



# New Madinah College

## Child Protection Policy

### **PURPOSE**

New Madinah College is committed to providing a safe learning environment for its students.

It is our policy that:

- All staff are trained with respect to identification of child abuse and relevant procedures;
- All suspected cases of child abuse are reported by the Principal to the Department of Family and Community Services and/or the Police;
- we work collaboratively with relevant external agencies that may be involved in child protection;
- we maintain up-to-date procedures to assist staff in identifying and reporting child abuse;
- we act immediately to ensure the safety of abused students; and
- we provide ongoing support and assistance to students who have been abused.

New Madinah College employees have significant obligations as *mandatory reporters* for the safety of children and young people. This Policy outlines the process of identifying and reporting, which a staff member should follow if a concern should be raised about the safety, welfare or wellbeing of a child or young person.

A hard copy of this policy document will be provided to all staff upon employment and made available online the NMC Staff Portal during their employment or engagement with the College to ensure a clear understanding of their duties and obligations under child protection legislation in NSW.

This Policy outlines the key concepts and definitions under the relevant legislation including mandatory reporters, reportable conduct, and risk management. It also sets out expected standards of behaviour in relation to employees and their relationships with students.

# 1. INTRODUCTION

## 1. General

The safety, protection and well-being of all students is of fundamental importance to the College. Both you and the College have a range of different obligations relating to the safety, protection and welfare of students including:

- a) a duty of care to ensure that reasonable steps are taken to prevent harm to students;
- b) obligations under child protection legislation; and
- c) obligations under work health and safety legislation.

The purpose of this Policy is to summarise the obligations imposed by child protection legislation on the College and on employees, contractors and volunteers at the College and to provide guidelines as to how the College will deal with certain matters.

Child protection is a community responsibility.

## 2. Key legislation

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

- a) the Children and Young Persons (Care and Protection) Act 1998 (NSW) (the Care and Protection Act);
- b) the Child Protection (Working with Children) Act 2012 (NSW) (the WWC Act); and
- c) the Ombudsman Act 1974 (NSW) (the Ombudsman Act).

All three Acts are included within this Policy.

## 3. Your Obligations to Report

In NSW it is a requirement of the Children and Young Persons (Care and Protection) Act 1998 (NSW) that the reporting of abuse (including physical, sexual or psychological/emotional abuse and/or neglect/ill-treatment/exposure to family violence) of a child is mandatory. It is not mandatory to report the abuse of a young person (16-17 years), however it is the College's policy to report concerns about the safety and wellbeing of all students, including young persons.

Abuse and neglect must be reported where a teacher forms a belief on reasonable grounds, that a child is at risk of significant harm from abuse or neglect. While we set out below circumstances in which the legislation requires reporting of child protection issues, the College requires you to report **any concern** you may have about the safety, welfare or wellbeing of a child or young person to the **Principal**.

In the event a report of concern is received regarding the safety, welfare or well-being of a child, the Principal will use the Online Mandatory Reporter Guide (MRG) on the NSW Government, 'Keep Them Safe' website, [www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au) to guide decision making, about whether or not a report to the Child Protection Helpline is appropriate under the risk of significant harm reporting threshold.

All staff members employed at New Madinah College are mandatory reporters. If a staff member disagrees with the College regarding whether the concern meets the threshold of risk of significant harm, the teacher should report the concern to the Child Protection Helpline directly.

## 2. GENERAL GUIDELINES

The school is committed to the achievement of the highest standards of education in which the security, protection and comfort of students is a high priority. The following guidelines are to be adopted for the care and protection of students and staff.

### 1. Duty of Care and Legal Liability

Staff can be deemed legally liable if they have been negligent in relation to their responsibilities under the legislation as it pertains to the care and protection of children.

Generally speaking, a person owes a duty not to injure another as a result of his or her own negligent act or omission. The duty does not usually extend to the taking of steps to prevent injury where one has not caused or contributed to the risk giving rise to the injury.

There exists, however, special duty relationships between some members of our society which give rise to more onerous duties of care, the relationship between teacher and pupil is one of these.

The general law of negligence provides that a person may be negligent if:

- S/he owes a duty of care to the person injured, that is, the standard judged reasonable in all of the circumstances, and
- S/he did not carry out that duty to the legal standard required, and
- The person suffered damage as a result of the failure to observe the duty of care.

