

**INABURRA** FAITH  
KNOWLEDGE  
LOVE

# INABURRA SCHOOL POLICY DOCUMENT

## CHILD PROTECTION POLICY



**INABURRA SCHOOL**  
A Project of Menai Baptists



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## 1. DESCRIPTION

### 1.1 Purpose and scope

The safety of children and young people is of paramount importance at Inaburra. 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.

#### 1.1.1 Child protection is a community responsibility.

Employees of Inaburra School will be provided with the Child Protection Policy on commencement of employment. The Policy will be available to staff on Sentral and staff can receive a hard copy from the Deputy Principal. Staff will receive regular briefings and training on the matters covered in this policy, at least annually. The Policy will be reviewed, revised and endorsed by ISL annually.

Inaburra is committed to raising awareness of child protection and ensuring the safety of its students through the implementation and development of the Child Safe Standards.

### 1.2 Key legislation

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

- the *Children and Young Persons (Care and Protection) Act 1998* (“Care and Protection Act”);
- the *Child Protection (Working With Children) Act 2012* (“WWC Act”);
- the *Children’s Guardian Act 2019* (Children’s Guardian Act) (“Ombudsman Act”); and
- the *Crimes Act 1900* (“Crimes Act”).

### 1.3 Related policies

There are a number of other School policies and procedures that relate to child protection that staff members must be aware of and understand including (but not limited to):

- *Anti-Bullying Harassment of Students Policy* and *Anti-Bullying Harassment of Students Procedures* - summarises obligations in relation to unlawful harassment and bullying;
- *Code of Conduct – Inaburra Staff*, *Code of Conduct – Inaburra Contractor* and the *Code of Conduct – Inaburra Board Member* outline conduct expected of members of our community;
- *Critical Incident Policy* – contains policy and procedures to provide for the safety of students during an Evacuation, Lockdown or Lockout. The Appendix contains extensive documents to cater not only for these events should they arise, but also for managing events of grief within the community with a focus on the wellbeing of students;

- *Discipline Policy K-12*- provides steps which can be taken to manage challenging student behaviour whilst providing care and respect for the individual;
- *Employee Handbook-Support Staff* and *Employee Handbook-Teaching Staff K-12* set out information about the standards of behaviour expected of all staff members;
- *Employment Policy* – ensures employment of staff with the qualifications and clearance to work with children;
- *Excursions and Incursions – Guidelines and Procedures* to provide a safe environment for students undertaking excursions or incursions;
- *Grievance Policy-Parents and Students* and *Grievance Policy-Staff* – provides for student grievances and procedures for their resolution;
- *ICT Student Guidelines- Appropriate Use of ICT* and *ICT Policy-Staff use of ICT*, provide guidelines to protect the wellbeing of students in an on-line environment;
- *Medical Treatment of Students Guidelines* provide for efficient first aid and medical care for students;
- *Nut Awareness and Anaphylaxis Guidelines and Procedures* – provide for the safety of students with known allergies or an unexpected anaphylactic reaction;
- *Safe and Supportive Environment Policy* – provides guidelines to ensure the safety of students whilst at Inaburra and to provide support for students with disability or special needs;
- *Self-Harm Procedural Guidelines* provides staff with clear guidelines on how to identify and assist students at risk of self-harm;
- *Traffic Management at Inaburra Guidelines* and *Procedural Document* – these provide for the safety of students during their arrival and departure from school; and
- *Work Health and Safety Policy* - identifies the obligations imposed by work health and safety legislation on the school and staff members.

### 1.4 Compliance and records

The Principal, and staff shown below, monitor compliance with this policy and securely maintain school records relevant to this policy,

- Deputy/Head of Senior School – maintains register of staff members who have read and acknowledged that they have read and understood this policy. The Deputy is also responsible for the annual presentation on Child Protection which is videoed. Staff who are absent are required to watch the video and complete a quiz on the presentation.
- Principal – responsible for mandatory reports to the Department of Communities and Justice; and reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions;
- Director of Compliance – responsible for ensuring annual review of the policy and annual presentations to staff, monitoring the recording and archiving of documentation related to Volunteers and Contractors; and
- Finance Manager – maintains Working With Children Check clearance verifications.

