



Child Protection Policy

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Prepared from information provided in Prolegis Child Protection Manual For Schools (2010), provided under licence for the purposes of Christian Education National Limited schools

This policy and its associated documents are prepared by CEN Hub (NSW & ACT), for use by member schools. Procedures and supporting documentation should be customised to reflect those of the individual school.

Do not alter policy statements without consultation with the CEO of CEN Hub.

The Purpose of Namoi Valley Christian School is to support Christian parents by providing an educational setting in which teaching and learning of a high standard are founded on Bible-based beliefs, values and behaviours and where parents have ready access to the decision-making framework.

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IMPORTANT RELATED DOCUMENTS

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|------------------------------------------|-------------------------|
| Employment Policy suite | Privacy Policy |
| Welfare Policy | Discipline Policy |
| Staff Code of Conduct | Grievance Policy |
| Code of Conduct for Parents and Visitors | Student Code of Conduct |
| Anti-Bullying Policy, Student | School Rules |
| Sexual Harassment Policy | |

Relevant Legislation:

NSW Ombudsman Act 1974
Ombudsman Amendment (Child Protection and Community Services) Act 1998
Child Protection (Working With Children) Act 2012
Child Protection (Working With Children) Amendment 2013
Children and Young Persons (Care and Protection) Act 1998

Reference:

Child Protection in NSW Christian Schools: Responding to Complaints & Investigating Reportable Conduct. ESPC Services P/L 2014
Christian Education National Ltd 'Class or Kind' Agreement with Ombudsman (Current signed Agreement)
Ombudsman Facts Sheets (www.ombo.nsw.gov.au – latest versions)

1 INTRODUCTION

Namoi Valley Christian School endeavours to ensure that the school is a safe environment where children are free of the risk of any form of abuse, or any other danger, by:

- Taking the necessary precautions to minimise harm;
- Ensuring safety networks are in place;
- Responding to indication or report of harm, abuse or danger to children;
- And acting in accordance with the legal obligation on all schools.

The school is committed to achieving the highest standards of education while fostering the dignity and integrity of the whole school community. The maintenance of a safe and supportive learning environment is essential to ensure that each student entrusted to our care is affirmed in his or her dignity and self-esteem as a person.

All staff must therefore endorse and embrace the principles of child protection as a fundamental responsibility.

2 CHRISTIAN RATIONALE

Namoi Valley Christian School has a commitment to honour and glorify God and to raise up effective leaders who will influence society for the glory of God.

Child Protection is part of the outworking of the Great Commandment to 'love the Lord your God with all your heart and with all your soul and with all your strength and with all your mind; and love your neighbour as yourself'. (Luke 10:27)

In the context of Namoi Valley Christian School, this love seeks to nurture and protect all people: with special regard to the children and young people placed into the School's care by parents and guardians; but also fostering the welfare of staff, volunteers and visitors to the School, the families and friends that form the community of the School, and the greater community. The education of students within Namoi Valley Christian School aims to protect them from harm, and to train them to live according to the principles of God's love in their future careers, families and communities.

Love honours each person as precious to God and desires their well-being in all ways. Therefore the School's procedures seek to embody patience and kindness, honouring and serving others without prejudice or partiality. 'Love does not delight in evil but rejoices with the truth. It always protects, always trusts, always hopes, always perseveres.' (1 Corinthians 13:4-7)

Namoi Valley Christian School honours the authority God has given to the government of our nation, and upholds the laws of the land for the protection of children and young people, and the systems for the implementation of those laws. The School's procedures in respect to these laws will be followed with compassion, sensitivity and humility towards all persons involved, as 'love does no harm to a neighbour. Therefore love is the fulfilment of the law.' (Romans 13:10)

3 PURPOSE OF THIS DOCUMENT

This document sets out the policy and procedures of Namoi Valley Christian School (“the School”) to assist staff in understanding and fulfilling their legal and professional obligations in the critical area of Child Protection. This Policy gives both a prevention and response perspective.

This Policy will:

- identify to staff their legal obligations in relation to child protection;
- explain to staff what is required of them to comply with, and implement, those obligations at a practical level; and
- explain the procedures to be followed in the employment of staff in child-related positions.

4 WHO MUST COMPLY

| <i>Responsibilities</i> | <i>Evidence of Compliance</i> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| Principal | |
| Ensure compliance with the processes and polices set out in this document | Secure files; CPL Policy & calendar |
| Review of this document as changes are made to the relevant laws | Version history |
| Ensure all relevant staff have current ‘Working With Children Check’ clearance | WWC Register |
| Compliance with guidelines and procedures as Head of Agency | Records of investigations |
| Maintain systems for a safe environment for students | Welfare Policy; WHS Policy |
| Ensure systems for reporting & investigating incidents | This document |
| Ensure adequate record keeping for audit or inspection by government authorities or CEN | Records of investigations; reports to CEN |
| Authorised Investigator | |
| Compliance with guidelines and procedures as Authorised Investigator | Records of investigations |
| All School Staff | |
| Read and agree to comply with the practices of Child Protection and their responsibilities under the law, as set out in this Policy, at the commencement of their employment | Annual CPL register; Staff Induction Policy; CPL Policy |
| Read and agree to comply with the Staff Code of Conduct (annually) | Annual Staff Code of Conduct files |
| Report according to the provisions of the law | Confidential report files |
| School community | |
| Comply with requirements of this policy | Code of Conduct for Parents & Visitors |
| Cooperate with any investigation | Records of investigations |