With regard to care and protection the following general principles apply:

- Staff must take reasonable care to ensure that their students are not harmed. They have a duty to protect their students against foreseeable risks of personal injury or harm.
- The standard of care is that of a reasonably prudent parent. The degree of care depends on such factors as the age of the students.
- There must be an efficient system of supervision in operation in the school.

Duty of care applies while the students are under the care of the school. This applies equally to school-based activities and out of school activities. The same duty of care applies to employees who volunteer their services to the school.

Employees are required to follow good standards and approved practice. An example of good standards or approved practice would be compliance with the school's Code of Conduct.

### 2. Supervision of Students

1. Staff must take all reasonable care to ensure that no student is exposed to any unnecessary risk of injury. Staff are to remember that they are in *loco parentis* - the standard of care required is that of a skilled professional.
2. Staff should be familiar with and adhere strictly to the school's evacuation procedures.
3. Ill or injured students should be attended to by the supervising staff member. Should additional assistance be required contact should be made with the front office.

4. Students should not be left unsupervised either within or outside of class. Staff are reminded of their duty of care obligations in this regard. Staff should be punctual to class and allocated supervision.
5. Staff should remain with students at after school activities until all students have been collected. In the event that a student is not collected staff should remain with the student until collected or return to school with the student.
6. Playground supervision is an integral part of the responsibility of staff. It must take precedence over other activities. It is unacceptable to be late. Staff should actively supervise their designated area, being vigilant and constantly moving around.
7. Staff should be alert to bullying or any other form of discriminatory behaviour, and report incidences to the appropriate staff member.
8. Staff should be familiar with and adhere to the school's Student Leadership Policy.

### **3. Relationships with Students**

1. Staff should avoid situations where they are alone in an enclosed space with a student. Where staff are left with the responsibility of a single student they should ensure that this is in an open space in view of others. Where this is not possible or practical it should be discussed with the immediate supervisor.
2. Staff may as part of their pastoral care role engage in discussion with students. This is entirely appropriate. However, staff must be cautious of making personal comments about a student or asking questions that probe their own or a student's sexuality or relationships.
3. When staff wish to conduct a private conversation with a student, they should consider the time and venue carefully to avoid placing themselves in a vulnerable situation. It is preferable to leave the door open. The staff member should not locate themselves between the student and the door.
4. Staff should never drive a student in their car unless they have specific permission from their supervisor to do so. In the event of an emergency staff should exercise discretion but then report the matter to an appropriate supervisor.
5. Staff should notify the Principal or Head of Agency immediately should they suspect a situation involving any form of reportable conduct (formerly referred to as child abuse). It is not staff responsibility to investigate. Similarly, staff should report to the Principal or Head of Agency any suspected case of neglect.
6. Social relations between staff and students outside the school can be problematic. Staff should refrain from visiting students at their home unless they have the expressed permission of the Principal. Staff must be alert to the risk involved in social relations with students and be conscious that their position places extra obligations on them.
7. Staff should not engage in tutoring or coaching students from the school for monetary return.
8. When physical contact with a student is a necessary part of the teaching/learning experience staff must exercise caution to ensure that the contact is appropriate and acceptable. Staff

should seek reassurance from the student by asking for a volunteer to demonstrate a particular activity.

9. Attention to the toileting needs of young children should be done with caution. It may be appropriate to have the door open. In respect to students with a disability the management of toileting needs should be included in the student's individual management plan.
10. Staff should not supply or condone the use of alcohol, tobacco or other drugs for themselves or any student in their care.
11. When congratulating a student, a handshake, pat on the shoulder or brief hug are acceptable as long as the student is comfortable with this action. Kissing of students is not acceptable.
12. Assessing a student who is injured or ill may necessitate touching. Always advise the student of what you intend doing and seek their concurrence.
13. Staff must always treat students with respect and without favouritism. There is no place for sarcasm, derogatory remarks, inappropriate familiarity or offensive comments.
14. Staff who communicate with students electronically must abide by the terms of the school's Computer/Internet Policy. Transmission of messages or files which are sexually explicit or offensive are totally inappropriate.
15. Sometimes during the course of your work you may be in receipt of a gift from a student. In such circumstances where the receipt of a gift could be considered outside of usual custom you are to inform your immediate supervisor.
16. Staff should ensure that they are familiar with and adhere to the school's policy in regard to the storage and administration of medical products to students.
17. Sometimes in ensuring duty of care staff may be required to restrain a student from harming him or herself or others using reasonable force. Any such strategy must be in keeping with the school's behaviour management practices.

