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PRIMARY • PRESCHOOL • PLAYGROUP

CHILD PROTECTION POLICY

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1 INTRODUCTION

1.1 Purpose and Scope

This policy document is provided to staff including employees and volunteers during their employment and engagement with Kinma to ensure a clear understanding of their duties and obligations under the key items of 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 volunteers and their relationship with students' and sets out staff responsibilities for child protection and processes that staff must follow in relation to child protection matters. This policy applies to all staff members, which includes employees, contractors, and volunteers.

Staff members who fail to adhere to this policy may be in breach of their terms of employment.

1.2 Key Legislation

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

- the Children and Young Persons (Care and Protection) Act 1998 ("Care and Protection Act");
- the Child Protection (Working With Children) Act 2012 ("WWC Act");
- the Children's Guardian Act 2019 ("Children's Guardian Act")
- The Crimes Act 1900 ("Crimes Act").

1.3 Related Policies

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

- Keeping them Safe – a proactive approach
- Child Safe scheme – implementing child safe standards (https://ocg.nsw.gov.au/child-safe-scheme
- Code of Conduct - sets out information about the standards of behaviour expected of all staff members
- Work Health and Safety Statement - identifies the obligations imposed by work health and safety legislation on Kinma and staff members
- Discrimination, Harassment and Bullying Statement - summarises obligations in relation to unlawful discrimination, harassment and bullying
- Complaint Handling Procedures – provides the steps taken by Kinma in addressing complaints
- Behaviour Management Policy - discusses the procedures and practices on supporting appropriate behaviours
- Student Leadership Policy

1.4 Compliance and Records

The Head of School monitors compliance with this policy and securely maintains school records relevant to this policy, which includes:

- register of staff members who have read and acknowledged that they read and understood this policy
- working with children check clearance verifications
- mandatory reports to Department of Communities and Justice (DCJ)
- reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions

2 CHILD PROTECTION

2.1 Empowerment of Students

Children are inherently vulnerable and the adults around them have a responsibility to protect them. Kinma recognises that it can take steps to reduce children's vulnerability by making sure that they:

- are active participants in their school community
- voices are clearly heard
- understand what is acceptable conduct
- are confident that their concerns will be taken seriously

Active participation by children is fundamental to Kinma's philosophy. Kinma's parent information kit explains that "Kinma children are encouraged to work in a style and at a level suitable to their developmental stage. They are involved in determining their needs together with their parents and teacher."

Kinma supports the active participation of Kinma students in all areas of their school life:

Learning themes: In Primary class discussions at the start of each term set themes for that term's study. The teacher weaves Board of Studies requirements into the theme. At Preschool, the program includes children's ideas and the interests they demonstrate. Children are also encouraged to make their own choices and decisions. These approaches are part of the Early Years Leaning Framework.

Class meetings: Primary classes hold class meetings on a fortnightly basis. Kids set the agenda, chair the meeting and determine its outcomes. Teachers abide by the chair's decisions. Class meetings determine conduct standards in the classroom.

Special events: Kinma students run their own events, including stalls at Kinma markets, the annual poetry festival and year six farewells.

Disputes: Kinma staff has a role to support discussion rather than intervene in disputes between students unless either party requires help or a mutually agreeable solution cannot be reached. Staff will listen to all parties to the dispute. The issue is generally resolved when all parties agree and accept the resolution. Accepting a resolution is easier when individuals feel empowered by being part of the decision-making process.

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

- a duty of care to ensure that reasonable steps are taken to prevent harm to students which could reasonably have been foreseen
- obligations under child protection legislation

2.2 Child Protection Concerns

There are different forms of child abuse. These include neglect, sexual, physical and emotional abuse.

Neglect is the continued failure by a parent or caregiver to provide a child with the basic things needed for his or her proper growth and development, such as food, clothing, shelter, medical and dental care and adequate supervision.

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

Physical abuse is a non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or any other person. It includes but is not limited to injuries which are caused by excessive discipline, severe beatings or shakings, cigarette burns, attempted strangulation and female genital mutilation.

Injuries include bruising, lacerations or welts, burns, fractures or dislocation of joints.

Hitting a child around the head or neck and/or using a stick, belt or other object to discipline or punishing a child (in a non-trivial way) is a crime.

Emotional abuse can result in serious psychological harm, where the behaviour of their parent or caregiver damages the confidence and self-esteem of the child or young person, resulting in serious emotional deprivation or trauma.

Although it is possible for 'one-off' incidents to cause serious harm, in general it is the frequency, persistence and duration of the parental or carer behaviour that is instrumental in defining the consequences for the child.

This can include a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation, or threatening behaviour.

2.3 Child Wellbeing Concerns

Child wellbeing concerns are safety, welfare or wellbeing concerns for a child or young person that do not meet the mandatory reporting threshold, risk of significant harm in section 5.1.2.

2.4 Staff Member Responsibilities

- Key legislation requires reporting of particular child protection concerns. However, as part of Kinma's overall commitment to child protection all staff are required to report any child protection or child wellbeing concerns about the safety, welfare or wellbeing of a child or young person to the Head of School.
- If the allegation involves the Head of School, a report should be made to the Chairperson of Kinma Board.

3 TRAINING

3.1 Kinma

Kinma provides all staff members with a copy of this policy on employment and at any time there are changes to the policy. At Kinma we ensure that child protection training is undertaken by all staff. Training is offered in term 1 and 3 of each year during the professional development days. Training is delivered by the Head of School or Education Leader. Every other year Kinma contracts an external provider to compliment this policy and provide information to staff about their legal responsibilities related to child protection and School expectations, including:

- Mandatory reporting
- Reportable conduct
- Working with children checks; and
- Professional boundaries.

For all new employees or casual / temporary staff an induction process is held prior to commencement of employment to discuss a number of policies and regulations. Child Protection is one such area.

If staff are unable to attend either of the PD days held internally, specific arrangements are made with the Head of School or Education Leader prior to the end of term 3 of each other year. For any external courses that are missed, a follow up course is provided at a mutually agreed time.

Records of attendees, course matter and certificates are held in a central register in Administration and maintained by the Administrator. This is overseen by the Head of School.

3.2 Staff Members

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

All staff members must participate in annual child protection training and additional training, as directed by the Head of School. The training complements this policy and provides information to staff about their legal responsibilities relating to child protection and school expectations, including:

- Mandatory reporting
- Reportable conduct
- Working with children check
- Professional boundaries

4 WORKING WITH CHILDREN

The WWC Act protects children by requiring a worker to have a WWCC clearance or current application to engage in child related work. Failure to do so may result in a fine or imprisonment.

The Office of the Children's Guardian (OCG) is responsible for determining applications for a WWCC clearance. It involves a national criminal history check and review of reported workplace misconduct findings. The result is either to:

- Grant a WWCC clearance (generally valid for 5 years); or
- Refuse a WWCC clearance (further applications cannot be made for 5 years).

In addition, the OGC may impose an interim bar on engaging in child related work for both applicants and WWCC clearance holders WWCC clearance holders are subject to ongoing monitoring by the OCG.

4.1 Responsibilities for Working with Children Checks

4.1.1 Staff Members

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

- Hold and maintain a valid WWCC clearance
- Not engage in child-related work at any time that they are subjected to an interim bar or a bar
- Report to the Head of School if they are no longer eligible for a WWCC clearance, the status of their WWCC clearance changes or are notified by the OCG that they are subjected to a risk assessment; and
- Notify the Children's Guardian of any change to their personal details within 3 months of the change occurring. Failure to do so may result in a fine.

It is an offence for an employee to engage in child-related work when they do not hold a WWCC clearance or if they are subject to a bar.

All volunteers are required to:

- Be aware of and follow the expectations of conduct expressed in Kinma staff Code of Conduct.
- Sign the Volunteer Statutory Declaration may be required and in high-risk roles have a Check

4.1.2 Kinma

Kinma is required to:

- Verify online and record the status of each child-related worker's WWCC clearance;
- Only employ or engage child-related workers or eligible volunteers who have a valid WWCC clearance; and
- Advise the OCG of the findings they have made after completing a reportable conduct investigation, including whether they have made a finding of reportable conduct. A finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault must be referred to the OCG's Working with Children Check Directorate (WWCC Directorate). It is an offence for an employer to knowingly engage a child-related worker who does not hold a WWCC clearance or who has a bar.

4.2 Working With Children Check Clearance

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

4.2.1 Child-Related Work

Child-related work involves direct contact by the worker with a child or children and that contact is a usual part of and more than incidental to the work. Child related work includes, but is not limited to work in the following sectors:

- Early education and child-care including education and care service, child-care centres and other child care;
- Schools and other educational institutions and private coaching or tuition of children;
- Religious services;
- Residential services including boarding schools, homestays more than three weeks, residential services and overnight camps;
- Transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings; and
- Counselling, mentoring or distance education not involving direct contact.
- Any queries about whether roles/duties engage in child-related work should be directed to the Head of School.

4.2.2 Application/Renewal

An application or renewal can be made through Service NSW or its replacement agency. The process for applying for and renewing a WWCC clearance with the OCG involves national police check and a review of findings of misconduct. If the OCG grants or renews a WWCC clearance, the holder will be issued with a number which is to be provided to Kinma to verify the status of a staff member's WWCC clearance.

4.2.3 Refusal/Cancellation

The OCG can refuse to grant a WWCC clearance or cancel a WWCC clearance. The person is then restricted from engaging in child-related work and not able to apply for another clearance for five years. Employers are notified by the OGC and instructed to remove such persons from child-related work.

4.2.4 Interim Bar

The OCG may issue an interim bar, for up to 12 months, to high risk individuals to prevent them from engaging in child-related work while a risk assessment is conducted. If an interim bar remains in place for six months or longer, it may be appealed to the Administrative Decisions Tribunal.

Not everyone who is subject to a risk assessment will receive an interim bar; only those representing a serious and immediate risk to children.

4.2.5 Disqualified Person

A disqualified person is a person who has been convicted, or against whom proceedings have been commenced for a disqualifying offence outlined in Schedule 2 of WWC Act. A disqualified person cannot be granted a WWCC clearance and is therefore restricted from engaging in child related work.

4.3 Ongoing Monitoring

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

4.3.1 Risk Assessments

A risk assessment is an evaluation of an individual's suitability for child-related work. The OCG will conduct a risk assessment on a person's suitability to work with children when a new record is received which triggers a risk assessment. This may include an offence under Schedule 1, pattern of behaviour or offences involving violence or sexual misconduct representing a risk to children and findings of misconduct involving children.

4.4 Process for Reporting to Office of the Children's Guardian

4.4.1 Kinma

Independent Schools are defined as a reporting body by the WWC Act.

Kinma is required to advise the OCG of the findings they have made after completing a reportable conduct investigation, including whether they have made a finding of reportable conduct. A finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault, must be referred to the OCG's WWCC Directorate. Information must also be referred internally to the OCG's WWCC Directorate if it meets the threshold for consideration of an interim WWCC bar, as per Section 17 of the WWC Act, pending a formal risk assessment.

Kinma may also be obliged to report, amend or provide additional information to the OCG as outlined in the WWC Act and the Children's Guardian Act.

4.4.2 Finding of misconduct involving children

Kinma will report any finding of reportable conduct to the OCG.

When informing an employee of a finding of reportable conduct against them, Kinma should alert them to the consequent report to the WWCC Directorate in relation to sustained findings of sexual misconduct, a sexual offence, or a serious physical assault.

The WWC Act enables a person who has a sustained finding referred to the OCG to request access to the records held by Kinma in relation to the finding of misconduct involving children once final findings are made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made.

4.4.3 Other information

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

5 MANDATORY REPORTING

The Care and Protection Act provides for mandatory reporting of children at risk of significant harm. A child is a person under the age of 16 years and a young person is aged 16 years or above but who is under the age of 18, for the purposes of the Care and Protection Act.

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

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

All teachers are mandatory reporters. Other staff members may also be mandatory reporters. Any queries about whether other staff members are mandatory reporters should be directed to the Head of School.

5.1 Reports to Department of Communities and Justice (DCJ)

A mandatory reporter must, where they have reasonable grounds to suspect that a child (under 16 years of age) is at risk of significant harm, report to the Department of Department of Communities and Justice (DCJ) (DCJ) as soon as practicable. The report must include the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

In addition, Kinma may choose to make a report to DCJ where there are reasonable grounds to suspect a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety, welfare and well-being of the young person.

In the independent school sector a mandatory reporter will meet their obligation if they report to the Head of School in Kinma. This centralised reporting model ensures that a person in Kinma has all of the information that may be relevant to the circumstances of the child at risk of significant harm and addresses the risk of Kinma not being aware of individual incidences that amount to cumulative harm.

5.1.1 Reasonable grounds

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

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

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

5.1.2 Significant harm

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

- the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,
- the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,
- in the case of a child or young person who is required to attend school in accordance with the Education Act 1990 —the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,
- the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
- the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,
- a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,
- The child was the subject of a pre-natal report under section 25 of the Care and Protection Act and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

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

What is "significant" is not minor or trivial and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare or well-being.

5.2 Process for Mandatory Reporting

5.2.1 Staff Members

Staff members must raise concerns about a child or young person who may be at risk of significant harm with the Head of School as soon as possible to discuss whether the matter meets the threshold of 'risk of significant harm' and the steps required to report the matter.

However, if there is an immediate danger to the child or young person and the Head of School or next most senior member of staff is not contactable staff members should contact the Police and/or the Child Protection Helpline (13 21 11) directly and then advise the Head of School or next most senior member of staff at Kinma as soon as possible.

Staff members are not required to, and must not, undertake any investigation of the matter. Staff members are not permitted to inform the parents or caregivers that a rep0rt to DCJ has been made.

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

5.2.2 Kinma

In general, the Head of School will report these matters to DCJ and, where necessary, the police. This is supported by DCJ in accordance with best practice principles.

5.3 Process for Reporting Concerns about Students

5.3.1 Staff Members

The Care and Protection Act outlines a mandatory reporter's obligation to report to DCJ concerns about risk of significant harm. However, to ensure centralised reporting all staff members are required to report any concern regarding the safety, welfare and wellbeing of a student to the Head of School. Staff members who are unsure as to whether a matter meets the threshold of 'risk of significant harm' should report their concern to the Head of School regardless.

Staff members are required to deal with all reports regarding the safety, welfare or wellbeing of a student with confidentially and only disclose it to the Head of School and any other person the Head of School's nominates.

6 REPORTABLE CONDUCT

Section 29 of the Children's Guardian Act 2019 requires the Heads of Entities, including non-government schools in New South Wales, to notify the OCG of all allegations of reportable conduct and convictions involving an 'employee' and the outcome of Kinma's investigation of these allegations. Under the Children's Guardian Act 2019, allegations of child abuse only fall within the reportable conduct jurisdiction if the involved individual is an employee of the relevant entity at the time when the allegation becomes known by the Head of Entity.

Reportable Conduct:

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

The Office of the Children's Guardian (OCG):

- must keep under scrutiny the systems for preventing reportable conduct by employees of non-government schools and the handling of, or response to, reportable allegations (including allegations which are exempt from notification) or convictions;
- must receive and assess notifications from non-government schools concerning reportable conduct or reportable convictions;
- is required to oversee or monitor the conduct of investigations by non-government schools into allegations of reportable conduct or reportable convictions;
- must determine whether an investigation that has been monitored has been conducted properly and whether appropriate action has been taken as a result of the investigation;
- may directly investigate an allegation of reportable conduct or reportable conviction against an employee of a non-government school, or the handling of or response to such a matter (e.g. arising out of complaints by the person who is the subject of an allegation); and
- May investigate the way in which a relevant entity has dealt with, or is dealing with, a report, complaint or notification, if the OCG considers it appropriate to do so.

6.1 Reportable Conduct

Under the Children's Guardian Act 2019 reportable conduct is defined as:

- any sexual offence
- sexual misconduct committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material);
- any assault, ill-treatment or neglect of a child;
- neglect of a child;
- an offence under section 43B (failure to protect) or section 316A (failure to report) of the Crimes Act 1900; and
- any behaviour that causes significant emotional or psychological harm to a child.

Reportable conduct <u>does not</u> extend to:

- conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards; or
- the use of physical force that, in all the circumstances, is trivial or negligible and the circumstances in which have been investigated and the result of the investigation recorded in accordance with appropriate procedures; or
- Conduct of a class or kind exempted from being reportable conduct by the Children's Guardian Act under Section 30.

6.1.1 Definitions

The following definitions relate to reportable conduct:

Sexual offence: an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child, such as:

- sexual touching of a child;
- a child grooming offence;
- production, dissemination or possession of child abuse material.

Definitions of 'grooming', within child protection legislation, are complex. Under the Crimes Act, grooming or procuring a child under the age of 16 years for unlawful sexual activity is classed as a sexual offence. The Crimes Act (s73) also extends the age of consent to 18 years when a child is in a 'special care' relationship.

Under Schedule 1(2) of the WWC Act, grooming is recognised as a form of sexual misconduct. The Children's Guardian Act 2019 and this Child Protection Policy reflect these definitions within the context of the Reportable Conduct Scheme (Division 2).

An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of sexual offence.

Sexual misconduct: conduct with, towards or in the presence of a child that is sexual in nature (but not a sexual offence). The Act provides the following (non-exhaustive) examples:

- descriptions of sexual acts without a legitimate reason to provide the descriptions;
- sexual comments, conversations or communications;
- comments to a child that express a desire to act in a sexual manner towards the child, or another child.

Note – crossing professional boundaries comes within the scope of the scheme to the extent that the alleged conduct meets the definition of sexual misconduct. That is, the conduct with, towards or in the presence of a child that is sexual in nature (but is not a sexual offence).

Assault: an assault can occur when a person intentionally or recklessly (i.e. knows the assault is possible but ignores the risk):

- applies physical force against a child without lawful justification or excuse – such as hitting, striking, kicking, punching or dragging a child (actual physical force); or
- causes a child to apprehend the immediate and unlawful use of physical force against them – such as threatening to physically harm a child through words and/or gestures regardless of whether the person actually intends to apply any force (apprehension of physical force)

Ill-treatment: is defined as conduct towards a child that is:

- unreasonable; and
- seriously inappropriate, improper, inhumane or cruel.

Ill-treatment can include a range of conduct such as making excessive or degrading demands of a child; a pattern of hostile or degrading comments or behaviour towards a child; and using inappropriate forms of behaviour management towards a child.

Neglect: defined as a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for a child that causes or is likely to cause harm - by a person who has care and/or has responsibility towards a child.

Neglect can be an ongoing situation of repeated failure by a caregiver to meet a child's physical or psychological needs, or a single significant incident where a caregiver fails to fulfil a duty or obligation, resulting in actual harm to a child where there is the potential for significant harm to a child. Examples of neglect include failing to protect a child from abuse and exposing a child to a harmful environment.

Behaviour that causes significant emotional or psychological harm to a child is conduct that is intentional or reckless (without reasonable excuse), obviously or very clearly unreasonable and which results in significant emotional harm or trauma to a child.

For a reportable allegation involving psychological harm, the following elements must be present:

- An obviously or very clearly unreasonable or serious act or series of acts that the employees knew or ought to have known was unacceptable, and
- Evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self-harm, and
- An alleged causal link between the employee's conduct and the significant emotional or psychological harm to the child.

Reportable allegation is an allegation that an employee has engaged in conduct that may be reportable conduct.

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

Employee of an entity includes:

- an individual employed by, or in, the entity
- a volunteer providing services to children
- a contractor engaged directly by the entity (or by a third party) where the contractor holds, or is required to hold, a WWCC clearance for the purposes of their work with an entity; and
- a person engaged by a religious body where that person holds, or is required to hold, a WWCC clearance for the purposes of their work with the religious body.
- ESOA (Employee Subject of the Allegation).

6.2 Process for Reporting of Reportable Conduct, Allegations or Convictions

6.2.1 Staff Members

Any concerns about any other employee engaging in conduct that is considered inappropriate, or reportable conduct, or any allegation of inappropriate or reportable conduct made to the employee or about the employee themselves must be reported to [the Head of School]. Where it is uncertain if the conduct is reportable conduct but is considered inappropriate behaviour, this must also be reported.

Staff members must also report to [the Head of School] when they become aware that an employee has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction) involving reportable conduct. This includes information relating to the employee themselves.

If the allegation involves the Head of School, the staff member must report to [the Chair Person of Kinma Board].

6.2.2 Parents, Carers and Community Members

Parents, carer and community members are encouraged to report any conduct that is in their view inappropriate, reportable or criminal conduct to [The Head of School] or their delegate. All such reports will be dealt with in accordance with Kinma's complaint handling procedures.

6.2.3 Kinma

The Head of School, as the Head of Entity under the Children's Guardian Act 2019, must:

- ensure specified systems are in place for preventing, detecting and responding to reportable allegations or convictions;
- submit a 7-day notification form to the OCG within 7 business days of becoming aware of a reportable allegation or conviction against an employee of the entity (unless the Head of the Entity has a reasonable excuse).

The notification should include the following information:

a) that a report has been received in relation to an employee of Kinma, and
b) the type of reportable conduct, and
c) the name of the employee, and
d) the name and contact details of School and the Head of Entity, and
e) for a reportable allegation, whether it has been reported to Police, and
f) if a report has been made to the Child Protection Helpline, that a report has been made, and
g) the nature of the relevant entity's initial risk assessment and risk management action

The notice must also include the following, if known to the Head of Entity:

a) details of the reportable allegation or conviction considered to be a reportable conviction,
b) the date of birth and working with children number, if any, of the employee the subject of the report,
c) the police report reference number (if Police were notified),
d) the report reference number if reported to the Child Protection Helpline,
e) the names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or contractor.

Maximum penalty for failure to notify within 7 business days —10 penalty units.

6.3 Process for Investigating an Allegation of Reportable Conduct

The Head of School is responsible for ensuring that the following steps are taken to investigate an allegation of reportable conduct.

6.3.1 Initial Steps

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

- determine whether it is an allegation of reportable conduct;
- assess whether the DCJ or the Police need to be notified (i.e., if reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence). If they have been notified, seek clearance from these statutory agencies prior to Kinma proceeding with the reportable conduct investigation;
- notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by the DCJ or Police);
- notify the OCG within 7 business days of receiving the allegation;
- carry out a risk assessment and take action to reduce/remove risk, where appropriate; and
- provide an initial letter to the ESOA advising that an allegation of reportable conduct has been made against them and Kinma's responsibility to investigate this matter under Section 34 of the Children's Guardian Act 2019; and
- investigate the allegation or appoint someone to investigate the allegation.

6.3.2 Investigation Principles

During the investigation of a reportable conduct allegation Kinma will:

- follow the principles of procedural fairness;
- inform ESOA of the substance of any allegations made against them, at the appropriate time in the investigation, and provide them with a reasonable opportunity to respond to the allegations;
- make reasonable enquiries or investigations before making a decision;
- avoid conflicts of interest;
- conduct the investigation without unjustifiable delay;
- handle the matter as confidentially as possible; and
- provide appropriate support for all parties including the child/children, witnesses and the ESOA.

6.3.3 Investigation Steps

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

- interview relevant witnesses and gather relevant documentation;
- provide a letter of allegation to the ESOA;
- provide the ESOA with the opportunity to provide a response to the allegations either in writing or at Interview;
- consider relevant evidence and make a preliminary finding in accordance with the OCG guidelines;
- inform the ESOA of the preliminary finding in writing by the Head of Entity and provide them with a further opportunity to respond or make a further submission prior to the matter moving to final findings;
- consider any response provided by the ESOA;
- make a final finding in accordance with the OCG guidelines;
- decide on the disciplinary action, if any, to be taken against the ESOA;
- if it is completed, send the final report to the OCG within 30 days after having received the allegation, as per section 36 of the Children's Guardian Act 2019.
- should the final report be unfinished within 30 days, the Head of Entity must provide, at minimum, an interim report to the OCG within 30 days of having received the allegation, as per section 38 of the Children's Guardian Act 2019.

Submission of an interim report must include;

- a reason for not providing the final report within 30 days and an estimated time frame for completion of the report.
- specific information, including (if known); the facts and circumstances of the reportable allegation; any known information about a reportable conviction; action taken since the OCG received a notification about the reportable allegation or reportable conviction; further action the Head of Entity proposes to take in relation to the reportable allegation or reportable conviction; including if the Head of Entity proposes to take no further action; the reasons for the action taken and the action proposed to be taken or the reasons for the decision to take no further action; other information prescribed by the regulations; and be accompanied by copies of documents in Kinma's possession, including transcripts of interviews and copies of evidence.

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

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

6.4 Risk Management Throughout an Investigation of a Reportable Conduct Allegation

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

The Head of School is responsible for risk management throughout the investigation and will assess risk.

6.4.1 Initial Risk Assessment

Following an allegation of reportable conduct against an employee, the Head of School conducts an initial risk assessment to identify and minimise the risks to:

- the child(ren) who are the subject of the allegation;
- other children with whom the employee may have contact;
- the ESOA;
- Kinma, and
- the proper investigation of the allegation.

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

- the nature and seriousness of the allegations;
- the vulnerability of the child(ren) the ESOA has contact with at work;
- the nature of the position occupied by the ESOA;
- the level of supervision of the ESOA; and
- the disciplinary history or safety of the ESOA and possible risks to the investigation.

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

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

6.4.2 Ongoing Risk Assessment

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

6.4.3 Findings

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

6.4.4 Information for the ESOA

The ESOA will be advised:

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

The ESOA does not automatically have the right to:

- know or have confirmed the identity of the person who made the allegation; or

be shown the content of the OCG notification form or other investigation material that reveals information provided by other employees or witnesses.

The WWC Act enables a person who has a sustained finding referred to the OCG to request access to the records held by Kinma in relation to the finding of misconduct involving children, once final findings are made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made.

6.4.5 Disciplinary Action

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

In relation to any disciplinary action Kinma will give the ESOA:

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

6.4.6 Confidentiality

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

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

Records about allegations of reportable conduct against employees will be kept [in a secure area] and will be accessible by [the Head of Entity or with the Head of Entity's express authority].

No employee may comment to the media about an allegation of reportable conduct unless expressly authorised by the Head of School to do so.

Staff members who become aware of a breach of confidentiality in relation to a reportable conduct allegation must advise the Head of School.

7 CRIMINAL OFFENCES

In 2018 the Crimes Act was amended to adopt recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. The new offences are designed to prevent child abuse and to bring abuse that has already occurred to the attention of the police.

7.1 Failure to Protect (Crimes Act 1900 – NSW)

An adult working in a school, therefore all staff members, will commit an offence if they know another adult working there poses as serious risk of committing a child abuse offence and they have the power to reduce or remove the risk, and they negligently fail to do so either by acts and/or omissions.

This offence is targeted at those in positions of authority and responsibility working with children who turn a blind eye to a known and serious risk rather than using their power to protect children.

7.2 Failure to Report (Crimes Act 1900 – NSW)

Any adult, therefore, all staff members, will commit an offence if they know, believe or reasonably ought to know that a child abuse offence has been committed and fail to report that information to police, without a reasonable excuse. A reasonable excuse would include where the adult has reported the matter to the Head of School and is aware that the Head of School has reported the matter to the police.

7.3 Special Care Relationships (Crimes Act 1900 – NSW)

It is a crime in NSW for a staff member, volunteer or contractor to have a sexual relationship with a student where there is a special care relationship. The Act provides that a young person is under an adult's special care if the adult is a member of the teaching staff of Kinma at which the young person is a student; or has an established personal relationship with the young person in connection with the provision of religious, sporting, musical or other instruction.

The Special Care (sexual intercourse) offence under s73 was supplemented by an additional special care offence involving sexual touching now under s73A of the Crimes Act. The new offence under s73A will expand special care offences to also apply to non-penetrative sexual touching. The offence will protect children aged 16-17 years from inappropriate sexual contact with teachers and others who have special care of the child.

8 APPENDIX

8.1 Acknowledgement

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

_____ _____

Signed Dated

8.2 Supporting Documents - References

- NSW Department of Communities and Justice
  www.dcj.nsw.gov.au
- The Office of the Children's Guardian
  www.kidsguardian.nsw.gov.au
- Department of Premier and Cabinet – Keep Them Safe
  www.keepthemsafe.nsw.gov.au
- Further details of obligations of employers can be found in the Information for Employers guidelines and/or Information for reporting bodies factsheet developed by the OCG found at
  www.kids.nsw.gov.au
- Guide to Child Safe Standards
  www.ocg.nsw.gov.au

8.3 Planning Controls

Review by Education Committee

Website publications

Next scheduled review: 2025

8.4 Version Control

Version	Date of approval	Approved by	Brief description of changes
1.0	April, May 2019	Julie Carr, Manager	Discussion with NESA
1.1	May 2019		Formatting and layout adjustment
1.2	Oct 2022	Education Committee	Legislative changes
1.3	Jan 2023	Julie Carr, Manager	Child Safe standards - OCG
1.4	Feb 2024	Board	Reviewed – updated references