5 LEGAL OBLIGATIONS

The legal obligations to ensure the safety of children at school are effected through:

- (a) **Common Law Duty of Care** – that a person is not injured as the result of the negligence of another
- (b) Three complementary components in the New South Wales legislative scheme:
 - Children and Young Persons (Care and Protection) Act 1998** – Provision for reporting and investigating disclosures of child abuse to NSW Community Services (CS) www.community.nsw.gov.au
 - Ombudsman Act 1974 (NSW) [Part 3A]** – Provision for reporting to the Ombudsman regarding in-house systems for handling allegations of child abuse by employees www.ombo.nsw.gov.au; and
 - Child Protection (Working With Children) Act 2012; Child Protection (Working With Children) Regulation 2013** - Screening staff in child-related employment, administered by the Office of the Children's Guardian (CG) www.kids.nsw.gov.au
- (c) Other requirements under **NSW law**

6 DEFINITIONS

The following terms have the following meanings in this policy:

Child - a person under the age of 16 years

Young person - a person aged 16 or 17 years

'Child abuse' or **'abuse'** - can include sexual abuse, physical assault, emotional abuse and neglect, whether or not, in any case, with the consent of the child.

(Sexual abuse does not include sexual activity between consenting peers.)

Assault - an act committed intentionally or recklessly, which puts another person in fear of unlawful bodily harm

'Reasonable grounds' - refers to objective evidence for suspecting a 'risk of significant harm' based on:

- first hand observations of the child, young person or family;
- disclosure from the child, young person, parent or another person;
- inference based on professional training and /or experience.

'At risk 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.

'Significant' implies harm:

- that is sufficiently serious to warrant a response irrespective of a family's consent;
- that is not minor or trivial;
- that may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare or well-being;
- that can result from a single act or omission, or an accumulation of these.

'Reportable conduct' - conduct by a person in child-related employment which offends against proper standards of care and behaviour involving children and young people

Head of Agency is The Principal, in terms of the relevant Acts, and has responsibility for mandatory notification, arrangement of investigation, reporting and managing outcomes and risk management of situation

Authorised Investigator – a staff member who has received training & accreditation in (ESPC Services, training provider) - the Deputy Principal, and the Middle School Coordinator; or an external accredited investigator recognised by the Ombudsman

7 POLICY

Namoi Valley Christian School stands against child abuse and seeks the welfare and protection of all students in its care. It aims to promote a culture of child protection to the school and wider community.

7.1 Commitment

Namoi Valley Christian School is committed to:

- Providing a safe environment for students (WHS policy suite);
- Preventing harm to a student within the school (Staff Code of Conduct);
- Dealing promptly with any report of a student at risk of harm, including reporting to appropriate regulators and agencies, in an appropriate manner;
- Educating students regarding their rights, and equipping them with appropriate skills for avoiding or reporting uncomfortable or abusive situations (Teaching & Learning Policy suite; Student Code of Conduct);
- Training staff to recognise and appropriately handle and report situations where a student may be at risk of harm.
- Supporting students' welfare (Welfare Policy)

7.2 Communication

The school seeks to communicate its concern about child abuse, and its procedures for child protection to the school community regularly.

- This policy is published on the school's website
- Details are included in the Parent Handbook
- The school's Grievance Policy explains how to make a complaint to the school

7.3 The Principal's Responsibilities

The Principal is responsible for the administration and conduct of the school and all that relates to it. In terms of the relevant Acts, the Principal as the Head of Agency:

- Must be informed promptly of any case where a student may be at risk of harm.
- Will consult as necessary to determine whether there are reasonable grounds for further action.
- Must notify Community Services (CS) if there are reasonable grounds to suspect that a child is at risk of harm.
- Must report allegations of child sexual assault to CS. (Other staff members may also report to CS).
- May report concerns regarding a young person to CS.
- Must inform the reporting teacher of the action which has been taken.
- Must notify the Ombudsman in the event of an allegation of reportable conduct by staff, or any conviction or disciplinary action in relation to reportable conduct by an employee of which he/ she becomes aware.

- Has the duty to investigate, or delegate (to an accredited external source) the investigation of, an allegation of reportable conduct of a staff member.
- Will set up systems for providing a safe environment for children in the School's care, to minimise the chances of reportable conduct happening.
- Will ensure systems for recording and responding to allegations or convictions of a child protection nature against employees.
- Will make arrangements within the School to require all staff to inform Principal of any allegations or conviction of a child protection nature against an employee, of which they become aware as soon as practicable.

7.4 A Complaint Against the Principal

If the Principal is the subject of a complaint, the Chairman of the Board must be informed. The chairman shall conduct CEN to determine who the responsibility of the investigation can be delegated to.

7.5 Mandatory Reporters

All staff are Mandatory Reporters under the Children and Young Persons (Care and Protection) Act, 1998.

All staff:

- Must be familiar with the School's Code of Conduct in relation to Child Protection.
- Must take the necessary steps to prevent and protect students from being harmed or exposed to harm, in consultation with the school Principal.
- Must report any suspicion, or disclosure, that a student is at risk of harm to the Principal, who must determine whether there are reasonable grounds for further action.
- In the event that the Principal determines there are not reasonable grounds to report, and the teacher disagrees, that teacher is responsible to notify CS themselves.
- In the event that no one is available to consult with, the teacher must take the necessary steps as required; and must make a written report to the Principal.
- Must report all allegations of reportable conduct, prior conviction for, or disciplinary proceedings in relation to, reportable conduct by staff to the Principal.