#### **4. Discipline of Students**

1. All staff should be familiar with and adhere to the school's Discipline policy
2. No student should be allowed to leave or be sent from a class other than for personal hygiene matters. In extreme cases students can be sent to the Principal's office.
3. At all times when speaking with student's care must be taken to use appropriate language. Please refer to the school's Discipline Policy.

#### **5. Communication Issues**

1. Staff are required to respect and adhere to the established lines of communication in the school.
2. Staff should be mindful of confidentiality when in discussion with parents. Staff can never guarantee confidentiality if the matter under discussion requires mandatory reporting.
3. Staff should not speak about another staff member to students or parents.

4. Staff should present a courteous professional manner to students, parents, visitors and other staff members. Confrontation and criticism in public is to be avoided at all times.
5. All matters discussed in staff meetings and staff memos are to be treated confidentially and not discussed with students.
6. The media should not be given access to students or allowed entry to the school without the expressed permission of the Principal.

## **6. Camps/Billets/Excursions**

1. In the case of activities involving overnight accommodation of boys and girls, both genders should be represented in the group of supervisors.
2. Excursion information must be communicated to parents.
3. A school mobile phone must be taken on all excursions. The teacher in charge must always have a complete list of student contact numbers with them on the excursion.
4. A co-ordinator will be appointed to oversee billeting arrangements. The co-ordinator will ensure that lines of communication are known to all students, their parents and host families.
5. Students being billeted should have access to supervising staff. The overriding principle is 'to act in the best interests of the child'. If the child expresses discomfort, or unease the child should be removed from the situation immediately.

## **7. Duty to Disclose**

1. Staff are required to report to the Principal any allegation of 'reportable conduct' (formerly referred to as child abuse).
2. Staff who are the subject of an Apprehended Violence Order or a Reportable Conviction are required to inform the Principal immediately they are in receipt of such an Order or Conviction.

## **8. Mandatory Reporting**

1. As a member of staff of this school, you are required to report to the Principal any situation where:
  - a) You suspect any form of reportable conduct (formerly referred to as child abuse).
  - b) You suspect neglect or ill treatment.
2. It is not staff responsibility to investigate. Investigations must only be carried out by investigators specifically appointed for the purpose.
3. Staff are required to report any allegation of reportable conduct to the Principal. Discussion with others should be avoided.
4. Investigations will be conducted in an impartial manner in accordance with the legislative requirements. The processes of the investigation will be based on procedural fairness.

5. As a member of staff of this school, you will be regularly updated of changes in regards to reportable conduct and mandatory reporting.

## 9. Managing a Students Disclosure of Abuse

A student may disclose information about abuse or neglect privately to a staff member. Alternatively, a child may make a public disclosure such as making a disclosure in class or to a group of other students.

### Private Disclosure

If a student discloses a situation of abuse directly to a staff member their role is to reassure the student and support the student in their decision to disclose. The teacher must assure students that they have the right to feel safe and must listen actively to what the student is saying. Disclosure of abuse can cause strong feelings in the person whom the disclosure is being made. It is important for the staff member to be aware of and control their feelings.

Sometimes students may try and elicit a promise that a staff member not tell anyone about the disclosure. Do not make a promise. The staff member is responsible for reporting the matter to the **Principal** and is not responsible for investigating the matter.

### Public Disclosure

It is possible that a student starts to disclose in class or with a group of other students. In this circumstance a teacher should use a strategy of 'protective interrupting' and:

- acknowledge that you have heard the student and stop further disclosure whilst maintaining support and encouraging the student to discuss the matter in a more private situation;
- quietly arrange to see the student as soon as possible away from other students; and
- not allow other students to ask questions and discourage them from making judgements.

## 10. Initial Reporting of Abuse

The identification of child abuse can be difficult especially where it is based upon the observation of multiple risk indicators that may often occur over a period of time.

