



# RAVENSWOOD SCHOOL FOR GIRLS POLICY

Policy Subject: Child Protection Policy

<b>Contact Officer</b>	Director of Human Resources
<b>Purpose</b>	<p>The purpose of this Policy is to:</p> <ul style="list-style-type: none"> <li>• summarise the obligations imposed by child protection legislation on the School and on employees, contractors, visitors and volunteers at the School; and</li> <li>• to provide guidelines as to how the School will deal with certain matters.</li> </ul>
<b>Scope</b>	<p>This Policy applies to all employees, contractors, visitors, volunteers and other users of the school's facilities and services. All references to the School include the School's Residential College.</p>
<b>The Policy</b>	<p><b>1. Introduction</b></p> <p><b>1.1. General</b></p> <p>The safety, protection and well-being of all students is of fundamental importance to the School.</p> <p>Both you and the School have a range of different obligations relating to the safety, protection and welfare of students including:</p> <ol style="list-style-type: none"> <li>a) a duty of care to ensure that reasonable steps are taken to prevent harm to students;</li> <li>b) obligations under child protection legislation; and</li> <li>c) obligations under work health and safety legislation.</li> </ol> <p>The purpose of this policy is to summarise the obligations imposed by child protection legislation on the School and on employees, contractors, visitors and volunteers at the School and to provide guidelines as to how the School will deal with certain matters.</p> <p>Child protection is a community responsibility.</p> <p><b>1.2. Key legislation</b></p> <p>There are three key pieces of child protection legislation in New South Wales</p> <ol style="list-style-type: none"> <li>a) the <i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i> (the Care and Protection Act);</li> <li>b) the <i>Ombudsman Act 1974 (NSW)</i>;</li> <li>c) the <i>Child Protection (Working With Children) Act 2012 (NSW)</i> (the WWC Act); and</li> <li>d) Other relevant legislation.</li> </ol> <p>We deal with each below.</p>



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### 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.

If the allegation involves the Principal, you are required to report to the Chair of the School Council.

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

### 1.4. Other policies

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

- a) The **Code of Conduct** 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; and
- d) The **Student Anti-Bullying Policy** which summarises your obligations in relation to anti-bullying within the School.

This Policy is not intended to extend the responsibility of the School beyond the law. The School reserves the right to modify this Policy at any time by notice on the School website.

### 1.5. Training

All staff will be informed annually of their legal responsibilities related to Child Protection through training or by way of a staff update provided in a staff meeting.

Any staff who do not attend this training or the staff update, will be required to undertake training at a later date. This may be delivered online or face to face.

#### Key Legislation

#### PART A: THE CARE AND PROTECTION ACT

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

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



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### 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; or
- 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.

### 2. When must a report be made to Community Services?

#### 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 Community Services as soon as practicable, the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

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

#### 2.2. Reasonable grounds

'Reasonable grounds' refers to the need to have an objective basis for suspecting that a child or young person may be at risk of significant harm, based on:

- a) first hand observations of the child, young person or family;
- b) what the child, young person, parent or another person has disclosed; and/or
- 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.

#### 2.3. Significant harm



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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* (NSW) —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.

### 2.4. Other relevant definitions

#### **Policy definition of significant harm**

A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or well-being of the child or young person are present to a significant extent.

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



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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.

In the case of an unborn child, what is significant is not minor or trivial, and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child after the child's birth.

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

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

### **Child abuse and neglect**

There are different forms of child abuse. These include neglect, 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.

**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.

**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,



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intimidation or threatening behaviour.

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

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

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

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

Reporting by the School about these matters to Community Services and, where necessary, the police, is generally undertaken by the Principal. This is supported by Community Services 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 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.

However, if there is an immediate danger to the child or young person and the Principal or next most senior member of staff is not contactable you should speak to the Police and/or the Child Protection Helpline directly and then advise the Principal or next most senior member of staff at the School as soon as possible.