7.6 Documentation

- (a) Accurate documentation must be kept by all parties concerning:
- Reports made of any possible case of a student suspected to be at risk of harm, including:
 - details of any complaint, allegation or notification;
 - actions taken by the school as a result of such notification; and
 - any other details related to the report
 - All details relating to any investigation undertaken by the Principal, or authorised investigator
- (b) All records will be kept indefinitely in a secure confidential file at the school.

7.7 Confidentiality

Staff who have access to information regarding:

- students suspected to be at risk of harm
- allegations of reportable conduct by a staff member
- details of any investigation into a complaint

are to observe strict confidentiality in relation to the entire matter unless required by the Principal to disclose that information.

7.8 Curriculum

Child Protection curriculum will be incorporated and implemented within the school curriculum.

7.9 Employment Policy

Namoi Valley Christian School requires that Staff who are appointed to positions in the school are fit and proper persons to occupy those positions, and understand their responsibilities in this area.

- (a) The school will undertake that all child-related staff have clearance under the Working With Children Check.
- (b) Any child-related worker, paid or voluntary, who is subsequently barred under the Working With Children Check will be immediately removed from child-related work upon notification by letter to the School.

7.10 Staff Code of Conduct

- (a) All staff are required to agree to the Staff Code of Conduct, and sign accordingly at the commencement of employment and at the commencement of each year.
- (b) Staff cannot commence employment until their signed Staff Code of Conduct is received.
- (c) Staff members whom the Board reasonably believe, on the face of evidence presented by all concerned, to have breached this code, or any part of this policy, may be suspended pending the outcome of investigation, or summarily dismissed from employment.
- (d) A register of staff receiving and agreeing with the Staff Codes of Conduct shall be filed under child protection in the filing cabinet in the Principal's office.

7.11 Staff Training

In-service and induction processes will ensure that all staff are thoroughly conversant with this policy and related procedures; and informed regarding changes and updates.

- (a) The Principal, as Head of Agency, maintain currency through CEN, or AIS, training.
- (b) Training for all staff occurs in January and as required throughout the year.

- (c) Staff are required to sign their agreement to the Staff Code of Conduct annually.
- (d) Staff are required to sign that they have read and agreed to comply with the Child Protection Policy annually.

7.12 Volunteers

The School will ensure that all volunteers, tutors, contractors and other outside providers are informed of their obligations relating to child protection.

7.13 Protection of Staff

The School recognises that there is a danger that its staff could be seriously affected by false, vexatious or misconceived allegations against them. The School is therefore also committed to investigating all allegations promptly and fairly.

7.14 Counselling

To the extent possible, Namoi Valley Christian School will attempt to support students and staff who are the victims or the accused in cases of alleged child abuse by directing persons toward counselling and, if necessary, legal representation.

See also: www.victimsservices.justice.nsw.gov.au

7.15 Review

This policy and associated procedures will be reviewed on a regular basis as part of the general review of policies, and as required by changes to the relevant legislation.

8 PROCEDURES RELATING TO SIGNIFICANT RISK OF HARM TO A CHILD

NOTE: If there is immediate danger to the student, contact the Police (000) and/ or Helpline (133 627) directly.

Reporting to Community Services (CS)

Under the Care and Protection Act, **all staff in schools are mandatory reporters.**

Although the legislative requirement ends at age 16, Namoi Valley Christian School considers a 'child' to mean any student enrolled at school thereby extending the duty of staff to report concerns to cover all students.

8.1 Where a staff member suspects significant risk of harm to child:

- (a) Any member of staff who in the course of their work suspects that a child or young person has been, or is, at risk of significant harm from abuse or neglect, should as soon as practicable notify the Principal.
- (b) If the staff member is uncertain whether there are 'reasonable grounds', the Principal will determine whether there are reasonable grounds to suspect the child is at significant risk of harm.
- (c) The Principal will use the Mandatory Reporter Guidance Tool (at www.keepthemsafe.nsw.gov.au) in order to help ascertain whether or not the child is at significant risk of harm.
- (d) If it has been determined there **are** 'reasonable grounds' to suspect the child has been, or is, at significant risk of harm the Principal must promptly notify or authorise notification to CS.

(Appendix 3 – 'Circumstances which indicate a risk of significant harm')

Appendix 4 – 'Staff response to disclosure of abuse by a student')

8.2 Reporting to Community Services

Step 1 – Refer to the interactive on-line Mandatory Reporter Guide

To assess whether concerns meet the risk of significant harm threshold for reporting.

(www.keepthemsafe.nsw.gov.au)

Step 2 – Prepare information for report

If risk of significant harm is indicated after following the Mandatory Reporter Guide, the quality and detail of the information will help with decision-making and action that follows.

The information provided must include details about:

- The risk of significant harm;
- The child or young person;
- The family background;
- The reporter; and
- The context of the report.

The information provided in the report must be submitted to the Principal and the Authorised Investigator.

Staff preparing the report or with access to the information must observe strict confidentiality in relation to the entire matter.

Step 3 – The Principal must contact the Child Protection Helpline:

- Phone 133 627;
- Fax 9633 7666;
- eReport (where available).

They must also make written notification to CS on the prescribed form.

