditation Act 2004 (NSW) (TAA).

### **1.3. Your obligations to report**

While we set out below circumstances in which the legislation requires reporting of particular child protection issues, the School requires you to report any concern you may have about the safety, welfare or wellbeing of a child or young person to the Principal or Deputy Principal. If the concern relates to harm caused by a member of staff or a volunteer you are required to report this directly to the Principal.

If the allegation involves the Principal, you are required to report to the Chair of the School Board ([chair@lpsww.nsw.edu.au](mailto:chair@lpsww.nsw.edu.au)).

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

### **1.4. Related policies and statements**

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

- a) The **Professional Standards Policy** which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the School.
- b) The **Work Health and Safety Statement** which summarises the obligations imposed by work health and safety legislation on the school and workers.
- c) The **Discrimination, Harassment and Bullying Statement** which summarises your obligations in relation to unlawful discrimination, harassment and bullying.
- d) The **Behaviour Learning Policy and Procedures** that outline acceptable behaviour and responses to incidents of misbehaviour including bullying.
- e) The **LEA Valuing Safe Communities** Framework that is mandatory for all Lutheran schools within Australia.
- f) The **LEA Code of ethics for safe and professional relationships** that outlines principles and expectations for behaviour based on the values that Lutheran schools adhere to and promote.
- g) The **Working With Children: Volunteers and Visitors Requirements and Declaration** that is completed by all volunteers and visiting tutors to the school.
- h) The **Complaints Policy and Procedures** that outline the steps taken to report allegations of misconduct and reportable conduct.
- i) The **Child Protection Procedures** that outline the school's approaches to ensuring a safe environment for its students.

### 1.5. Compliance and Records

The Principal, or their delegate, monitors compliance with this policy and securely maintains school records relevant to this policy, which includes:

- a) Register of staff members who have read and acknowledged that they read and understood this policy.
- b) Working with children check clearance (WWCC clearance) verifications.
- c) Mandatory reports to the Department of Communities and Justice (DCJ), previously known as Family and Community Services.
- d) Reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions.

## 2. CHILD PROTECTION

The safety, protection and welfare of students is the responsibility of all staff members and encompasses:

- a) A duty of care to ensure that reasonable steps are taken to prevent harm to students which could reasonably have been foreseen.
- b) Obligations under child protection legislation.

### 2.1. Children protection concerns

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

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

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.

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

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

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

## **2.2. Child wellbeing concerns**

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 in Section 5.2.3.

## **2.3. Staff member responsibilities**

Key legislation requires reporting of particular child protection concerns. However, as part of the school's overall commitment to child protection all staff are required to report any child protection or child wellbeing concerns about the safety, welfare or wellbeing of a child or young person to the Principal or the Deputy Principal.

If the allegation involves the Principal, a report should be made to the Chair of the School Board ([chair@lpsww.nsw.edu.au](mailto:chair@lpsww.nsw.edu.au)).

# **3. TRAINING**

## **3.1. The school**

The school provides all employees with a copy of this policy and will provide all employees with the opportunity to participate in child protection training annually.

## **3.2. Employees**

All new employees must read this policy and sign the acknowledgement that they have read and understood the policy.

All employees must participate in annual child protection training and additional training, as directed by the Principal. The training compliments this policy and provides information to employees about their legal responsibilities related to child protection and school expectations, including:

- a) Mandatory reporting.
- b) Reportable conduct.
- c) Working With Children Check.
- d) Professional boundaries.

# **4. WORKING WITH CHILDREN**

## **4.1. General**

The WWC Act protects children by requiring a worker to have a WWCC clearance or current application to engage in child related work. Failure to do so may result in a fine or imprisonment.

The Office of the Children’s Guardian (OCG) is responsible for determining applications for a WWCC clearance. It involves a national criminal history check and review of reported workplace misconduct findings. The result is either to:

- a) Grant a WWCC clearance (generally valid for 5 years); or
- b) Refuse a WWCC clearance (further applications cannot be made for 5 years).

In addition, the OGC may impose an interim bar on engaging in child related work for both applicants and WWCC clearance holders.

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

## **4.2. Responsibilities for working with children checks**

### **4.2.1. Staff members**

Staff members who engage in child-related work and eligible volunteers (including those volunteers working at overnight camps) are required to:

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

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.

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

The School's position is that all employees and eligible volunteers who work at the School must have a WWCC. All volunteers attending overnight school excursions (e.g. school camps) must have a valid WWCC.