If the Principal or their nominee reports the matter to Community Services and confirms this with you, you are not required to make a further report. If the Principal or their nominee does not confirm to you that the matter has been reported to Community Services, or 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 School Council Chairperson or call the Community Services Child Protection Helpline on 132 111.

You are not required to, and must not, undertake any investigation of the matter yourself.

You are not to inform the parents or caregivers that a report to Community Services has been made.



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

#### **4. What should you do if you have a concern that is below the mandatory reporting threshold?**

While the Care and Protection Act outlines a mandatory reporter's obligation to report to Community Services, as an employee of this School, any concern regarding the safety, welfare and wellbeing of a student must be reported to the Principal.

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

#### **5. Reporting child-to-child conduct**

There are a range of circumstances in which child-to-child conduct may be reportable, either to Community Services or to the NSW Police.

In the case of mandatory reporting to Community Services, you are required to report circumstances of problematic sexual behaviour by a child or young person toward another child or young person (that is, conduct outside the bounds of normal sexual behaviour), including child-to-child sexual abuse.

Child-to-child sexual abuse can occur when a child or young person involves another child in sexual activity. It can be physical, verbal or emotional and can include but is not limited to a child:

- a) kissing or holding another child in a sexual manner;
- b) exposing a sexual body part to a child;
- c) having sexual relations with a child;
- d) talking in a sexually explicit way;
- e) making obscene phone calls or remarks to a child;
- f) sending obscene messages to a child via technology including social media; and/or
- g) fondling a child in a sexual manner.

If you have any concern that problematic sexual behaviour by a child or young person toward another child or young person (including child-to-child sexual abuse) is occurring, you must immediately advise the Principal. If you are not sure whether the sexual behaviour is problematic, you should report the behaviour to the Principal.



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The issue of bullying by a student is dealt with in the School's Anti Bullying Policy (Students) and the Discrimination, Harassment and Workplace Bullying Policy. However, depending on the seriousness and nature of the alleged conduct – e.g. physical assault or threats of violence - the matter may also be reportable to the NSW Police. In such instances, you must immediately advise the Principal.

### **PART B: THE OMBUDSMAN ACT**

#### **1. Responsibilities**

##### **1.1. General**

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

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

##### **1.2. The Ombudsman**

The Ombudsman:

- 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 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





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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

- f) may undertake 'own motion' investigations of non government schools where the Ombudsman considers it appropriate to do so, including where there is evidence of systemic failure or serious conflict of interests.

### 1.3. Head of Agency

The Head of Agency is the Principal of the School.

Under the Ombudsman Act the Head of Agency must:

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

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

### 1.4. Your obligations to report

You must report any concerns you may have about any other employee engaging in reportable conduct or any allegation of 'reportable conduct' that has been made to you, to the Principal, including information about yourself. If you are not sure whether the conduct is reportable conduct but consider that it is inappropriate behaviour you must still report it.

The reportable conduct scheme is allegations-based. If an allegation is, on the face of it, a reportable allegation, it must be notified to the Principal irrespective of other factors or information that may suggest that the allegation has no weight. The allegation does not have to be made by a person affected. It may be that a 'rumour' of reportable conduct is sufficient.



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Always raise these matters with the Principal.

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

If the allegation involves the Principal, you are required to report to the Chairperson of the School Council.

### **1.5. Contact for parents**

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

## **2. What is reportable conduct?**

### **2.1. Definition of reportable conduct**

Reportable conduct is defined as:

- a) any sexual offence or sexual misconduct committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material);
- b) any assault, ill-treatment or neglect of a child; and
- c) any behaviour that causes psychological harm to a child whether or not, in any case, with the consent of the child.

Reportable conduct does not extend to:

- a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards; or
- b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures; or
- c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

### **2.2. Other relevant definitions**

Set out below are definitions of the various terms referred to



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above in relation to reportable conduct.

Behaviour that causes **psychological harm** to a child is behaviour that is obviously or very clearly unreasonable and results in significant harm or trauma to a child. There needs to be a proven causal link between the inappropriate behaviour and the harm, and the harm must be more than transient.