If the Principal declines to report, and the staff member has a current concern of risk of significant harm, the staff member should make the report.

Step 4 – File documentation

The Principal must ensure that documentation is completed and filed confidentially.

Step 5 – Provide information to Community Services

The Principal must comply with a direction from CS to provide information about the student who is the subject of an investigation following a notification of risk of significant harm.

Note: Reports to Community Services are confidential and the reporter's identity is protected by law if the report is made in good faith. (Appendix 5 -'Safeguards for Reporters')

8.3 Other matters to be aware of regarding a disclosure

- (a) Once a report is made to the Child Protection Helpline, no further report needs to be made unless new information comes to hand.
- (b) Reports should be made in one form only, i.e. by phone or fax or eReport. Confirmation in writing is unnecessary. The summary page or the decision report from the online Mandatory Reporter Guide can be printed and filed in the School records.
- (c) Further investigation is normally left to CS or the Police. If there is some aspect of the case that directly involves the School, investigation must be in consultation with CS, and with care to avoid contaminating evidence.
- (d) The Principal or staff members **MUST NOT** inform parents/ carers that a notification has been made. This is the responsibility of CS.
- (e) The Principal must inform a student who is to be interviewed by CS officers, or any other person, that they have the right to refuse the interview; and the right to have a support person attend any interview granted by the student.
- (f) The Principal **MUST NOT** inform parents/ carers of an interview with the student, where suspected abuse involves a family member or close family friend. This is the responsibility of CS.

- (g) If the alleged offender is not a family member or close family friend, a student **MUST NOT** be interviewed unless a parent/ carer or their nominated representative is present.
- (h) The Principal or staff member should not attend as a nominee of the parents or carers.
- (i) If the concerns do not fall within the category of 'significant harm' but are still matters of concern, the school may wish to deal with the matter internally or take action including discussing the matter with the School Chaplain and/ or parents. If appropriate in the circumstances, refer the matter to a Family Referral Service.
- (j) The Principal will follow up with CS if, after a reasonable time, feedback has not occurred, particularly to ensure parents have been informed and to facilitate any general counselling that may be necessary at school.

8.4 Confidentiality and privacy

- (a) The Principal must ensure accurate documentation is made (and kept strictly confidential and securely filed) concerning:
 - reports made to the Principal about possible risk of harm to a child and any decisions made and action taken;
 - details of any notification to CS;
 - details of any feedback or requests from CS following notification;
 - any actions taken by the school in relation to a notification.
- (b) At all stages it is essential that:
 - the student's right to privacy and confidentiality is respected;
 - the anonymity of the notifier is maintained;
 - the rights of any person implicated in the allegation are respected;
 - where the accusation is of a criminal nature the legal principle of *presumption of innocence* of the accused must be maintained
- (c) In general any person making an enquiry or complaint about a notification or interview with a student should be referred to CS.

8.5 Failure to report

There is no longer any criminal penalty for a mandatory reporter who fails to make a report to Community Services.

However, reporting is still a legal obligation. Namoi Valley Christian School expects that a mandatory reporter will fulfil their duty to all students. Failure to report may result in disciplinary action.

8.6 Information sharing between schools

Schools are required to exchange information relating to a child or young person's well-being. The Care and Protection Act also requires that reasonable steps are taken to co-ordinate decision making and service delivery regarding children and young people.

9 PROCEDURES FOR REPORTING TO THE OMBUDSMAN

(Notification of 'Reportable Conduct')

Ombudsman Amendment (Child Protection and Community Services) Act 1998

The role of the Ombudsman's office is to oversee child protection systems in designated agencies, including schools; and their handling of 'reportable allegations', including the investigation of allegations. It is an employment-related child protection division.

All notifications of 'reportable conduct' must be reported to the Ombudsman who will monitor the School's response and investigations, and may undertake their own investigation.

Schools are encouraged to make use of the Ombudsman's Enquiry Line to discuss any incident of concern to assess the likelihood of a report being required.

9.1 When to Report

A report to the Ombudsman is required to be made by the Principal, as Head of Agency, when an employee of the school:

- is implicated in any allegation of reportable conduct; or
- is discovered to have a conviction for, or to have been subject to any disciplinary proceeding in relation to reportable conduct.

This is an allegation-based system: it is the fact of an allegation, and what is alleged in the complaint or notification, that triggers the obligation to report to the Ombudsman.

Reportable conduct is:

- any sexual offence or sexual misconduct, committed against, with or in the presence of a child (including child pornography), or
- any assault, ill treatment, or neglect of a child, or
- any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child; where a 'child' is a person under the age of 18 years

It excludes conduct that is reasonable for the purposes of the discipline, management or care of children (Class or Kind Agreement between the Ombudsman and CEN schools), as outlined in the Staff Code of Conduct.

9.2 Procedure for reporting

Step 1

When an allegation of a child protection nature is made against an employee, the Principal is required to record and respond to the allegation. This process includes clarifying, on the face of it, if the allegation is reportable to the Ombudsman.

The Ombudsman's office will be contacted for advice about any incidents which may involve reportable conduct. Records of contact with the Ombudsman's office will be maintained separately of the review.

Step 2

If the allegation is reportable, the Head of Agency is required to make a notification to the Ombudsman on the prescribed form within 30 days of becoming aware of a reportable allegation or conviction.

The notification must include details of the reportable allegation or conviction and what the agency proposes to do about it. It is not a requirement that the investigation be completed within 30 days of becoming aware of the allegation.