All volunteers are required to:

- a) Be aware and follow the expectations of conduct expressed in the school’s Professional Standards Policy.
- b) Complete a Volunteers Induction session with a senior member of school staff.
- c) Hold a valid WWCC Check if they are over 18 and not a parent or close relative of a student currently enrolled at the school.

### **4.2.2. The School**

The School is required to:

- a) Verify online and record the status of each child-related worker’s WWCC clearance.
- b) Only employ or engage child-related workers or eligible volunteers who have a valid WWCC clearance.
- c) Advise the OCG of the findings they have made after completing a reportable conduct investigation, including whether they have made a finding of reportable conduct. A finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault must be referred to the OCG's 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.

### **4.3. Working with children check clearance**

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

#### **4.3.1. Child-related work**

Child-related work involves direct contact by the worker with a child or children and that contact is a usual part of and more than incidental to the work. Child related work includes, but is not limited to work in the following sectors:

- a) Early education and child-care including education and care service, child-care centres and other child care.
- b) 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.
- e) Transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings; and
- f) Counselling, mentoring or distance education not involving direct contact.

Any queries about whether roles/duties engage in child-related work should be directed to the Principal.

#### **4.3.2. Application/Renewal**

An application or renewal can be made through Service NSW or its replacement agency. The process for applying for and renewing a WWCC clearance with the OCG involves a national police check and a review of findings of misconduct. If the OCG grants or renews a WWCC clearance the holder will be issued with a number which is to be provided to the School to verify the status of a staff member's WWCC clearance.

Should a staff member's WWCC expire and not be renewed, they cannot be employed by the school while they do not have a current WWCC.

#### **4.3.3. Refusal/Cancellation**

The OCG can refuse to grant a WWCC clearance or cancel a WWCC clearance. The person is then restricted from engaging in child-related work and not able to apply for another clearance for five years. Employers are notified by the OCG and instructed to remove such persons from child-related work.

#### **4.3.4. Interim bar**

The OCG may issue an interim bar, for up to 12 months, to high risk individuals to prevent them from engaging in child-related work while a risk assessment is conducted. If an interim bar remains in place for six months or longer, it may be appealed to the Administrative Decisions Tribunal.

Not everyone who is subject to a risk assessment will receive an interim bar; only those representing a serious and immediate risk to children.

#### **4.3.5. Disqualified person**

A disqualified person is a person who has been convicted, or against whom proceedings have been commenced for a disqualifying offence outlined in Schedule 2 of WWC Act. A disqualified person cannot be granted a WWCC clearance and is therefore restricted from engaging in child related work.

### **4.4. Ongoing monitoring**

The OCG will continue to monitor criminal records and professional conduct findings of all WWCC clearance holders through a risk assessment process.

#### **4.4.1. Risk assessments**

A risk assessment is an evaluation of an individual's suitability for child-related work.

The OCG will conduct a risk assessment on a person's suitability to work with children when a new record is received which triggers a risk assessment. This may include an offence under Schedule 1, pattern of behaviour or offences involving violence or sexual misconduct representing a risk to children and findings of misconduct involving children.

#### **4.5. Process for reporting to OCG**

##### **4.5.1. The school**

Independent Schools are defined as a reporting body by the WWC Act.

The School is required to advise the OCG of the findings they have made after completing a reportable conduct investigation, including whether they have made a finding of reportable conduct. A finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault must be referred to the OCG's WWCC Directorate. Information must also be referred internally to the OCG's WWCC Directorate if it meets the threshold for consideration of an interim WWCC bar, as per Section 17 of the WWC Act, pending a formal risk assessment.

The School may also be obliged to report, amend or provide additional information to the OCG as outlined in the WWC Act and the Children's Guardian Act.

##### **4.5.2. Finding of misconduct involving children**

The Principal will report any finding of reportable conduct to the OCG.

When informing an employee of a finding of reportable conduct against them, the Principal should alert them to the consequent report to the WWCC Directorate in relation to sustained findings of sexual misconduct, a sexual offence or a serious physical assault.

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

##### **4.5.3. Other information**

The School may also be required to provide information to the OGC that is relevant to an assessment of whether a person poses a risk to the safety of children or the OCG's monitoring functions.

#### **5. MANDATORY REPORTING**

The Care and Protection Act provides for mandatory reporting of children at risk of significant harm. A child is a person under the age of 16 years and a young person is aged 16 years or above but who is under the age of 18, for the purposes of the Care and Protection Act.

NOTE: Any concern regarding the safety, welfare or wellbeing of a student must be reported to the Principal or Deputy Principal. If the concern involves a member of staff or volunteer, it must be reported directly to the Principal.