For details about monitoring of Volunteers and Contractors refer to the School documents: *Child Protection Procedures-Inaburra Volunteers* and *Child Protection Procedures- Inaburra Contractors*.

## 2. CHILD PROTECTION

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

- a duty of care to ensure that reasonable steps are taken to prevent harm to students which could reasonably have been foreseen
- 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 punish 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 6.1.2.

## 3. STAFF 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

If the allegation involves the Principal a report should be made to the Chair of the School Board. Contact details for the Chair can be accessed through the Personal Assistant to the Principal. The Chair must investigate the allegation following the steps detailed in Section 7.3.

## 4. TRAINING

### 4.1 The school

The school provides all staff members with a copy of this policy and all staff members with annual child protection training.

### 4.2 Staff members

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

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

- mandatory reporting
- reportable conduct
- working with children check, and
- professional boundaries.

## 5. WORKING WITH CHILDREN

The WWC Act protects children by requiring a worker to have a working with children's check 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 working with children check clearance (WWCC clearance). It involves a national criminal history check and review of reported workplace misconduct findings. The result is either to:

- grant a WWCC clearance (generally valid for 5 years)
- refuse a WWCC clearance (further applications cannot be made for 5 years)

In addition, the OCG 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.

### 5.1 Responsibilities for working with children checks

#### 5.1.1 Staff members

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

- hold and maintain a valid WWCC clearance;
- not engage in child-related work at any time that they are subjected to an interim bar or a bar;
- report to the Principal if they are no longer eligible for a WWCC clearance, if the status of their WWCC clearance changes or if they are notified by the OCG that they are subjected to a risk assessment; and
- 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.

Volunteers are required to:

- be aware of and follow the expectations of conduct expressed in the *Code of Conduct – Inaburra Staff*; and
- provide a current volunteer WWCC if working with specific groups such as the Learning Enrichment Team, training /coaching sports teams or Reading and Maths Groups. Refer to *Child Protection Procedures – Volunteers* for further information.

### 5.1.2 The school

The school is required to:

- verify online and record the status of each child-related worker's Check;
- only employ or engage child-related workers or eligible volunteers who have a valid WWCC Check; and
- advise the OCG of the findings the School has 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.

It is an offence for an employer to knowingly engage a child-related worker when they do not hold a WWCC clearance or when they have a bar.

## 5.2 Working with children check clearance

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

### 5.2.1 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

- early education and childcare including education and care service, childcare centres and other childcare;
- schools and other educational institutions and private coaching or tuition of children;
- religious services;
- residential services including boarding schools, homestays more than three weeks, residential services and overnight camps;



- transport services for children including school bus services, taxi services for children with a disability and supervision of school road crossings; and
- 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.

### 5.2.2 Application/Renewal

All staff at Inaburra are responsible for ensuring they have a current WWCC Clearance.

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's Finance Manager who will verify the status of a staff member's WWCC clearance.

### 5.2.3 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.

### 5.2.4 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.

### 5.2.5 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 the WWCC Act. A disqualified person cannot be granted a WWCC clearance and is therefore restricted from engaging in child-related work.

## 5.3 Ongoing monitoring

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

### 5.3.1 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, a pattern of behaviour or offences involving violence or sexual misconduct representing a risk to children and/or findings of misconduct involving children.

## 5.4 Process for reporting to the OCG

### 5.4.1 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. Refer to Section 7 for the definition 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.

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.

### 5.4.2 Finding of misconduct involving children

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

When informing an employee of a finding of reportable conduct against them, the School will 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.

### 5.4.3 Other information

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

## 6. 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 is under the age of 18, for the purposes of the Care and Protection Act.

Under the Care and Protection Act mandatory reporting applies to persons who:

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

At Inaburra, the safety of our students is paramount. All teachers are mandatory reporters and all other staff members are deemed to be mandatory reporters.

## 6.1 Reports to the Department of Communities and Justice

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 Department of Communities and Justice (DCJ) as soon as practicable. The report must include the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

In addition, the school may choose to make a report to 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.

In the independent school sector a mandatory reporter will meet their obligation if they report to the Principal of 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.

### 6.1.1 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:

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

'Reasonable grounds' does not mean a person is required to confirm their suspicions or have clear proof before making a report.

### 6.1.2 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:

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

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

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.