**Child** is a person under the age of 18 years for the purposes of the Ombudsman Act.

**Ill-treatment** captures those circumstances where a person treats a child in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner. The focus is on the alleged conduct rather than the actual effect of the conduct on the child.

Ill-treatment can include disciplining or correcting a child in an obviously unreasonable and seriously inappropriate manner; making excessive and/or degrading demands on a child; hostile use of force towards a child; and/or pattern of hostile or unreasonable and seriously inappropriate, degrading comments or behaviour towards a child.

**Neglect** includes either an action or inaction by a person who has care responsibility towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.

i. Supervisory neglect:

- An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or
- An intentional or reckless failure to adequately supervise a child or a significantly careless act or failure to act, that;
  - Involves a gross breach of professional standards, and
  - Has the potential to result in the death or significant harm to a child.

ii. Carer neglect:

- Grossly inadequate care that involves depriving a child of the basic necessities of life, such as the provision of food and drink, clothing, critical medical care of treatment, or shelter.



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- iii. Failure to protect from abuse:
  - An obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.
- iv. Reckless act (or failure to act):
  - A reckless act, or failure act, that;
    - Involves a gross breach of professional standards, and
    - Has the potential to result in the death of, or significant harm to, a child.

**Physical Assault** is any act by which another person intentionally inflicts unjustified use of physical force against another. An assault can also occur if a person causes another person to reasonably apprehend that unjustified force is going to be used against them. Even if a person who inflicts physical harm or causes another person to reasonably apprehend physical harm does not actually intend to inflict the harm or cause fear, they may still have committed an assault if they acted 'recklessly'.

'Recklessness' in this context relates to circumstances when the person ought to have known that their actions would cause a person physical harm or cause them to fear injury. Assaults can include hitting, pushing, shoving, throwing objects or making threats to physically harm a child.

**PSOA** 'person subject to the allegation'.

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

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

- i. crossing professional boundaries
- ii. sexually explicit comments and other overtly sexual behaviour.

The alleged conduct must have been committed against, with or in the presence of a child.

### **Crossing professional boundaries**

Sexual misconduct includes behaviour that can reasonably be construed as involving an inappropriate and overly personal or



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intimate:

- relationship with;
- conduct towards; or
- focus on;

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

Codes of conduct that outline the nature of the professional boundaries which should exist between employees and children/young people can be particularly useful. For employees who either intentionally breach such codes or have demonstrated an inability to apply them appropriately, it may be necessary to provide more detailed written advice about what constitutes appropriate behaviour.

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

Behaviour involving sexually explicit comments and other overtly sexual behaviour which can constitute sexual misconduct. Some forms of this behaviour also involve crossing professional boundaries.

This conduct may include:

- a) inappropriate conversations of a sexual nature;
- b) comments that express a desire to act in a sexual manner;
- c) unwarranted and inappropriate touching involving a child;
- d) sexual behaviour with or towards a child (including 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 intimate, romantic or sexual feelings for a child or young person;
- f) exposure of children and young people to sexual behaviour of others including display of pornography; and
- g) watching children undress in circumstances where supervision is not required and it is clearly inappropriate. For example, in change rooms or toilets.

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



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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 bases of special care relationships.

**Grooming** refers to patterns of behaviour or conduct aimed at engaging with an alleged victim for sexual activity. Types of grooming behaviours may include:

- a) persuading child/ren that there is a 'special' relationship;
- b) inappropriately giving gifts to a child;
- c) inappropriately showing special favours to them but not other children;
- d) inappropriately allowing the child to overstep rules;
- e) spending inappropriate special time with a child;
- f) testing boundaries (touching, encouraging inappropriate physical contact (even when not overtly sexual), undressing in front of child, talking about sex);
- g) asking the child to keep this relationship to themselves;
- h) inappropriately extending a relationship outside of work (except where it may be appropriate – for example where there was a pre-existing friendship with the child's family or as part of a normal social interactions in the community);
- i) inappropriate personal communication including emails, telephone calls, text messaging, social media and web forums that explores sexual feelings or intimate personal feelings with a child.