Where a staff member forms a belief on reasonable grounds that neglect, or abuse may be occurring they must raise the matter with the Principal or Assistant Principal or a member of the school Board if the matter involves the Principal.

This obligation is part of the College's overall commitment to the safety, welfare and well-being of children. It also falls outside the scope of a staff member's mandatory obligation to report on reasonable grounds that a child is at risk of significant harm from abuse or neglect.

## 11. Initial Action Following Disclosure

Safety of students is paramount. Once disclosure has been made the Principal, or appropriate person, may consult with an internal or external qualified children's counsellor, as the circumstances demand, and will determine a strategy to ensure the students' immediate safety. This process must be documented (refer to the 'Records' section below).

## 12. Record Keeping

Where a staff member suspects child abuse but does not have enough information, written and dated records of their observations and concerns should be kept until reasonable belief is formed.

All verbal and written communications regarding child protection matters (including notes of observations, meetings and telephone calls) must be properly documented. The documented records should include dates and times and enough detail to record key conversations, especially those relating to the student's disclosure.

The records of child protection matters must be stored securely.

### **13. Child Protection Training**

All staff at New Madinah College fall under the category of mandatory reporters.

Each school year, all staff members within the Scope of this Policy will be provided with and must participate in child protection awareness training in the form of a face-to-face workshop, on-line module or the completion of both. The child protection awareness training will be conducted by the Principal, a child protection investigator or an endorsed provider of professional development accredited to provide child protection training (i.e. the Association of Independent Colleges).

A register of staff whom have participated in the annual Child Protection Training is maintained and managed by the Principal and Administrative Staff.

### **14. Other policies**

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

- a) the Staff Code of Conduct which sets out information about the standards of behaviour expected of all employees, contractors and volunteers of the College and;
- b) the College's policy on Anti-Bullying which summarises your obligations in relation to establishing effective procedures to prevent or identify and deal with bullying if and when it occurs.



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

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

#### 1. Who is a mandatory reporter?

Under the Care and Protection Act persons who:

- a) during 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.

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

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.

To guide decision making, about whether or not a report to the Community Services is appropriate under the risk of significant harm reporting threshold, the Principal will use the Online Mandatory Reporter Guide (MRG) on the NSW Government, 'Keep Them Safe' website [www.KeepThemSafe.nsw.gov.au](http://www.KeepThemSafe.nsw.gov.au). In the event, you disagree with the College regarding whether the concern meets the threshold of risk of significant harm, the staff member should report the concern to Community Services directly.

In addition, while not mandatory, the College 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.

#### 3. Reasonable grounds

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

- a) first hand observations of the child, young person or family
- b) what the child, young person, parent or another person has disclosed
- c) what can reasonably be inferred based on professional training and / or experience.

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

#### 4. Significant harm

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

- a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,
- b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,

- c) in the case of a child or young person who is required to attend College in accordance with the Education Act 1990 —the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,
- d) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
- e) the child or young person is living in a household where there have been incidents of domestic violence and, consequently, 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.

## 5. 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. 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, 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.

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

Reporting by the College about these matters to Community Services and, where necessary, the police, is generally undertaken by the **Principal**. This is in accordance with best practice principles and is the expectation of the College.

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.

To guide decision making, about whether or not a report to the Community Services is appropriate under the risk of significant harm reporting threshold, the Principal will use the Online Mandatory Reporter Guide (MRG) on the NSW Government, 'Keep Them Safe' website ([www.kepthemsafe.nsw.gov.au](http://www.kepthemsafe.nsw.gov.au)).

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 or you disagree with the decision reached by the College, 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 College as soon as possible.

You are not required to and must not undertake any investigation of the matter yourself. You are not to inform the parents or caregivers that a report to Community Services has been made.

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

## **7. 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 College, any concern regarding the safety, welfare and wellbeing of a student must be reported to the Principal. In the event, you disagree with the Principal regarding whether the concern meets the threshold of risk of significant harm, you should report the concern to Community Services directly.

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.

## **4. 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 Colleges 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 College'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:

- h) Must keep under scrutiny the systems for preventing reportable conduct by employees of non-government Colleges and the handling of, or response to, reportable allegations (including allegations which are exempt from notification) or convictions;
- i) must receive and assess notifications from non-government Colleges concerning reportable conduct or reportable convictions;
- j) is required to oversee or monitor the conduct of investigations by non-government Colleges into allegations of reportable or reportable convictions;
- k) 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;
- l) may directly investigate an allegation of reportable conduct or reportable conviction against an employee of a non-government College, 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
- m) may undertake 'own motion' investigations of non-government Colleges 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 College.