## 6.2 Process for mandatory reporting

### 6.2.1 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 matter meets the threshold of 'risk of significant harm' 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 the Head of Senior School or the Head of Junior School is not contactable, then staff members should contact the Police and/or the Child Protection Helpline (13 21 11) directly and then advise the Principal or the Head of Senior School or the Head of Junior School as soon as possible.

Our current School Liaison Officer at Sutherland Police Station is:

Adam Taylor ph: 9542 0899 or 0437 882 214

Staff members are not required to, and must not, undertake any investigation of the matter. Staff members are not permitted to inform the parents or caregivers that a report to the Department of Communities and Justice 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 but could incite potential civil proceedings for defamation.

### 6.2.2 The School

The Principal will report these matters to the Department of Communities and Justice and, where necessary, the Police. This is supported by the Department of Communities and Justice in accordance with best practice principles.

## 6.3 Process for reporting concerns about students

### 6.3.1 Staff members

The Care and Protection Act outlines a mandatory reporter's obligation to report to the Department of Communities and Justice 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.

## 7. REPORTABLE CONDUCT

Section 29 of the Children's Guardian Act 2019 requires the Heads of Entities, including non-government schools in New South Wales, to notify in New South Wales 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 Head of Entity.

Reportable Conduct:

- involves a child or young person (a person under the age of 18 years) at the time of the alleged incident; and
- involves certain defined conduct as described in the Act (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 (eg 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.

### 7.1 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.

### 7.1.1 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** is 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:

- 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** 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. That is, there is an apprehension of physical force by the child.

**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 behaviours such as making excessive or degrading demands of a child; a pattern of hostile or degrading comments or behaviour towards a child; and/or using inappropriate forms of behaviour management towards a child.

**Neglect** is 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.

**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.

**Employee Subject of the Allegation** is abbreviated to ESOA.

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

### 7.2.1 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 Chair of the School Board**. Contact details for the Chair of the Board can be accessed through the Personal Assistant to the Principal.

### 7.2.2 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. All such reports will be dealt with in accordance with the schools *Grievance Policy-Parents and Students* and *Grievance Policy-Staff*.

### 7.2.3 The School

The Principal, as the Head of Entity under the Children's Guardians 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 Head of the Entity 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 Head of Entity, 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 Head of Entity:
  - (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 who is 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.

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

The Principal, in consultation with the Child Protection Team at AIS, is responsible for ensuring that the following steps are taken to investigate an allegation of reportable conduct.

If the allegation involves the Principal, then the Chair of the Board, in consultation with the Child Protection Team at AIS, will be responsible for ensuring that the following steps are taken to investigate an allegation of reportable conduct.

#### 7.3.1 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 there are reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence has occurred). The Principal is required to 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.

#### 7.3.2 Investigation principles

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

- follow the principles of procedural fairness;
- inform the 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;
- provide appropriate support for all parties including the child/children, witnesses and the ESOA; and
- document the process

### 7.3.3 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 OCG guidelines;
- inform the ESOA in writing of the preliminary finding 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 Head of Entity 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 information about a reportable conviction; action taken since the OCG received a notification about the reportable allegation or reportable conviction; further action the Head of Entity proposes to take in relation to the reportable allegation or reportable conviction; including if the Head of Entity 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
- (c) 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 Department of Communities and Justice or police.

An 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.

## 7.4 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.

### 7.4.1 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.

### 7.4.2 Ongoing risk assessment

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

### 7.4.3 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.

### 7.4.4 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 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.

### 7.4.5 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.

### 7.4.6 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 securely by the Principal. Such records will only 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.

## 8. CRIMINAL OFFENCES

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.

### 8.1 Failure to protect offence (Crimes Act 1900-NSW)

An adult working in a school, which, therefore, includes all staff members, has committed 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.

### 8.2 Failure to report offence (Crimes Act 1900-NSW)

Any adult, which, therefore, includes 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.

### 8.3 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.

## 9. PEER TO PEER – SEXUAL BEHAVIOUR

### 9.1 Student sexual offending

Student sexual offending refers to sexual behaviour instigated by a student who is over 10 years of age, and which may amount to a sexual offence. A sexual offence includes sexual assault, indecent acts and other unwanted sexualised touching.

