Marri Mittigar

Child Protection Policy

Purpose: The Head of Barker College and the Council of Barker College commit to the safety of all children and young people at the Marri Mittigar School in a safe, loving and supportive learning environment. The purpose of this Child Protection Policy is to summarise the obligations enforced by child protection legislation on the Marri Mittigar School ("the School") and to provide guidelines as to how the School will deal with certain matters.

Scope: Marri Mittigar Special Assistance School: Applies in all Marri Mittigar *School environments* to all adults in the School community, including staff, contractors, external providers, work experience participants (practicum teachers on placement), clergy, ministers of religion and instructors of religion who provide pastoral or liturgical services and volunteers. Parents/carers and other family members must also abide by the principles and expectations of the Schools child safety requirements.

Definitions: *School environment* includes both physical and online, and on-site and off-site grounds for School activities.

Mandatory or specific requirements: The Child Safe Organisation Policy is the overarching policy for the Council of Barker College and the Child Safety Report Procedures apply to all New South Wales School campus and staff.

Responsibility: The Head of Barker College and the Head of Marri Mittigar School.

1.1 General

The safety, protection and well-being of all students is of paramount importance to the Marri Mittigar School culture. Child safety is embedded in School leadership governance and compliance, and staff are equipped to keep children safe through continual education, awareness and training.

The Head of Barker College, with the School Council, has made a commitment to provide leadership and safe systems to ensure that the Marri Mittigar School fulfills its duty of care students for a safe and supportive learning environment. The council of Barker Colleges' Commitment Statement to Child Safety is available on the public website and contained in the *Barker College Child Safe Organisation Policy.*

Staff, contractors, volunteers and external providers and the School have a range of different obligations relating to the safety, protection and welfare of students including:

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

Child protection is a whole School community responsibility.

1.2 Key Legislation

The key principles guiding child protection legislation in Australia informs the state and territory child protection legislation applicable to each Barker College School campus:

a) The *Crimes Act 1900* Cth)
b) the *Education Act 2013* (Cth)
c) the *National Framework for Protecting Australia's Children 2021 -2031*
d) the *Modern Slavery Act 2015* (Cth)

The key pieces of child protection-related legislation applicable to Schools in New South Wales:

a) the *Education Act 1990* (NSW)
b) the *Children and Young Persons (Care and Protection) Act 1998* (NSW)

c) the *Child Protection (Working with Children) Act 2012* (NSW)

d) the *Child Protection (Working with Children) Regulation 2013* (NSW)
the Children's Guardian Act 2019 (NSW)

e) the *Crimes Act 1900* (NSW) and

f) the *Civil Liability Act 2002* (NSW).

1.3 Working with Children Check Requirements in NSW Paid Employees

In accordance with the *Child Protection (Working with Children) Act 2012* in NSW, all persons in child-related employment in New South Wales, are required to have a working with children check number (WWCC). Staff, contractors and volunteers in child-facing roles in Barker College NSW Schools and campuses are responsible for applying for their own Working with Children Check number through the NSW Childrens Guardian Scheme.

Barker College is responsible for verifying the status of the clearance before engaging an individual for child-related work or allowing you to work in a child-related voluntary capacity.

For Volunteers

Following the guidelines of the NSW Office of the Childrens Guardian (OCG), there are exemptions for a closed and defined list of indirect volunteer roles in the School and *do not* require a WWCC number.

a) parents or close relatives of children volunteering at the child's School;
b) referee, umpire, lineperson or other sporting official or grounds person if the work doesn't ordinarily involve contact with children for extended periods without other adults present.

Indirect Volunteers

Volunteers whose role does *not* bring the individual into direct contact with Marri Mittigar School students and other children, other than transient contact that is supervised by a Barker College or Marri Mittigar School staff member. The contact with students applies to accessing student personal information and records.

The assumption at Barker College is that parent/carer or close relative is an Indirect Volunteer and:

- They are closely supervised by a Marri Mittigar School or Barker staff member;
- The activity is directly associated with their child's Marri Mittigar School schedule; and
- The role does not lead to any ongoing contact with other Marri Mittigar School students or other children as a result of the volunteering.