##### **5.1. Who is a mandatory reporter?**

Under the Care and Protection Act persons who:

- a) In the course of their employment, deliver services including health care; welfare, education, children's services and residential services, to children.
- b) 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 Principal.

## **5.2. When must a report be made to Department of Communities and Justice (DCJ)?**

### **5.2.1. What is the threshold?**

A mandatory reporter must, where they have reasonable grounds to suspect that a child (under 16 years of age) is at risk of significant harm, report to the 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.

While we are a Kindergarten to Year 6 primary school, please be aware of the following statement.

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

### **5.2.3. 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.
- 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. If you have any concerns about whether you have 'reasonable grounds' you should immediately speak to the Principal.

### **5.2.4. Significant harm**

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

- a) The child's or young person's basic physical or psychological needs are not being met or are at risk of not being met.
- b) The parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care.
- c) in the case of a child or young person who is required to attend school in accordance with the Education Act 1990 - the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,
- d) The child or young person has been, or is at risk of being, physically or sexually abused or ill-treated.
- e) The child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm.
- f) A parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm.
- g) The child was the subject of a pre-natal report under section 25 of the 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.

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

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

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

### 5.2.5. Other relevant definitions

**a) Child**

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

**b) Young Person**

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.

**c) Child abuse and neglect**

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

**d) 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.

**e) 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.

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

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

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

**g) 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.

**h) 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.

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

Reporting by the School about these matters to the Department of Communities and Justice (DCJ) and, where necessary, the police, is generally undertaken by the Principal or Deputy Principal. This is supported by the DCJ in accordance with best practice principles and is the expectation of the School.

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

To determine the necessary response to the concern, the following steps are followed.

- a) Immediately speak with the Principal or Deputy Principal about your concern.



- b) Together with the Deputy Principal (or Principal) work through the Mandatory Reporting Guide <https://reporter.childstory.nsw.gov.au/s/>
- c) Follow the advice given by the decision report as to what action is to be taken.
- d) Deputy Principal (or Principal) prints a copy of the decision report and gives to the Business Manager together with any other relevant notes regarding the concern.
- e) Business Manager files report and adds details to the school's Risk Register for reporting to the School Board.

However, if there is an immediate danger to the child or young person and the Principal or Deputy Principal or next most senior member of staff is not contactable you should speak to the Police (phone 02 6922 2599) and/or the Child Protection Helpline (phone 13 21 11) directly and then advise the Principal or Deputy Principal 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 the DCJ has been made.

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

#### **5.4. 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 the DCJ, as an employee of this School, any concern regarding the safety, welfare and wellbeing of a student must be reported to the Principal or Deputy Principal.

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

If the Principal or their nominee reports the matter to the DCJ and confirms this with you, you are not required to make a further report. If the Principal or their nominee advises you that they do not believe the circumstances warrant the matter being reported, then if you still consider that a child is at risk of significant harm, you should escalate the matter to the Chair of the School Board ([chair@lpsww.nsw.edu.au](mailto:chair@lpsww.nsw.edu.au)) or call the Child Protection Helpline (phone 132 111).

## **6. REPORTABLE CONDUCT**

### **6.1. Responsibilities**

#### **a) General**

Section 29 of the Children's Guardian Act 2019 requires the Heads of Reportable Entities (HRE), including non-government schools in New South Wales, 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 HRE.

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.

Reportable Conduct:

- Involves a child (a person under the age of 18 years) at the time of the alleged incident.
- Involves certain defined conduct as described in the Act (see below).

#### **b) The Office of the Children's Guardian (OCG)**

The OCG:

- a) 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.
- b) Must receive and assess notifications from non-government schools concerning reportable conduct or reportable convictions.
- c) Is required to oversee or monitor the conduct of investigations by non-government schools into allegations of reportable conduct or reportable convictions.
- d) 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.
- e) 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).
- f) 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.

## 6.2. What is reportable conduct?

### 6.2.1. Definition of reportable conduct

Under the Children’s Guardian Act 2019 reportable conduct is defined as:

- a) A sexual offence.
- b) Sexual misconduct.
- c) An assault against a child.
- d) Ill-treatment of a child.
- e) Neglect of a child.
- f) An offence under section 43B (failure to protect) or section 316A (failure to report) of the Crimes Act 1900.
- g) Behaviour that causes significant emotional or psychological harm to a 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 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
- c) Conduct of a class or kind exempted from being reportable conduct by the Children’s Guardian Act under section 30.

### 6.2.2. Other relevant 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:

- a) Sexual touching of a child.
- b) A child grooming offence.

- c) Production, dissemination or possession of child abuse material.