### 9.2 Issue of consent

The statutory definition of consent in NSW is set out at subsection 61HE(2) of the Crimes Act 1900 (NSW) (Crimes Act) as follows: 'A person consents to a sexual activity if the person freely and voluntarily agrees to the sexual activity'. In order for a person to consent to sexual activity they have to have the capacity to understand the context and possible consequences of the act. Therefore sexual contact instigated by a student involving a person with a cognitive impairment or affected by alcohol and other drugs may also amount to student sexual offending.

The age of consent in NSW is 16 years of age. Where a child is under 16 years of age, they cannot be deemed to give consent under the Crimes Act (section 80AE of the Crimes Act).

An age defence is available where the sexual activity is between two minors, the youngest of whom is 14 years old, and the age gap between the children involved is less than 2 years

(for example, a 14 year old and a 16 year old, or a 15 year old and a 17 year old) (section 80AG of the Crimes Act). The defence of similar age was introduced in 2019 to protect teenagers from being criminalised for consensual sexual contact with younger teenagers where the age difference is no more than two years.

### 9.3 Reporting of a sexual offence between students.

If a staff member knows, believes or reasonably ought to know that a child **sexual offence** has been committed between students, they must report this immediately to the Principal. Refer to 9.1 for the definition of sexual offence. If the Principal or the Head of Senior School or the Head of Junior School is not contactable, then staff members should contact the Police directly and then advise the Principal or the Head of Senior School or the Head of Junior School as soon as possible.

As a school staff member you play a critical role in protecting children. Teachers have a mandatory duty to make a report where they have reasonable grounds to suspect that a child or young person is at risk of significant harm.

Do not investigate. Keep clear and comprehensive notes relating to incidents, disclosures and allegations of peer on peer abuse incidents and report directly to the Principal. Refer to Section 6 for further information.

The Principal, in consultation with AIS Staff, determines if the behaviour should be reported to the DCJ and/or the Police.

### 9.4 Sexual behaviours

A child may be observed demonstrating potentially harmful or problematic sexual behaviours. This could include a child exhibiting, or having knowledge of, sexual behaviour that is not age appropriate (for example, by reason of the child's age they should not have been exposed to the behaviour that they are exhibiting). In those circumstances, the information may give rise to a concern that the child is at significant risk of harm by reason of them having been exposed to inappropriate material or behaviour. If you observe such inappropriate behaviour, or it is reported to you, inform the Principal immediately.

### 9.5 Identification of problematic or harmful sexual behaviour in children under 10 years of age

There is a continuum of sexual behaviours from common and appropriate sexual play through to very problematic and harmful sexual behaviours. Children with these behaviours include those children less than 10 years of age demonstrating developmentally inappropriate and/or problematic and harmful sexual behaviours.

Problematic or harmful sexual behaviour in children under 10 years includes, but is not limited to:

- curiosity about sexual behaviour becomes obsessive preoccupation for example, compulsive masturbation;
- exploration becomes re-enactment of specific adult sexual activity;
- behaviour involves injury to self or others;
- children's behaviour involves coercion, threats, secrecy, violence, aggression or developmentally inappropriate acts;

- high-frequency occurrences of sexual behaviour that interfere with normal childhood activities;
- sexual penetration;
- genital kissing;
- oral copulation;
- simulated intercourse;
- children's behaviour involves coercion, threats, secrecy, violence, aggression or developmentally inappropriate acts; and
- behaviour that causes harm to the child or other children.

### 9.6 Response to problematic sexual behaviour in children under 10 years of age

For students who are under 10 years of age and who engage in problematic sexual behaviour, the school may institute one of more of the following:

- complete the MRG and report to Department of Communities and Justice (DCJ) if required;
- consult with the Child Wellbeing Unit, AISNSW; and
- consult with wellbeing professionals, including the School Counsellors.