[This requirement enables the Ombudsman to intervene early in matters where an agency, as evidenced by its initial response to an allegation, risks compromising the safety of the child, the integrity of the investigation or fair processes for the employee.]

Step 3

At the end of the internal investigation by the Authorised Investigator, the Head of Agency must send a report to the Ombudsman concerning the investigation. This report must include the agency's findings in relation to the allegations, details of any action taken or to be taken, copies of documents on which the report is based and any comments on the report.

Step 4

Once the notification and/or report is completed, the Ombudsman will assess the information and provide feedback. In doing so, it may be necessary to provide further information, as required by the Ombudsman.

9.3 Further Information

- (a) Staff must, as soon as practicable, inform the Principal if they:
- Become aware of any conduct, allegation or complaint that may involve reportable conduct by another employee, and report the circumstances;
 - Become aware of any allegation of a conviction or disciplinary action in relation to reportable conduct, against another employee, or themselves, and report the circumstances.
- (b) In the case of an allegation against the Principal, which may involve reportable conduct, or of a conviction or disciplinary action in relation to reportable conduct, staff must as soon as is practicable inform the Chairman of the School Board of the circumstances.
- (c) On receiving an allegation which may involve reportable conduct against an employee the Principal shall consult with the 'Authorised Investigator' to promptly decide whether or not, on the face of the information provided, the matter is reportable to the Ombudsman. In deciding this, the Authorised Investigator may seek clarification and record the details, but should not commence an investigation. Currently, the authorised investigator is the Principal. This may change in future years. At this stage it is recommended that the Principal contact CEN, or AISNSW, for advice and guidance.

If, on the face of it:

- the alleged behaviour was reasonable for the purposes of discipline, management or care of children and in line with the agency's code of conduct,

then the matter is not reportable to the Ombudsman, but needs to be recorded by the agency and dealt with as a complaint;

- the alleged behaviour involves the use of physical force that, in all the circumstances, is trivial or negligible, then the matter should be investigated and the result of the investigation recorded under workplace employment procedures.

- (d) Records shall be maintained of all complaints and allegations, not just those deemed reportable.

A 'proforma' for inquiries, notifications, interviews etc will be kept in a secure file for the creation of file notes.

- (e) In the event the alleged behaviour constituted 'reportable conduct', i.e. sexual offences, sexual misconduct, assault, ill-treatment, neglect or behaviour that causes psychological harm, the **matter must be reported to the Ombudsman within 30 days of the Head of Agency becoming aware** of the allegation, and the matter investigated by the Authorised Investigator.

- (f) In the case of reportable conduct the Authorised Investigator shall:

- Seek a signed written statement detailing the nature of the allegation and any other relevant information;
- If the person making the allegation is unable or unwilling to make or sign a written statement: record details of the allegation as reported, using as far as possible the words used by the person making the allegation;
- Direct the person making the allegation to maintain confidentiality;
- Conduct, or instigate, an investigation of the allegation;
- Make any notifications to Community Services, police, Ombudsman, or
- Children's Guardian as required.

- (g) The Principal as Head of Agency shall, as soon as practicable, and in any case within 30 days, notify the Ombudsman (Notification Form Part B) of:

- any allegation of reportable conduct, or conviction or disciplinary action related to reportable conduct, against an employee of the school;
- the findings of the investigation into the allegation;
- whether or not the School plans to take any disciplinary or other action in relation to the employee;
- any written submissions that the employee wishes to have considered in relation to the above.

- (h) At the conclusion of the investigation the Principal shall notify the Commission for Children and Young People of the disciplinary proceedings unless the allegation was found to be false, vexatious or misconceived.

9.4 Conduct of an Investigation

- (a) Any investigation will normally include the following steps:
- Clarify the allegation
 - Carry out a risk assessment

- Collect all available relevant information (ensure adequate documentation)
 - Interview all relevant witnesses (ensure all interviews are adequately recorded)
 - Inform the employee who is the subject of the allegation of the substance of the allegation
 - Give the employee access to any relevant documents which do not need to be kept confidential
 - Interview the employee ensuring procedural fairness
 - Consider all the evidence and make a preliminary finding whether the allegation is sustained or not
 - Decide on disciplinary action, if any, to be taken against the employee
- (b) All investigations must be conducted in an impartial, independent and objective manner, in regard to the alleged victim, the accused person and the reputation of the School.
- (c) The Authorised Investigator will normally conduct an investigation but may ask another person to undertake the investigation, e.g. in cases where a conflict of interest may arise. (i.e. a clear history of conflict between the proposed investigator and the accused)
- (d) All persons involved in the investigation must maintain a high level of confidentiality throughout the investigation. (It may, in some circumstances, be inappropriate to advise the accused person of the identity of the person making the allegation.)
- (e) The accused employee must not discuss the allegations with students (including the alleged victim) or with the parents without the approval of the school.
- (f) The School should, as far as possible, make available counselling and support to all those involved in an investigation, particularly the victim and accused.
- (g) All communication with the Ombudsman, records and reports of allegations and investigations, will be kept in secure confidential files, with access limited to authorised staff; and cross-referenced to student files.
- (h) If key personnel leave or become unavailable during an investigation, all files will be handed over to the incoming staff member.