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

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

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

- a) Descriptions of sexual acts without a legitimate reason to provide the descriptions.
- b) Sexual comments, conversations or communications.
- c) Comments to a child that express a desire to act in a sexual manner towards the child, or another child.

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

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

- d) Applies physical force against a child without lawful justification or excuse – such as hitting, striking, kicking, punching or dragging a child (actual physical force).
- e) 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:

- a) Unreasonable.
- b) 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 fulfil a duty or obligation, resulting in actual harm to a child where there is the potential for significant harm to a child. Examples of neglect include failing to protect a child from abuse and exposing a child to a harmful environment.

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

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

- a) 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

- b) 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
- c) 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:

- a) An individual employed by, or in, the entity.
- b) A volunteer providing services to children.
- c) 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.
- d) A person engaged by a religious body where that person holds, or is required to hold, a WWCC clearance for the purposes of their work with the religious body.

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

**Sexual Misconduct** has three categories which include:

- a) Crossing professional boundaries.
- b) Sexually explicit comments and other overtly sexual behaviour.
- c) Grooming 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:

- a) Relationship with;
- b) Conduct towards; or
- c) Focus on;

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

The School's Professional Standards Policy and the LEA Code of Ethics for Safe and Professional Relationships outline the nature of the professional boundaries which should exist between employees and children/young people. Employees who either intentionally breach such codes or have demonstrated an inability to apply them appropriately may face disciplinary action.

#### **Sexually explicit comments and other overtly sexual behaviour**

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

- a) Inappropriate conversations of a sexual nature.
- b) Comments that express a desire to act in a sexual manner.
- c) Unwarranted and inappropriate touching.

- d) Sexual exhibitionism.
- e) Personal correspondence (including electronic communications such as e-mails and text messages) with a child or young person in relation to the adult's sexual feelings for a child or young person.
- f) Exposure of children and young people to sexual behaviour of others including display of pornography.
- g) Watching children undress. For example, in change rooms or toilets when supervision is not required or justified.

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

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

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

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

Types of grooming behaviours may include:

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

### **6.3. Process for reporting of reportable conduct allegations or convictions**

#### **6.3.1 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 Chair of the School Board ([chair@lpsww.nsw.edu.au](mailto:chair@lpsww.nsw.edu.au)).

### **6.3.2 Parents, carers and community members**

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

### **6.3.3 The school**

The Principal, as the HRE 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 HRE 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 HRE, 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 HRE:
  - (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.

## **6.4. 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.

### **6.4.1 Initial steps**

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

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

- b) Assess whether 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.
- c) Notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by DCJ or the Police).
- d) Notify the OCG within 7 business days of receiving the allegation;
- e) Carry out a risk assessment and take action to reduce/remove risk, where appropriate.
- f) Provide an initial letter to the PSOA 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.
- g) Investigate the allegation or appoint someone to investigate the allegation.

#### **6.4.2 Investigation principles**

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

- a) Follow the principles of procedural fairness.
- b) Inform the person subject of the allegation (PSOA) of the substance of any allegations made against them and provide them with a reasonable opportunity to respond to the allegations. NOTE this will not happen until the appropriate time in the investigation process.
- c) Make reasonable enquiries or investigations before making a decision.
- d) Avoid conflicts of interest.
- e) Conduct the investigation without unjustifiable delay.
- f) Handle the matter as confidentially as possible.
- g) Provide appropriate support for all parties including the child(ren), witnesses and the PSOA.

#### **6.4.3 Investigation steps**

In an investigation the Principal or appointed investigator will generally:

- a) Interview relevant witnesses and gather relevant documentation.
- b) Provide a letter of allegation to the PSOA.
- c) provide the PSOA with the opportunity to provide a response to the allegations either in writing or at Interview;
- d) Consider relevant evidence and make a preliminary finding in accordance with the OCG guidelines
- e) Inform the PSOA of the preliminary finding and provide them with an opportunity to respond.
- f) Consider any response provided by the PSOA.
- g) Make a final finding in accordance with the OCG Guidelines.
- h) Decide on the disciplinary action, if any, to be taken against the PSOA.
- i) If it is completed, send the final report to the OCG within 30 calendar days after having received the allegation, as per section 36 of the Children's Guardian Act 2019.
- j) Should the final report be unfinished within 30 days, the HRE 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) A reason for not providing the final report within 30 days and an estimated time frame for completion of the report.
- b) Specific information, including (if known); the facts and circumstances of the reportable allegation; any known
- c) Information about a reportable conviction; action taken since the OCG received a notification about the reportable allegation or reportable conviction; further action HRE proposes to take in relation to the reportable allegation or reportable conviction; HRE 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
- d) 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 DCJ or the NSW Police.