To support the alleged victim, the student who is displaying problematic and/or harmful sexual behaviours and other students affected by the incident (other peers/witnesses)

- develop a Student Safety Support Plan to determine and document support strategies for all students involved and risk management strategies to maintain the safety of all students;
- meet with the parents to discuss problem behaviour(s) exhibited by their own child and if relevant, the safety of other students;
- meet with the parents of the victim child and discuss risk management strategies the school will implement to keep their child safe and other children safe;
- meet with parents of any student witnesses or other peers affected by the incident and advise what risk management strategies will be put in place to keep students safe;
- consider whether the child may be the victim of child abuse and the concerning sexual behaviour may be a physical or behavioural indicator that this may be occurring. Concerning sexual behaviour in children is not a clear indicator that a child has been sexually abused; however, if there is a reasonable belief that the child is being abused, and their parents/carers are unable or unwilling to protect the child from that abuse, then the Principal will make a report to the Department of Communities and Justice (DCJ) and/or NSW Police.
- If the School determines that the risk management strategies cannot mitigate the risk to the student and other students' consider temporarily suspending the child displaying the problematic behaviour if there is a risk to other students.
- Cancel enrolment if there is no significant improvement in behaviour and the risk to other students is not diminished.

### 9.7 Confidentiality of such information

Staff are to take particular care to keep information about a sexual assault or inappropriate sexual behavior confidential, including the names and ages of the students involved.

If public comment is absolutely necessary, then it is only to be made by the Principal and it is made without identifying the children. The school should not disclose the identity of the children involved so as not to prejudice any criminal proceeding, or breach non-publication orders of the Court, as well as protecting the interests of the children involved more generally.

Under the provisions of Chapter 16A the school may be required to release information to another school (or other prescribed body) if it relates to the safety, welfare and wellbeing of a child or young person. This may include providing information about the student displaying the problematic and/or harmful sexual behaviour so risk management strategies can be put in place. Chapter 16A allows information to be exchanged between prescribed bodies despite other laws that prohibit or restrict the disclosure of personal information, such as the *Privacy and Personal Information Protection Act 1998*, the *Health Records and Information Privacy Act 2002* and the *Commonwealth Privacy Act 1988*.

## 10. ADDITIONAL INFORMATION

### **DEFINITION: Child and Young Person**

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.

### **SCHOOL DOCUMENTS:**

*Child Protection Procedures-Inaburra Volunteers*

*Child Protection Procedures-Inaburra Contractors*

### **REFERENCES:**

- Department of Premier and Cabinet – Keep Them Safe  
[www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au)
- ‘Identifying and Responding to Student Sexual Offending’ Education Victoria  
[https://www.education.vic.gov.au/Documents/about/programs/health/protect/SSO\\_Policy.pdf](https://www.education.vic.gov.au/Documents/about/programs/health/protect/SSO_Policy.pdf)
- NSW Department of Communities and Justice  
<https://www.dcj.nsw.edu.au>
- Office of the Children’s Guardian  
<https://www.kidsguardian.nsw.gov.au>
- Royal Commission Volume 10 Final Report – Children with Harmful Sexual Behaviours  
[https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_10\\_children\\_with\\_harmful\\_sexual\\_behaviours.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_10_children_with_harmful_sexual_behaviours.pdf)



## 11. DOCUMENT CONTROL

### DOCUMENT INFORMATION

*Prepared by* G Powell, based on AIS template

*Document Owner* James Pietsch

*Policy last reviewed* 25/09/2021

*Policy review cycle* Annual

*Date for next review* 25/09/2022

*Review by* ISL

*Status* Current

### CHANGE HISTORY

<i>Date</i>	<i>Change Number</i>	<i>Details and reason for change</i>
<i>1/8/2013</i>	1	Policy Document from AIS adapted to Inaburra
<i>4/3/2015</i>	2	Updated for governance changes and minor formatting.
<i>15/12/2015</i>	3	Updated for minor editing.
<i>13/10/2017</i>	4	Dates updated for biennial review. Approved by ICL on 23/10/17
<i>12/5/2019</i>	5	Change throughout of ICI to ISL
<i>4/9/2019</i>	6	Major review: new Policy Document from AIS adapted to Inaburra. Review period changed to annual
<i>6/9/2020</i>	7	Major Review to reflect changes related to the replacement of the <i>Ombudsman Act 1974 (NSW)</i> with the <i>Children's Guardian Act 2019</i> Update of sections 5.4.1 and 5.4.2. Extensive rewrite 7.1, 7.2.3, 7.3.1, 7.3.3 Addition of 8.3
<i>20/03/2021</i>	8	Addition of Section 9, reviewed by AIS
<i>14/11/2021</i>	9	9.3.1 and 9.3.2 combined to form 9.3. Addition of Principal consultation with the AIS

**ACKNOWLEDGEMENT**

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

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated