



CHILD PROTECTION POLICY

This policy relates to both Day and Boarding School procedures

Introduction

The legislation in NSW relevant to the care protection of children and young people within Kambala is as follows:

- Ombudsman Amendment (Child Protection and Community Services) Act 1998 (NSW) (see attached)
- Child Protection (Working With Children) Act 2012 (NSW)
- The Ombudsman Act 1974
- The Commission for Children and Young People Act 1998
- The Children and Young Persons (Care and Protection) Act 1998.

Children and Young Person's Legislation Mandatory Reporting

Reporting Risk of Significant Harm

A mandatory reporter is an individual required by law to report to Community Services when they have reasonable grounds to suspect that a child is at risk of significant harm from abuse or neglect.

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

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

When to report

The Mandatory Reporter Guide has been developed to assist reporters to decide if any of the following conditions are present to a significant extent:

- physical abuse
- neglect
 - supervision
 - physical shelter/environment
 - food
 - medical care
 - health care
 - education

- sexual abuse
- problematic sexual behaviour

- psychological harm
- relinquishing care
- carer concerns
 - parent/carer substance abuse
 - parent/carer mental health
 - parent/carer domestic violence
 - unborn child.

Where a person has reasonable grounds to suspect risk of significant harm, they should first use the Mandatory Reporter Guide to assess whether their concerns meet the threshold of risk of significant harm.

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:

- first hand 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.

It does not mean that reporters are required to confirm their suspicions or have clear proof before making a report.

Concerns must be current - that is, significant harm arising from abuse or neglect is recent or likely in the foreseeable future should circumstances continue unchanged. Current concerns may also arise from a child or young person's safety, welfare or wellbeing.

A report must be made in respect of a young person under the age of 16 but may be made in respect of a young person who is 16 but is under 18.

Once the report has been made to the Principal, an individual's obligation is complete. The Principal should confirm when the significant Risk of Significant Harm Report has been made to Community Services.

Ombudsman Act 1974 as amended

It is acknowledged that each case of alleged child abuse that requires internal investigation and possible disciplinary action will be quite different. These protocols have been compiled to advise how investigations and disciplinary proceedings may be conducted at Kambala. These are guidelines only and in applying them one should always bear in mind the primary objectives of the relevant legislation. This document will be provided to teachers who are the subject of an internal investigation into child abuse by Kambala.

Teachers are not permitted to investigate such allegations. The Principal is the Head of Agency.

The Working With Children Check

Employees commencing at Kambala, must hold a current Working With Children Check.

To obtain a Working With Children Check, applicants go on line at www.newcheck.kids.nsw.gov.au and fill in the online application form. Once the form is submitted, a Check application number is issued. Applicants must take this application number and proof of their identity to a motor registry or government access centre. The proof of identity requirement for the Working With Children Check is the same as for a NSW driver's license.

If the applicant is in paid employment, they must also pay a fee of \$80. The fee is not refundable if the worker terminates or withdraws their application or if they do not receive a clearance.

Workers who are starting a new, paid job (or changing jobs) in child-related work after 15 June 2013 must apply for the Check before they start their new role.

Current paid employees and all volunteers in child-related work do not need to apply straight away because they will be phased in over the next five years, according to their industry sector. Employers must not encourage (or compel) workers (paid or unpaid) to deviate from the phase in schedule. The phase in schedule is available as a fact sheet at www.newcheck.kids.nsw.gov.au

Wellbeing at Kambala

The Wellbeing structure at Kambala is intended to provide an environment that promotes the care of every student. Although each staff member has a pastoral role, it is the Class Teacher (Junior School and Massie House), Tutor and the Year Co-ordinator (Senior School) to whom girls should speak about problems or concerns. The Head of Senior School, Head of Junior School, Dean of Wellbeing and Director of Boarding are available to both students and parents.

Staff should notify the Principal immediately should they suspect a situation involving any form of reportable conduct. It is not staff responsibility to investigate. If an allegation is made against the Principal, the President of Council will have responsibility for investigation.

Prevention strategies

The awareness of students, staff and the community regarding Child Protection is raised by:

- Key elements of Child Protection covered in the school curriculum
- Professional Development for staff in Term 1 of each year
- Code of conduct for staff

- Information provided via Kambala View, the intranet and following the Communications with Parents and Students Policy and Procedures.

Head of Agency is obliged to:

Set up internal systems to ensure all staff are made aware of their obligations, particularly to report to Head of Agency and reportable conduct allegation or conviction against employees.

Set up internal systems to prevent reportable conduct occurring in the workplace.

Notify the Ombudsman of any allegations or convictions involving employees of which they become aware as soon as practicable and within 30 Days of the matter being raised.

Instigate, complete and properly document the investigation.

An allegation involves:

- Identification of a person who is an employee of the agency at the time of the offence or who is a current employee.
- A description of behaviour that may constitute reportable conduct or details of a conviction.
- Conduct involving a person who was a child at the time of the alleged behaviour.
- Any allegation of reportable conduct must be reported.

Reportable conduct is defined as:

- Sexual Offence or sexual misconduct
- Assault, ill treatment or neglect of a child
- Behaviour that causes psychological harm to a child
- 'Child' covers 0-18 years.

Types of Reportable Conduct

Sexual Offences

- Sexual intercourse

Sexual Misconduct

- Inappropriate conversations of a sexual nature
- Comments that express a desire to act in a sexual manner
- Unwarranted and inappropriate touching
- Sexual exhibitionism
- Personal correspondence including electronic communication, (e.g. e-mail and text messages)
- Exposure of children and young people to sexual behaviour of others

- Possession of child pornography
- Watching children undress, when supervision is not required or justified

For sexual misconduct to be reported, the alleged conduct must have been committed against, with or in the presence of a child. Age of consent was raised to 18 years by s.73 of the Crimes Act.

Grooming behaviour

- Persuading the child that special relationships exist - spending inappropriate special time with the child, inappropriately giving gifts, showing special favours to them but not to other children, allowing the child to over step rules etc
- Testing of boundaries - undressing in front of the child, allowing the child to sit on the lap, talking about sex, 'accidental' touching, for example, of the genitals etc

Physical assault of a child under common law principles, must include all three of the following elements:

- It is an act committed on or towards a child, and
- It involves either the application of force to a child or an act that causes a child to think that immediate force will be used on them, and
- It is either hostile or reckless (reckless act is one where a person would reasonably foresee the consequence of or likelihood of inflicting injury or fear, and ignores the risk).

III-treatment

- e.g. excessive discipline

Neglect

- e.g. failing to meet the child's physical, emotional or safety needs resulting in harm or potential to cause harm

Behaviour that causes psychological harm

- e.g. degrading or belittling, harsh criticism or shaming, isolation by comment or restriction, exploiting or corruption, persistent failure to care for and support.

NB. There must be reportable conduct, significant emotional trauma or harm and causal link between behaviour and harm.

Outline of Obligations under the Legislation

Upon receipt of an allegation of child abuse against a staff member, the Principal or her designate will determine whether or not it is an allegation about child abuse or misconduct that may involve child abuse.

All allegations against a staff member that involve child abuse or misconduct that may involve child abuse must be reported within 30 days of receipt of the allegation to the Ombudsman. The allegations will also be reported to the Department of Community Services (CS) if there is a current concern for the safety, welfare and well-being of the child. The Principal or her designate will need to:

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

At the conclusion of the investigation and the decision regarding disciplinary action, a complete report including the findings, disciplinary action decided upon and any other recommendations will be forwarded to the Ombudsman together with any information, which the accused person requires to be included.

Completed relevant disciplinary proceedings will be reported to the Commission for Children and Young People unless the allegation was found to be false, vexatious or misconceived.

Following the introduction of the Child Protection Amendment Act 2003, in certain circumstances, reportable conduct would not include:

- Conduct that is reasonable for the purposes of discipline, management, or care of children
- Use of physical force that is trivial or negligible
- Class or kind exemptions (under certain circumstances).