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An adult requesting that a child keep any aspect of their relationship secret or using tactics to keep any aspect of the relationship secret, would generally increase the likelihood that grooming is occurring.

Definitions of 'grooming', within child protection legislation, are complex. Under the *Crimes Act*, grooming or procuring a child under the age of 16 years for unlawful sexual activity is classed as a **sexual offence**. The *Crimes Act (s73)* also extends the age of consent to 18 years when a child is in a 'special care' relationship. Under Schedule 1(2) of the *Child Protection (Working With Children) Act*, grooming is recognised as a form of **sexual misconduct**. The *NSW Ombudsman Act, 1974* and this Child Protection Policy reflect all of these definitions within the context of the Reportable Conduct Scheme (Part 3A).

### 3. What happens when an allegation of reportable conduct is made?

#### 3.1. Initial Steps

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

- a) determine on face value whether it is an allegation of reportable conduct;
- b) assess whether Community Services or the Police need to be notified (ie, 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 Community Services or the Police);
- d) notify the Ombudsman within 30 days of receiving the allegation;
- e) carry out a risk assessment and take action to reduce/remove risk, where appropriate; and
- f) investigate the allegation or appoint someone to investigate the allegation (unless to do so would be likely to compromise any investigation by Community Services or the police).

#### 3.2. Investigation principles



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The School will:

- a) be mindful of 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;
- 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; and
- g) provide appropriate support for all parties including the child/children, witnesses and the PSOA.

### **3.3. Investigation steps**

In an investigation the Head of Agency or appointed investigator will generally:

- a) interview relevant witnesses and gather relevant documentation;
- b) provide a letter of allegation to the PSOA;
- c) interview the PSOA;
- d) consider relevant evidence and make a preliminary finding in accordance with the NSW Ombudsman 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 NSW Ombudsman Guidelines;
- h) decide on the disciplinary action, if any, to be taken against the PSOA;
- i) apply the NSW Office of the Children's Guardian (OCG) Guidelines and decide if the matter is reportable to the OCG; and
- j) send the final report to the Ombudsman and report to the





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OCG (where required) (See Part C).

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

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

#### **4. Risk Management**

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

The Head of Agency 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.

##### **4.1. Initial Risk Assessment**

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

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

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

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



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to the investigation.

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

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

### **4.2. Ongoing Risk Management**

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

### **4.3. Risk Management at the Conclusion of the Investigation**

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

### **5. What information will be provided to the PSOA?**

The PSOA will be advised:

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

The PSOA does not automatically have the right to:

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

The WWC Act enables a person who has a finding referred to the OCG under the Act to request access to the records held by the



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School in relation to the finding of misconduct involving children (see Part C section 3).

### 6. Disciplinary Action

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

In relation to any disciplinary action the School will:

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

### 7. Confidentiality

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

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

Records about allegations of reportable conduct against employees will be kept in a secure area and will be accessible by the Head of Agency or with the Head of Agency'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.

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

## PART C: WORKING WITH CHILDREN ACT (WWC)

### 1. General

The Child Protection (Working with Children) Act 2012 (NSW) (the Act) and the Child Protection (Working with Children) Regulation 2013 (NSW) (the Regulation) aim to protect children from harm by providing a high standard of compulsory national criminal record checking for people wishing to do paid, unpaid or volunteer child-related work in NSW. These background checks are referred to as Working with



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Children Checks (WWC Checks).

It is an offence to engage in child-related work without a valid WWC Check.

It is an offence for the School to commence employing or continue to employ a worker in child-related work if the School knows or has reasonable cause to believe that:

- the worker is not the holder of a WWC Check Clearance that authorises that work and that there is no current application by the worker to the Children's Guardian for a clearance of a class applicable to that work, or
- the worker is subject to an interim bar,

unless the School has obtained and verified the worker's relevant details and made a record of those relevant details.

Ravenswood, our staff, volunteers and others have a number of responsibilities and obligations under the Act and the Regulation which are outlined in this policy.

### 2. Who needs a WWC Check

Subject to the exemptions referred to below, any worker who engages in child-related work must undergo a WWC Check.

Under the Act, a child is defined as a person who is under 18 years of age.

#### 2.1. Definition of a Worker

A worker means any person who is engaged in work, as an employee, a self-employed person, a contractor or subcontractor, a volunteer, a person undertaking practical training as part of an educational or vocational course (other than as a school student undertaking work experience), or as a minister, priest, rabbi, mufi or other like religious leader, or spiritual officer of a religion, or other member of a religious organisation.

#### 2.2. What is Child-Related Work?

A worker is engaged in child-related work for the purposes of the Act if:

- the worker is engaged in work for, or in connection with, work declared by the Regulation to be child-related work that 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, or
- the worker is engaged in work in a child-related role.

Under the Act and Regulation, work for, or in connection with, any of the following is declared to be child-related work:



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- mentoring and counselling services for children
- direct provision of child health services
- clubs, associations, movements, societies or other bodies (including bodies of a cultural, recreational or sporting nature) providing programs or services for children
- education and care services, child care centres, nanny services and other child care
- sporting, cultural or other entertainment venues used primarily by children and entertainment services for children
- justice services such as detention centres
- any religious organisation where children form part of the congregation
- private coaching or tuition to children
- boarding houses or other residential services for children and overnight camps for children
- transport services especially for children, including School bus services and taxi services for children with a disability and supervision of School road crossings
- the role of a cleaner providing cleaning services at the School
- providing ongoing, counselling, mentoring or distance education using any form of communication that does not primarily involve direct contact (physical or face-to-face contact).

Under the Act and Regulation, the following roles are considered to be child-related roles:

- an approved provider or manager, or a certified supervisor, of an education and care service
- an authorised carer
- an assessment officer of a relevant agency under the Children and Young Persons (Care and Protection) Act 1998 (NSW)
- the principal officer of a designated agency or an accredited adoption service provider.

The governing body of the School must also ensure that any person who is appointed to a key position in the School is the holder of a WWC Check applicable to that work. For example, responsible persons.



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### 2.3. What is Not Considered to be Child-Related Work

Under the Regulation, the following types of work are not considered to be child-related work:

- if the work does not ordinarily involve contact with children for extended periods without other adults being present, the work is not child-related work if it is:
  - work as a referee, umpire, linesperson, other sporting official or grounds person for a club, association, movement, society or other body of a cultural, recreational, sporting or community service nature that involves providing programs or services primarily for children, or
  - work in providing respite care or other support services primarily for children with a disability
- work as a student in the course of a student clinical placement in a hospital or other health service, and
- providing food or equipment at or for a sporting, cultural or other entertainment venue or providing a venue.

### 2.4. What is 'Direct Contact'

Under the Act, 'direct contact' with children means:

- Physical contact, or
- Face-to-face contact.

The Regulation may provide for circumstances in which direct contact by a worker with a child or children is taken to be a usual part of and more than incidental to a worker's work.

### 2.5. Key Exemptions

People engaged in the following types of work are not required to have a WWC Check:

- administrative, clerical or maintenance work, or other ancillary work, that does not ordinarily involve contact with children for extended periods, other than School cleaners
- work with minimal direct contact or unsupervised contact with children, done for no more than five days in a calendar year
- volunteering by a parent or close relative in the following areas, except where the work involves providing mentoring services as part of a formal mentoring program, providing personal care services to children with disabilities, or attending an overnight camp for children:



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- of a child in activities for the child's school, early education service or other educational institution
- with a team, program or other activity in which their child usually participates or is a team member
- a visiting speaker, adjudicator, performer, assessor or other similar visitor at a school or other place where child-related work is carried out if the work of the person at that place is for a one off occasion and is carried out in the presence of one or more other adults
- work by an interstate visitor:
  - in a one-off event such as a jamboree, sporting or religious event or tour, if the event is the only child-related work carried out by the worker in NSW in that calendar year and the period of work does not exceed 30 days
  - who holds an interstate working with children check, or is exempt from the requirement to have such a check in his or her home jurisdiction, whose child related work in NSW is for no more than 30 days in any calendar year
- people under the age of 18.