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 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 College 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.

## **2. 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.

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 Chairman of the College Board or another Board member if the Principal and Chairman are one and the same. In the event, you disagree with the Principal regarding whether the concern meets the threshold of risk of significant harm, you should report the concern to Community Services directly.

## **3. Contact for parents**

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

If the allegation involves the Principal, you are required to report to the Chairman of the College Board or another Board member if the Principal and Chairman are one and the same.

## **4. 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.

## 5. Other relevant definitions

Set out below are definitions of the various terms referred to 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.

1. 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.
2. 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 or treatment, or shelter.
3. 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.
4. Reckless act (or failure to act):
  - A reckless act, or failure to 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 a 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:

- a) crossing professional boundaries, and
- b) 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 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;
- d) sexual exhibitionism
- e) personal correspondence (including electronic communications such as e-mails and text messages) with a child or young person in relation to the adult's sexual feelings for a child or young person
- f) exposure of children and young people to sexual behaviour of others including display of pornography
- g) watching children undress. Eg, in change rooms/toilets when supervision is not justified.

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

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

- a) indecent assault
- b) sexual assault

- c) aggravated sexual assault
- d) sexual intercourse and attempted sexual intercourse
- e) possession/ dissemination/ production of child pornography or child abuse material
- f) using children to produce pornography
- g) grooming or procuring children under the age of 16 years for unlawful sexual activity
- h) deemed non-consensual sexual activity on the basis of special care relationships

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

### 1.1 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 criminal offence);
- 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;
- f) investigate the allegation or appoint someone to investigate the allegation.

### 1.2 Investigation principles

The College 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;
- a) make reasonable enquiries or investigations before making a decision;
- b) avoid conflicts of interest;
- c) conduct the investigation without unjustifiable delay;
- d) handle the matter as confidentially as possible; and
- e) provide appropriate support for all parties including the child/children, witnesses and the PSOA.

### 1.3 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 OCG (where required) (see Part C).



The steps followed in the investigate process will be guided by the 'Recommended Protocols for Internal Investigative and Disciplinary Proceedings, 2001' (IEU/AIS) as updated from time to time.

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.

## **7. 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.

### **1.1 Initial risk assessment**

One of the first steps following an allegation of reportable conduct against an employee is for the Head of Agency 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 College, 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 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 College 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.

### **1.2 Ongoing Risk Management**

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

### **1.3 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.

### **8. 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.
- c) The PSOA does not automatically have the right to:
- d) know or have confirmed the identity of the person who made the allegation; or
- e) 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 College in relation to the finding of misconduct involving children (see Part C section 3).

### **9. Disciplinary Action**

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

In relation to any disciplinary action the College 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.

### **10. Confidentiality**

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

The College 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 Principal 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.

## **5. PART C: WWC ACT**

### **1. General**

The Office of the Children's Guardian (OCG) is responsible for employment screening for child related employment. A Working With Children Check (Check) is a prerequisite for anyone in child-related work. It involves a national criminal history check and review of reported workplace misconduct findings. The result of a Check is either a clearance to work with children for five years, or a bar against working with children. Cleared applicants are subject to ongoing monitoring

by the OCG, and any relevant new records which appear against a cleared applicant's name may lead to the Check being revoked.

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

## 2. Responsibilities

The object of the WWC Act is to protect children:

- a) by not permitting certain persons to engage in child-related work; and
- b) by requiring persons engaged in child-related work to have working with children check clearances.

Colleges are required to:

- a) verify online and record the status of each child-related worker's Check;
- b) only employ or engage child-related workers or eligible volunteers who have a valid Check; and
- c) report findings of misconduct involving children made against child-related workers or volunteers.

Child-related workers and eligible volunteers are required to:

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

All volunteers are required to be aware and follow the expectations of conduct expressed in the College Staff Code of Conduct.

## 3. Process of Verifying WWC

The Principal or delegate is responsible of verifying and recording the status of each worker's Working with Children check.