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

## **6.5. Risk management**

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

### **6.5.1 Initial risk assessment**

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

- a) The child(ren) who are the subject of the allegation.
- b) Other children with whom the employee may have contact.
- c) The PSOA.
- d) The School.
- e) The proper investigation of the allegation.

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

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

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

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



### **6.5.2 Ongoing risk management**

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

### **6.6. Findings**

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

### **6.7. Information for the PSOA?**

The PSOA will be advised:

- a) That an allegation has been made against them (at the appropriate time in the investigation).
- b) Of the substance of the allegation (at the appropriate time in the investigation), of any preliminary finding and the final finding.

The PSOA does not automatically have the right to:

- a) Know or have confirmed the identity of the person who made the allegation.
- b) Be shown the content of the OCG 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 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.

### **6.8. Disciplinary action**

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

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

- a) Details of the proposed disciplinary action.
- b) A reasonable opportunity to respond before a final decision is made.

### **6.9. 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 and after the investigation including in relation to the handling and storing of documents and records.

Records about allegations of reportable conduct against employees will be kept in a secure area in the School's Administration, or at the LEVNT office if the allegation is against the Principal, and will be accessible by the Principal or with the Principal's express authority if the records are held at the school, or by the HRE, or with the LEVNT Executive Director's express authority, if the records are held at the LEVNT office.

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

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

## **7. CRIMINAL OFFENCES**

If an employee of the School knows or believes that another person has committed a serious indictable offence they should report that information to the Principal of the School or directly to the Police or other appropriate authority. The Principal must report the information directly to Police.

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.

### **7.1. Failure to protect offence**

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

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

### **7.2. Failure to report offence**

Any adult, 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.

## **8. TEACHER ACCREDITATION**

### **8.1. General**

The NSW Education Standards Authority (NESA) has the sole authority to revoke or suspend a teacher's accreditation. NESA requires the Lutheran School Wagga Wagga Limited Teacher Accreditation Authority to notify NESA of certain matters which can include child protection related matters.

### **8.2. Reporting obligations**

The Principal must notify NESA of a decision to dismiss a teacher from employment for any of the reasons outlined below under 6.3 Grounds for revocation.

If the School becomes aware of any information that is or may be relevant to any of the grounds for which a teacher's accreditation may be suspended or revoked by NESA, the Principal must notify NESA of that information. This includes the requirement for the Principal to notify NESA when a teacher is the subject of a reportable conduct investigation. All grounds are listed below at c) Grounds for revocation and d) Grounds for suspension.

### **8.3. Grounds for revocation**

NESA may revoke the accreditation of a person on any of the following grounds:

- a) Being a disqualified person within the meaning of the Working With Children Act.
- b) Being found guilty:
  - I. of an offence punishable by imprisonment for 12 months or more;
  - II. of an offence under the TAA; or
  - III. more than once during the 5 years immediately before the revocation of any other type of offence that, in the opinion of the authority, involves an act or conduct that is of a nature that would reflect adversely on a teacher's professional standing or integrity or suitability or competence to teach.

c) Has:

- I. been dismissed from employment as a teacher (whether on a permanent, temporary, part-time or casual basis) or has resigned from such employment before being dismissed; or
- II. been included in the list of persons maintained by the Secretary under section 7 (1)(e) of the Teaching Service Act 1980 (NSW) as a person who is not to be employed in the Teaching Service, because of any misconduct that, in the opinion of the authority, is of a nature that would reflect adversely on a teacher's professional standing or integrity or suitability or competence to teach.

d) Has failed to comply with any condition of the person's accreditation.

e) Has failed to comply with any of the requirements of the professional teaching standards that apply to the person.

#### 8.4. Grounds for suspension

NESA may suspend the accreditation of a person on any of the following grounds:

- a) On any ground outlined above under grounds for revocation.
- b) If disciplinary proceedings against the person are pending in relation to alleged misconduct. This includes reportable conduct investigations.
- c) If proceedings against the person for an offence are pending and, were the person to be found guilty of the offence, NESA would have grounds to revoke the accreditation.

## 9. ACKNOWLEDGEMENT

### Lutheran School Wagga Wagga

#### Child Protection Policy

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

\_\_\_\_\_

Signed

\_\_\_\_\_

Dated

## 10. REFERENCES

NSW Department of Communities and Justice

<https://www.dcj.nsw.gov.au>

The Office of the Children's Guardian

<https://www.kidsguardian.nsw.gov.au>

Department of Premier and Cabinet – Keep Them Safe

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