Direct Volunteers at Marri Mittigar School are volunteers whose role brings them into more than transient face to face and direct contact with Marri Mittigar School students. This category is considered outside the OCG exemption and requires a WWCC in the Volunteer category.

Any decision regarding a Volunteer role being direct or indirect sits with the Head of Barker College and must be escalated to this level of decision making, in any and all circumstances.

Contractors

Individuals who are contracted by Barker College and/or Marri Mittigar School to engage in roles that have direct contact with students and other children, or their personal records and information, are required to have a WWCC.

Contractors in non-child related roles are required to complete a Child Safety in Schools Declaration before commencing work in the Marri Mittigar School.

1.4 Your Obligations to Report

The circumstances in which the legislation requires reporting of particular child protection issues are set out

in this Policy, the School requires staff, contractors and volunteers to report **any concern** about the safety, welfare or wellbeing of a child or young person to the Head of Barker College via the Child Safety Team at childsafetyreport@barker.nsw.edu.au

If the allegation involves the Head of Barker College, you are required to report your concern to the Chair of the Council of Barker College. Alternatively, a confidential Support Line is available at all times on the public School website at *concerns@barker* and information or concerns can be reported using a secure online reporting process.

These accessible and flexible reporting pathways form an important part of the Marri Mittigar Schools openness and commitment to address concerns regarding the safety, welfare and well-being of its students.

1.5 Other Policies

There are a number of other Marri Mittigar School and Barker College policies that relate to child protection. Thes policies and procedures are made available to Marri Mittigar School staff, contractors and volunteers prior to engagement at Marri Mittigar School and the Policy Library Application on MyBarker:

a) the Child Safe Organisation Policy;
b) the **Code of Conduct** which sets out information about the standards of behaviour expected of all staff members, contractors, external providers, volunteers and work experience participants (practicum teachers);
c) the **Work Health and Safety Policy.pdf** which summarises the obligations imposed by work health and safety legislation on the School, staff members, contractors, students on placement and volunteers;
d) **A Guide to Bullying and Harassment Protection** brochure which summarises your obligations in relation to unlawful discrimination, harassment, victimisation or bullying;
e) the **Social Media Policy;**
f) the **Complaints Procedure;** and
g) the **Promoting Positive Relationships Framework** for students**.**

1.6 Review

This Policy will be reviewed by the School on a Policy Cycle of three years and as required by changes to legislative and other child safety requirements.

PART A: MANDATORY REPORTERS

The *Child Protection* laws in NSW provide for mandatory reporting of children at risk of significant harm.

NOTE: Any concern regarding the safety, welfare or well-being of a Marri Mittigar School student must be reported to the Head of Barker College via the Child Safety Team at childsafetyreport@barker.nsw.edu.au

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

1. *WHO IS A MANDATORY REPORTER?*

Under Section 27 of the *Care and Protection Act* in NSW, mandatory reporters includes:

a) a person who, in the course of their professional work or other paid employment, delivers health care, welfare, education, children's services and residential services or law enforcement, wholly or partly, to children; and
b) a person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, or law enforcement, wholly or partly, residential services, to children,

All teachers are mandatory reporters in NSW as may be other Marri Mittigar School staff members, including health practitioners such as nurses, physiotherapists and psychologists Any staff member who is unsure of whether they are a mandatory reporter should speak to the Marri Mittigar School Psychologist or the Head of Barker College.

Throughout the investigative process, the Marri Mittigar School will ensure that the safety and welfare of all parties involved is preserved by:

a) maintaining strict confidentiality;
b) ensuring that due process and procedural fairness are followed;
c) acknowledging and resolving conflicts of interest; and
d) supporting and advising those staff members, students and any other individual who make a report under the *Care and Protection Act*.

2. *WHEN MUST A REPORT BE MADE TO THE AUTHORITIES?*

2.1 What is the Threshold?

A mandatory reporter must ensure, where they have reasonable grounds to suspect that a child (under 16 years of age) is at risk of significant harm, that the Head of Barker College or Marri Mittigar School Psychologist reports to Department of Communities and Justice or the Territory Families, Housing and Communities or a Northern Territory Police Officer.