9.5 Risk Assessment:

- (a) The purpose of a risk assessment is to identify and minimise the risk to:
- the child or children who are alleged to have been victims of the abuse;
 - the employee against whom the allegation was made;
 - other children whom the employee may contact;
 - the proper investigation of the allegation.
- (b) Action may include: the employee being temporarily relieved of some duties; being required to avoid certain pupils; or in special cases, being suspended from duty.
- (c) Any decision taken as a result of a risk assessment is in no way an indication of the guilt of the employee concerned, nor will affect the findings of the investigation.
- (d) The factors to be considered during the risk assessment include:
- the nature of the allegation;
 - the vulnerability of the children;

- the nature of the position occupied by the employee;
 - the level of supervision of the employee;
 - the disciplinary history of the employee;
 - the safety of the employee;
 - any comment made by the employee.
- (e) Risk should be continually monitored throughout the investigation.

9.6 Notifying and Interviewing the Employee who is the Subject of an Allegation

- (a) If Community Services or the police are investigating an allegation, advice should be received from them about when to inform an employee about the details of an allegation.
- (b) Otherwise, the decision of when to inform the employee 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.
- (c) Within these constraints the employee should be told as soon as possible of the allegation made. Where possible employees should be given reasonable advance notice of an interview with the investigator; sufficient details of the allegation to allow the employee to respond; and advised they may have a witness at the interview.
- (d) Employees may have someone to support them during the interview process. A support person is there as a witness only: not as an advocate or to take an active role in the proceedings.
- (e) A record must be kept of the meeting. This could be a tape recording, a full written record or short minutes.

9.7 Findings and disciplinary proceedings:

- (a) At the conclusion of the investigation a preliminary finding will be made on the balance of probabilities that:
- the allegation was false; or
 - the allegation was vexatious, i.e. made without substance, or malicious; or
 - the allegation was misconceived, i.e. it was made in good faith, but either without substance or based upon a misunderstanding, or the incident could not reasonably be considered reportable conduct; or
 - the allegation was not sustained; or
 - the allegation was not one of reportable conduct, but might constitute a breach of professional behaviour or judgement, which requires further professional disciplinary action; or
 - the allegation was sustained, and the matter required further disciplinary action, and reported to the Children's Guardian.
- (b) As a result of findings of the investigation the Principal or Board may take disciplinary proceedings against the employee. Such proceedings will have regard to procedural fairness and will usually involve:
- Giving the employee details of the final findings;
 - Informing the employee of the possible action the Principal or Board may take;

- Giving the employee the right to respond.
- (c) The employee must be advised if the employer has notified completed disciplinary proceedings to the Commission for Children and Young People.
- (d) If the completed disciplinary proceedings are notified to the Commission for Children and Young People, the employee is entitled to inspect the employer file in accordance with Freedom of Information Principles, subject to any exemptions which may apply under that Act.

9.8 Complaint or Review

- (a) The employee is entitled to ask the Ombudsman to review the investigation and findings if the employee believes the investigation was unfair, biased, incomplete or suffered from some deficiency giving rise to an incorrect finding.
- (b) Parents have the right to complain to the Ombudsman if they are concerned about some aspect of the investigation.

9.9 Procedure with Regard to Class or Kind Agreement with NSW Ombudsman

(Determination by the NSW Ombudsman under Section 25CA of the Ombudsman Act 1074, concerning Christian Education National and the participating member school)

- (a) **Responsibilities of CEN:**
- Encourage accreditation and ongoing training of Authorised Investigator/s
 - Facilitate and monitor the use of formalised support during investigations
 - Facilitate provision of further child protection resources to schools
 - Monitor school's compliance with child protection responsibilities; and give feedback on investigations
 - Maintain a data base of: signed Class or Kind Agreements with schools; 'Completed Class or Kind Investigation Notifications'; and records of accreditation and training of investigators
 - Ensure that the school and Authorised Investigator/s maintain adequate records of advice given or information received during investigations
- (b) **Responsibilities of the School:**
- Notify CEN of any allegations
 - Use only accredited Authorised Investigator/s
 - Seek advice; and follow advice given via formal support mechanisms provided by CEN
 - Outsource investigations where required by Ombudsman Determination
 - Take appropriate action following investigations; and document rationale and actions taken
 - Authorise the finalisation of an investigation in signed final report
 - Retain adequate records of matters covered by Ombudsman Determination

- Ensure all relevant employees receive basic training of their responsibilities in identifying, and reporting allegations of reportable conduct to the Head of Agency
- Retain a separate register of all Class or Kind Agreement investigations
- Forward all completed Class or Kind Investigation Notifications to the CEN State Executive Officer, including:
 - name of school
 - name of Investigator
 - date of investigation
 - acknowledgement that the matter complies with the Ombudsman Determination
 - any other necessary identifying information
- Authorise the Ombudsman to access records of allegations of reportable conduct made against an employee of the school

(c) **Record Keeping**

- Complete all records accurately and honestly at regular intervals, as required
- Make records available to CEN State Executive Officer or Ombudsman, as required
- Provide any reports about the fulfilment of the school's child protection responsibilities, as required
- Hard copy of files are kept in secure locked cabinet
- Electronic files are kept in secure files with authorised access only

(d) **Inspection and Audit**

- Following reasonable notice, the CEN State Executive Officer shall have the right to inspect and/ or conduct an audit of the schools records to ensure compliance with this Agreement
- The school shall cooperate with a request for an inspection, and give access to its records
- Any audit or inspection as specified above shall be at the cost of CEN

Reference:

'Class or Kind' Agreement between Christian Education National Ltd & Namoi Valley Christian Schools Ltd (current year)

Further Information:

www.ombo.nsw.gov.au/ Facts Sheets

10 PROCEDURES RELATING TO STAFF SCREENING FOR CHILD-RELATED EMPLOYMENT

The Office of the Children's Guardian through the Child Protection (Working with Children) Act 2012 (WWC Act) aims to reduce the risk of abuse to children by establishing Working With Children Check (WWCC) clearance. This check is a screening mechanism aimed at reducing the likelihood that unsuitable people be employed or engaged in child-related employment.