### 3. How to Apply for a WWC Check

A worker who engages in child related work is responsible for applying for his or her own WWC Check. Ravenswood cannot apply on behalf of a worker.

To apply for a WWC Check, or to renew your clearance, visit the NSW Office of the Children's Guardian website and follow the prompts to either apply, renew or update your details.

#### 3.1. What is checked

The WWC Check obtains applicants' national criminal histories including:

- convictions (including convictions that have been spent, quashed or set aside or for which a pardon has been granted)
- charges (whether or not heard, proven, dismissed, withdrawn or discharged)
- convictions or findings dealt with by way of recognizance after 15 years under the Crimes Act 1900 (NSW)
- juvenile records
- findings of misconduct (e.g. sexual misconduct or serious physical assault of a child) by a government



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agency

- notifications on matters indicating serious risk to children made by the Ombudsman.

### 3.2. Outcome of the WWC Check

There are two key results for a WWC Check – a clearance to work with children or a bar against working with children.

Where the outcome is a clearance, the applicant will be provided with a WWC Check number. The WWC Check is valid for five years and may be used for any child-related work (paid or voluntary) in NSW. Cleared applicants will be subjected to ongoing monitoring for relevant new records which could lead to a bar and the clearance being revoked before the five year expiry date.

Where a bar is being considered, the NSW Office of the Children's Guardian will call and write to the applicant to inform them of the proposed decision. Applicants will be invited to submit information to support their application and the Office of the Children's Guardian will take this information into account when making their final decision.

#### Bar Against Working with Children

If the outcome is a bar, applicants must not engage in any child-related work. The barred applicant will receive a letter from the Office of the Children's Guardian notifying them of the decision and an explanation of the appeals process, should they wish to appeal through the NSW Administrative Decisions Tribunal.

The online verification process may produce the following other results:

- Application in progress
- Interim barred
- Not found.

Refer to the guidance available on the NSW Office of the Children's Guardian website for more information about the meaning of these results.

### 3.3. Worker Obligations

Upon receiving clearance, it is compulsory that the worker provides their WWC Check number to Ravenswood, along with their full name and date of birth for online verification.

Workers are responsible for renewing their own WWC Checks and notifying the Office of the Children's Guardian of changes to their personal details as necessary. If the workers contact details are up to date, they will receive a reminder to renew





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their WWC Check three months before it expires from the Office of the Children's Guardian.

### 3.4. Ravenswood's Obligations

The School must:

- register online as a child-related employer by going to the NSW Office Of the Children's Guardian website and completing the form
- before engaging a new worker, obtain and verify the worker's relevant details using the online verification system
- not accept paper evidence of a clearance or an application from the worker because they may have been barred
- update the record of the worker's relevant details within five working days after the worker's WWC Check clearance expires
- ensure current paid workers and volunteers attending overnight camps hold a valid WWC Check
- remove any barred or unauthorised persons from child-related work
- maintain all records of verifications and other WWC documentation in accordance with this policy
- notify the Office of the Children's Guardian if a staff member or volunteer is subject to an adverse finding in relation to an allegation of misconduct that is the subject of a Mandatory Reporting and/or a Reportable Conduct notification. This notification will trigger a risk assessment by the Children's Guardian and a review of the individual's WWC Check.

## 4. Record Keeping

Ravenswood is required to obtain, verify and record the relevant details of all workers engaged in child-related Work. Relevant details will only be correctly verified if they accord with the information relating to the worker recorded in the NSW Office of the Children's Guardian's working with children register, accessed via the online verification system, as at the date the record is made by the school.

There are two methods of keeping records of WWC checks at Ravenswood, one for staff and one for volunteers. These methods apply to all staff and volunteers, regardless of when they commence child-related work at the school.

### 4.1. Staff

Prior to the commencement of any appointment, staff must



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provide their WWC check number, first name, surname and date of birth to the school for verification and clearance.

Using the NSW government Office of Children's Guardian WWC Check employer log in, the Human Resources department is responsible for the initial verification of all staff WWC checks.

Once verified, status reports are printed to be placed on individual staff members' files by the Human Resources department. In addition, the following information for each staff member is recorded electronically in a consolidated register:

- full name
- date of birth
- verification date
- WWC number
- expiry date of the WWC Check

The Human Resources department is responsible for monitoring the WWC Check status of all staff members and keeping details up-to-date. Each month the HR & Payroll Administrator checks the status of all staff members' WWC Checks and provides notifications to staff prior to their expiry date. The consolidated register and the process for maintaining and monitoring it are evidence of the School's maintenance of WWC Checks. These records are:

- located in the secure HR folder on the S Drive
- retained by the School for the duration of the staff member's employment and for a period of seven years after the staff member ceases to work for the School.

### 4.2. Volunteers

This section should be read in conjunction with the Volunteer Code of Conduct and the Parent Volunteers Working With Children's Check Procedure.

Volunteers are required to either complete a Volunteer Statutory Declaration and a Consent form or if they hold a current Working With Children's Check, this information must be provided to the Human Resources Department for the School's records.

From time-to-time the school may ask a volunteer to obtain a Volunteer Working With Children Check. This would be if there is a requirement under the Child Protection (Working With Children) Act 2012 (NSW) for the volunteer to hold a volunteer WWC Check for the particular role they are undertaking.

Any volunteer attending an overnight camp is required to provide the school with a Volunteer Working With Children



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Check.

The WWC Check records are:

- located in the secure HR Folder on the S Drive
- retained by the School for the duration of the volunteer's work at the school and for a period of seven years after the volunteer ceases to work for the School.

The Statutory Declarations are:

- scanned and located in the secure HR Folder on the S Drive.

### 5. Privacy and Confidentiality

The Office of the Children's Guardian maintains a register for Working with Children Checks.

#### 5.1. Worker Information Disclosure

The following information about a worker in the register may be made available by the NSW Office of the Children's Guardian to an employer or proposed employer, upon request in the approved format, containing the particulars required by the NSW Office of the Children's Guardian:

- particulars of applications for WWC Check clearances
- WWC Check application number of any worker
- current clearance status of a child-related worker
- number, class (volunteer or non-volunteer) and expiry date of a WWC Check clearance held by a child-related worker and whether the clearance holder is subject to an interim bar or has had a clearance cancelled.

#### 5.2. Employer Information Disclosure

Similarly, the following information about an employer in the register may be made publicly available by the NSW Office of the Children's Guardian:

- trading name or registered business name of the employer
- child-related work for which the employer engages a child-related worker
- postcode or name of the place in which the employer's business is located
- whether any requests for information regarding a Check status were made to the NSW Office of the Children's Guardian by the employer within a specified period.



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### PART D: OTHER RELEVANT LEGISLATION

#### 1. Crimes Act 1900 (NSW)

##### Offences

The following two offences impose duties on persons at the School to act in relation to a risk of child abuse occurring or in the event that they have information that a child abuse offence has been committed.

A person's failure to:

- make a report using the Child Protection Helpline or to FACS, or
- notify the NSW Ombudsman of reportable conduct

may result in the commission of offences under these provisions.

##### **Section 43B: Failure to reduce or remove risk of child becoming victim of child abuse**

A person commits an offence if:

- the person is an adult (person who is of or above the age of 18 years) who carries out work for an organisation, whether as an employee, contractor, volunteer or otherwise (a position holder), and
- the organisation is the employer of an adult worker, who engages in child-related work, and
- there is a serious risk that the adult worker will commit a child abuse offence against a child (a person under the age of 18 years) who is, or may come, under the care, supervision or authority of the organisation, and
- the position holder knows that the risk exists, and
- the position holder, by reason of their position, has the power or responsibility to reduce or remove that risk, and
- the position holder negligently fails to reduce or remove that risk.