Risk Assessment

Upon the receipt of an allegation of child abuse against a staff member, the Principal or her designate will carry out an initial risk assessment prior to the investigation of the allegation. The purpose of the risk assessment is to identify and minimise the risk to:

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

This may result, for example, in the staff member being temporarily relieved of

some duties, being required to avoid certain pupils or, in some special cases, being suspended from duty.

Any decision to take action as a result of a risk assessment is in no way an indication of the guilt of the staff member concerned.

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

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

Risk should be continually monitored throughout the investigation.

The Investigation

In conducting an investigation into allegations of child abuse, the Principal or her designate should be guided by the following principles.

Conflict of Interest and Appointment of Investigator

All investigations will be conducted in an impartial, independent and objective manner and be open and transparent. The investigator will not show bias or favour to the alleged victim(s), the person the subject of the allegation, nor in outcomes, which might affect the reputations of the particular agency.

In some instances the Principal or her designate may call on external experts to undertake the investigation. This may be the case where the Principal or her designate determines that she/he does not have the expertise to satisfactorily conduct the investigation or in cases where a conflict of interest or bias may arise.

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

Confidentiality

The Principal or her designate and persons conducting investigations will maintain a high level of confidentiality throughout the investigation phase. Action for defamation could result if agencies have published allegations of child abuse against a staff member. The person making the allegation also has a right to

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

The staff member should not discuss the allegations with any student (including the alleged victim) nor with parents without the approval of the school.

The Investigative Process

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

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

Where possible staff will be given advance notice of an interview with the Principal or her designate or appointed investigator, details of the allegation (sufficient to allow the employee to respond) and be advised that they may have a witness at the interview.

While it is desirable for a staff member to be given reasonable notice before being required to respond to an allegation, what constitutes reasonable notice will depend on the circumstances of the situation.

Staff may wish to have someone to support them during the interview process. The support person may be a friend on staff or an Independent Education Union representative. However, such a person is there for support only and as a witness to the proceedings, and not as an advocate or to take an active role in the proceedings.

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

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

Steps in the Process:

1. Initial response to an allegation.
2. Planning the investigation.
3. Gathering information.

4. Formalising the allegation/s.
5. Employee response to the allegation/s.
6. Analysing the evidence.
7. Making a preliminary finding.
8. Making a final finding.
9. Taking action.

Findings

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

- The allegation was sustained and the matter required disciplinary action; or
- The allegation was false; or
- The allegation was not sustained - insufficient evidence; or
- The allegation was not sustained - lack of evidence of weight; or
- Not reportable conduct (might constitute a breach of professional behaviour or judgement which requires further professional disciplinary actions).

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

Disciplinary Proceedings

For the purpose of this recommended protocol, disciplinary proceedings are defined as the action taken as a consequence of the findings arising out of the investigation. When conducting disciplinary proceedings Kambala will have regard to procedural fairness.

This will usually involve:

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

When the investigation has been completed

The staff member is entitled to ask the Ombudsman to review the investigation and findings if the staff member believes the investigation was unfair, biased, incomplete or suffered some other deficiency giving rise to an incorrect finding.

The staff member must be advised if Kambala has notified the Commission for Children and Young People of completed disciplinary proceedings.

If the Commission for Children and Young People is notified of completed disciplinary proceedings the staff member is entitled to inspect Kambala's file in accordance with Freedom of Information Principles, subject to any exemptions, which may apply under that Act.

Notification to the Commission for Children and Young People (CCYP)

The Commission for Children and Young People Act requires all completed investigations into allegations of child abuse to be reported to it. It is an offence under the Act to fail to report unless the allegation is found to be either;

- false (the alleged conduct did not occur);
- vexatious (without substance, malicious intent);
- misconceived (not reasonably be considered to be child abuse).

Class or Kind agreements

The Class or Kind Agreement outlines additional provisions for certain education sector employers regarding notifying findings of relevant employment proceedings to the Commission for Children and Young People.