The check applies to child related workers. 'Worker' is defined comprehensively to include paid, unpaid and other roles.

10.1 Definition of child-related work

Child related work is defined as work that involves direct contact by the worker with children; and work that is in one of the sectors of:

Child development & family welfare services; child protection; early education & child care; education; transport services for children; youth workers; children's health services; disability services; entertainment for children; justice services; religious services

Further information: Part 2, Child-related Work, [Child Protection \(Working With Children\) Regulation 2013](#), (under the [Child Protection \(Working With Children\) Act 2012](#))

<http://www.kidsguardian.nsw.gov.au/Working-with-children/Working-With-Children-Check>

10.2 Regulations for employers

Employers must:

- Register online with the Working With Children Check at: www.newcheck.kids.nsw.gov.au
- Verify the Check status of every new paid employee before hiring them to ensure they have a clearance or a completed application for a Check
- Ensure current paid workers and all volunteers apply for the Check in accordance with the phase in schedule
- Remove any barred person from child-related work
- The School needs to establish whether a Working With Children Check is necessary for the position being filled, and may not ask for one if it is not required

10.3 Compliance for employees in child-related work

- A child-related employee or volunteer is responsible for applying for his or her own Working With Children Check.
- An employer cannot apply on behalf of a worker.
- Child-related workers **starting a new job** must apply for a Check before they begin their new role.
- Paid child-related workers who are **currently employed** do not need to apply straight away; they will be phased in over a five year period. (Secondary 2016; Early childhood/ Primary 2017)
- **Volunteers (new and current)** will also be phased in. (Secondary 2016; Early childhood/ Primary 2017)

- **Self employed people** who hold a Certificate for Self Employed People (CSEP) may continue to use their CSEP until it expires; and must apply for the Check once their CSEP expires.

10.4 To apply for a Check

STEP 1

- Applicants fill in an online form at www.newcheck.kids.nsw.gov.au
- Once they have submitted the form, they will receive an application number.
- This application number **cannot** be used for online verification until STEP 2 is completed.

STEP 2

- Applicants must take their application number and proof of their identity to a NSW service centre or NSW Council Agency.
- Proof of identity for the Working With Children Check is the same as for a NSW driver's licence.
- Paid workers pay an \$80 fee for a five year clearance.
- The application number can then be used in the online verification process, pending the final outcome of the Working With Children Check application.
- An applicant must appear in person to prove their identity; this task cannot be delegated to a third party.
- Proof of identity must be performed in NSW; it cannot be completed from interstate or overseas.

Exemptions

There are specified exemptions from the Working With Children Check under Part 4, Clause 20 of the [Child Protection \(Working With Children\) Regulation 2013](#).

Exemptions relate to administrative and maintenance staff, parental helpers in class, visiting speakers.

People covered by the exemptions are not required to have a WWCC.

10.5 Results of a Check

- If the worker receives a clearance, the Check is valid for five years and may be used for any child-related work in NSW.
- Cleared applicants will be subject to ongoing monitoring for relevant new records which could lead to a bar and the clearance being revoked before the five year expiry date.
- Barred applicants must not engage in any child-related work (paid or unpaid). It is an offence for them to do so and penalties apply.
- It is an offence to hire a barred worker for child-related work.

10.6 Verifying a child-related worker

Before hiring a new paid child-related worker, WWCC status must be verified to ensure they have a clearance to work with children, or have completed an application for a Check.

- Verification can only be completed online – a worker cannot present their Working With Children Check number and clearance on paper, due to possible fraudulence or obsolescence.
- Current employees and volunteers are being phased in (Secondary 2016; Early childhood/ Primary 2017)

To verify a Working With Children Check status:

1. Go to www.newcheck.kids.nsw.gov.au/ *Child-related employers*
2. Click the *Start here* button
3. Click the *Employer login* button.
4. Click the *Verify Working With Children status* tab.
5. Enter the worker's:
 - Full name
 - Date of birth
 - Working With Children Check number (or application no.) and click *Verify*A brief report will appear on-screen.

10.7 Working With Children Check status

These are the possible results and their meaning:

Application in progress - A Working With Children Check application is being processed and the applicant may work with children.

If the applicant becomes barred, you will be contacted and advised on what to do next.

Cleared - This applicant has a Working With Children Check clearance that is valid until the listed expiry date. The applicant may work with children.

Barred - The applicant has been barred from working with children and it is an offence to engage this person for child-related work.

Interim barred - The applicant has been barred from working with children during the course of a risk assessment. It is an offence to engage this person for child-related work.

Not found - The database cannot find a matching Working With Children Check for any one of these reasons:

- The data entered for verification has errors;
- The person's application has been withdrawn or terminated without an outcome;
- An application has not been completed by this individual.

It is an offence to engage this person in child-related work or child-related roles.