"Serious risk" and "knows" are undefined in the legislation.

The list of child abuse offences that are captured by this provision is extensive and includes rape, sexual abuse, sexual touching, production of child abuse material and grooming offences as well as attempts to commit those offences.

##### **Section 316A: Concealing child abuse offence**

It is an offence under the Crimes Act 1900 (NSW) to conceal a child abuse offence. Under section 316A an adult (person who is of or above the age of 18 years):



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- who knows, believes or reasonably ought to know that a child abuse offence has been committed against another person, and
- who knows, believes or reasonably ought to know that they have information that might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for that offence, and
- who fails without reasonable excuse to bring that information to the attention of a member of the Police as soon as it is practicable to do so,

is guilty of an offence.

A person will have a "reasonable excuse" for failing to tell the Police if:

- they believe, on reasonable grounds, that the Police already know the information, or
- they have made a mandatory report under Mandatory Reporting laws or believe on reasonable grounds that another person has done so, or
- they have reported the information to the NSW Ombudsman under reportable conduct laws or believe on reasonable grounds that another person has done so, or
- they have reasonable grounds to fear for the safety of the person or any other person (other than the offender) if the information were to be reported to the Police, or
- the information was obtained by the person (by the person receiving it or otherwise becoming aware of it) when they were under the age of 18 years, or
- the alleged victim was an adult at the time that the information was obtained by the person and the person believes on reasonable grounds that the alleged victim does not wish the information to be reported to Police.

The reporting of an offence under section 316A by a person in good faith does not constitute unprofessional conduct or a breach of professional ethics and does not make the person subject to any civil liability (including liability for defamation).

### **2. Civil Liability Act 2002 (NSW)**

Section 6F of the Civil Liability Act 2002 (NSW) imposes a duty of care on the School to take reasonable precautions to prevent an individual associated with the School from perpetrating physical or sexual abuse of a child in connection with the School's responsibility for the child. If the School is involved in a negligence proceeding under the



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Civil Liability Act, the School is presumed to have breached its duty of care unless it establishes that it took reasonable precautions to prevent the abuse.

Whether or not the School took reasonable precautions will be assessed by a court in accordance with considerations set out in the Civil Liability Act and case law.

In determining whether the School took reasonable precautions to prevent child abuse, a court may take into account any of the following:

- the nature of the School
- the resources reasonably available to the School
- the relationship between the School and the child
- whether the School has delegated in whole or in part the exercise of care, supervision or authority over a child to another organisation
- the role in the School of the individual who perpetrated the child abuse
- the level of control the School had over the individual who perpetrated the child abuse
- whether the School complied with any applicable standards in respect of child safety
- any other matters the court considers relevant.

### Keywords

Child Protection, Care and Protection Act, Ombudsmans Act, Working with Children Act, Crimes Act, Civil Liability Act

<b>Date Approved</b>	2013
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<b>Date of Commencement</b>	15 July 2013
<b>Amendment Dates</b>	16 May 2017, 22 January 2018, 22 January 2019, 20 March 2019
<b>Date for Next Review</b>	22 January 2020
<b>Related Policies, Procedures and Guidelines</b>	<p>Please note that there are a number of other School policies and procedures that relate to child protection which you need to be aware of and understand including (but not limited to):</p> <ol style="list-style-type: none"> <li>a) The <b>Code of Conduct</b> which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the School;</li> <li>b) The <b>Work Health and Safety Policy</b> which summarises the obligations imposed by work health and safety legislation on the school and</li> </ol>



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workers;

- c) The **Workplace Discriminations, Harassment and Bullying Policy** which summarises your obligations in relation to unlawful discrimination, harassment and bullying; and
- d) The **Student Bullying Policy** which summarises student obligations in relation to unlawful bullying.