The Principal or delegate will verify the worker's WWC status before the official start date of employment.

## 4. Relevant Definitions

### **Bars**

#### Final bar

This bar is applied based on a decision made by the OCG, following a risk assessment. This person is barred against working with children.

#### Interim bar

An interim bar is issued to high risk individuals to prevent them from continuing to work with children while a risk assessment is conducted. An interim bar may be applied for up to 12 months. If an interim bar remains in place for six months or longer, it may be appealed against through 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.

Interim bars are issued only for risks considered likely to result in a final bar.

### **Child-related work**

Child-related work includes, but not limited to work in the following sectors:

- a) early education and child care including education and care service, child care centres and other child care;
- b) education Colleges and other educational institutions and private coaching or tuition of children;
- c) religious services;
- d) residential services including boarding Colleges, homestays more than three weeks, residential services and overnight camps; or
- e) transport services for children including College bus services, taxi services for children with disability and supervision of College road crossings.

### **Child-related worker**

A person who has physical contact or face to face contact with children in work outlined above in 3.2, including Colleges. This may include volunteer work.

A child-related worker may commence work once they have completed the Check application process. An application is completed when the online application form is complete, and the worker's identity has been proven at the NSW motor registry or Council Agency and the fee has been paid (if in paid work).

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

### **Disqualified person**

A disqualified person is a person who has been convicted, or against whom proceedings have been commenced for a disqualifying offence outlined in Schedule 2 of WWC Act.

A disqualified person is a person who has a bar preventing them from working with children in child-related work.

It is an offence for an employer to knowingly engage a child-related worker when they do not hold a Check or who has a bar or an interim bar.

It is an offence for an employee to engage in child-related worker when they do not hold a Check or has a bar or an interim bar.

### **Findings of misconduct involving children**

The College will report to the OCG when a finding has been made that the person (an employee of the College) subject to the finding engaged in:

- a) sexual misconduct committed against, with or in the presence of a child, including grooming of a child; or
- b) any serious physical assault of a child.

The College will advise the person that the OCG has been notified of a finding of misconduct involving children.

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 College in relation to the finding of misconduct involving children.

### **Reporting body**

Independent Colleges which are members of the AISNSW are defined as a reporting body by the WWC Act.

Section 35 of the WWC Act requires this College to notify the OCG findings of misconduct involving children made against a child-related worker. The College may also be obliged to report, amend or provide additional information to the OCG as outlined in the WWC Act.

### **Risk assessment**

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

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

### **Working with Children Check Clearance**

A Working with Children Check (Check) means authorisation under the WWC Act to engage in child-related work. An employee will be issued with a number which is to be provided to the College to verify the status of an employee's Check.

Mandatory child protection screening applies for all positions within the College. It is an offence under the NSW Child Protection (Working With Children) Act 2012 and Child Protection (Working With Children) regulation 2013 for a person convicted of a serious sex or any other serious offence to apply for a position at New Madinah College. The Working with Children Check involves a national criminal history check and a review of reported sexual misconduct and serious physical assault involving children.

Prospective employees must provide evidence of Working with Children Clearance during the arranged interview and/or staff induction to the Principal. Failure to do so will result in the prospective employment position being withdrawn.

The Principal will forward the documentation to the Administrative Staff. The Administrative Staff will verify the staff members Working With Children Check status using the Office of the Children Guardian Website and update the Staff WWC template accordingly.

All information collected is subject to the College's Privacy Policy.

## **REFERENCES**

- NSW Family and Community Services
- [www.community.nsw.gov.au](http://www.community.nsw.gov.au)
- NSW Ombudsman
- [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)
- The Children's Guardian (formerly the NSW Commission for Children and Young People)
- [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au)
- Department of Premier and Cabinet – Keep Them Safe  
[www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au)

# DECLARATION

## STAFF COPY

### New Madinah College

ACCEPTANCE DECLARATION			
First Name:		Last Name:	
I hereby declare that I have read, understood and agree to comply with the terms of this Child Protection Policy.			
Signature:			
Date:			



-----  
Please tear here

## COLLEGE COPY

### New Madinah College



ACCEPTANCE DECLARATION			
First Name:		Last Name:	
I hereby declare that I have read, understood and agree to comply with the terms of this Child Protection Policy.			
Signature:			
Date:			