If the outcome of your online verification of a worker is:

- barred
- interim barred
- not found

The School cannot employ them to work with children – paid or unpaid.

10.8 Records considered in the Working With Children Check

A Working With Children Check includes a national police check and review of findings of misconduct involving children.

Further information:

www.newcheck.kids.nsw.gov.au /FACT SHEET: Records used to assess risk

Only significant sexual misconduct and serious physical assault will be considered in the Working With Children Check.

Findings of misconduct can only be reported by “reporting bodies” and the *Child Protection (Working With Children) Act 2012* nominates the categories of agency that will be required to report Disciplinary Matters.

10.9 Risk assessment

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

(a) It will be triggered by:

- an offence listed in Schedule 1 of the *Child Protection (Working With Children) Act 2012* (and equivalent records from other states and territories)
- a pattern of behaviour or offences involving violence or sexual misconduct that represents a potential risk to children (even if not listed on Schedule 1 or 2)
- findings of misconduct reported by a reporting body.
- notifications by the Ombudsman.

Schedule 1 records are listed in the FACT SHEET: Records used to assess risk from www.newcheck.kids.nsw.gov.au

When assessing risk, factors set out in section 15 of the *Child Protection (Working With Children) Act 2012* are considered. These factors relate to the conduct of the offence, the applicant, and likely recurrence of the offence.

The Commission must also take into consideration any information given in or in relation to the application, and any other matters considered necessary.

- (b) The Commission will keep the applicant informed during the risk assessment process. If a bar is being considered, the Commission will contact the applicant to inform him or her of the potential decision and invite them to submit information which may affect the outcome of the final decision.
- (c) If the final outcome is a bar, notification will be issued by post. In most cases, barred workers can apply for a review of the decision to the Administrative Decisions Tribunal.

Further information: Fact Sheet: Bars and Appeals (www.newcheck.kids.nsw.gov.au)

10.10 Record keeping

Employers are required to keep records of child-related workers which include:

- Full name

- Working With Children Check number
- Date and outcome of the Check verification
- Check expiry date.

These records may be electronic or in hard copy format, but must be made available if required for audit and monitoring purposes. A list of all current WWCC clearances is maintained on the school server. The list is checked at the beginning year to identify which workers will be expiring.

- Workers will be reminded to renew their Check three months before it expires
- Workers are responsible for applying and renewing their own Working With Children Checks
- No notification will be sent to employers
- Employers have responsibility for verifying the status of Working With Children Checks

10.11 Notifications

If a worker becomes barred, the employer will be contacted, using details provided during the online verification process.

Only the worker's barred status will be shared with the employer. Details of work or criminal records will NOT be shared.

Notification will be sent by letter, addressed to the individual who verified the worker. The letter will outline the legal implications of a barred status and the action required by the employer.

10.12 When notification is received

If you receive a letter advising you that a current employee or volunteer has become barred, you must immediately remove them from child-related work. It doesn't matter whether they are paid or unpaid; supervised or unsupervised.

Your options are:

- dismiss the worker
- suspend them from child-related work pending the outcome of an appeal
- transfer them to a non-child-related role within the business (although you are under no legal obligation to find an alternative position for a barred worker).

The courts cannot order the re-employment of a person for child-related work if the person is barred from working with children.

Damages or compensation are not payable to a worker who has been removed from child-related work because they are barred from working with children.

See: [FACT SHEET: Bars and appeals from www.newcheck.kids.nsw.gov.au](http://www.newcheck.kids.nsw.gov.au)

10.13 Privacy and confidentiality

The Office of the Children’s Guardian will maintain a register for Working With Children Checks.

Information about a person that may be shared

The following information about a person contained in this register may be made available by the Children’s Guardian to an employer or proposed employer on request by the employer or proposed employer:

- The Working With Children Check application number of any worker;
- The current Check status of a child-related worker;
- The number, type (volunteer or non-volunteer) and expiry date of a Working With Children Check held by a child-related worker.

The Children’s Guardian must not make this information available unless the request is made in an approved format and contains the particulars required by the Children’s Guardian.

Information about an employer that may be shared

The following information about an employer contained in the register may be made publicly available by the Children’s Guardian:

- the trading name or registered business name of the employer
- the child-related work for which the employer engages a child-related worker
- the 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 Children’s Guardian by the employer within a specified period.

11 FURTHER INFORMATION

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Community Services (CS) General Enquiries: 02 9716 2222 Help Line:132 111 (for all reporting) TTY: 1800 212 936 www.community.nsw.gov.au</p> | <p>Commission for Children & Young People General Enquiries: 02 9286 7276 Fax: 02 9286 7267 Email: kids@kids.nsw.gov.au</p> |
| <p>Working with Children Check Phone: 02 9286 7219 Email: check@kids.nsw.gov.au www.kids.nsw.gov.au</p> | <p>NSW Ombudsman General Enquiries: 02 9286 1000 TTY: 02 9264 8050 Email: nswombo@ombo.nsw.gov.au www.ombo.nsw.gov.au</p> |

References:

Child Protection in NSW Christian Schools: Responding to Complaints and Investigating Reportable Conduct *ESPC Services Pty Ltd 2011*; www.espcservices.com

Ombudsman Act: www.ombo.nsw.gov.au

Working With Children Check: Office of the Children’s Guardian (Commission for Children and Young People); www.newcheck.kids.nsw.gov.au

www.kidsguardian.nsw.gov.au