This must be reported as soon as practicable, providing the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

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

2.2 Reasonable grounds

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

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

'Reasonable grounds' does not mean that you are required to confirm your suspicions or have clear proof before making a report. If you have any doubt about whether you have 'reasonable grounds' you should immediately speak with a member of the Child Safety Team or send an email to childsafetyreport@barker.nsw.edu.au

2.3 Significant Harm

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

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

What is meant by 'significant' in the phrase 'to a significant extent' is that which is sufficiently serious to

warrant a response by a statutory authority irrespective of a family's consent.

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

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

The significance can result from a single act or omission or an accumulation of these. 'Child' is a person under the age of 16 years for the purposes of the Care and Protection laws in both NSW.

2.4 Definitions

There are different forms of child abuse. These include, but are not limited to, neglect, sexual, physical abuse, emotional abuse or psychological harm.

Child Abuse Material as defined in the *Crimes Act 1900* (Cth) means material that depicts or describes, a person who is, appears to be or is implied to be a child as a victim of torture, cruelty or physical abuse or engaged in a sexual pose or act including what appears or is implied to be the private parts of child or young person.

Exploitation of a child is defined in section 16 of the *Care and Protection of Children Act 2007* (NT) as sexual and any other forms of exploitation of the child. Sexual exploitation can include, but is not limited to: Sexual abuse of the child; and
Involving the child as a participant or spectator in any of the following:

- an act of a sexual nature;
- prostitution;
- a pornographic performance

Modern Slavery is defined under the *Modern Slavery Act 2018* (Cth) and describes situations where offenders use coercion, threats or deception to exploit victims and undermine their freedom. It includes the worst forms of child labor, forced marriage, servitude, human trafficking, slavery and debt bondage.

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 or young people are bribed or threatened physically and psychologically to make them participate in the activity.

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

Serious psychological harm can occur where the behaviour of their parent or caregiver damages the

confidence and self-esteem of the child or young person, resulting in serious emotional deprivation or trauma.

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

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

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.

3. *WHAT SHOULD YOU DO IF YOU CONSIDER THAT A MANDATORY REPORT IS REQUIRED?*

Reporting by the Marri Mittigar School about these matters to the Department of Communities and Justice, or where necessary, the NSW Police and the Territory Families, Housing and Communities or a Northern Territory Police Officer in the Northern Territory, is undertaken by the Head of Barker College or the Marri Mittigar School Psychologist. This is in accordance with best practice principles and is the expectation of the School.

If you have a concern that a child or young person is at risk of significant harm, you should contact the Child Safety Team or the Head of Barker College as soon as possible to discuss whether the case reaches the threshold of 'risk of significant harm' and the steps required to report the matter.

However, if there is an immediate danger to the child or young person and the Head of Barker College or

Child Safety Team or the Head of Marri Mittigar is not contactable, you should speak to the NSW or NT Police and/or the Child Protection Helpline directly:

- NSW Communities & Justice Child Protection Helpline: 132 111 and then advise the Head of Barker College, Head Psychologist or Deputy Head of Student Experience as soon as possible.

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

- **You are not to inform the parents or caregivers that a report to the Police or the Department of Communities and Justice has been made.**

These steps will be undertaken by the Head of Barker College or delegate. You are required to deal with the matter confidentially and only disclose it to the persons referred to above or as required to comply with your mandatory reporting obligations. **Failure to maintain confidentiality** may be a serious disciplinary matter.

4. *WHAT SHOULD YOU DO IF YOU HAVE A CONCERN THAT IS BELOW THE MANDATORY REPORTING THRESHOLD?*

While the Care and Protection laws in NSW outline a mandatory reporter's obligation to report to the relevant authority, as a staff member of this School, **any concern** regarding the safety, welfare and wellbeing of a student must be reported to the Head of Barker College or Head

Psychologist via the Child Safety Team at childsafetyreport@barker.nsw.edu.au

PART B: THE CHILDREN'S GUARDIAN ACT 2019 NSW

1. *RESPONSIBILITIES*

1.1 General

From 1 March 2020, the Reportable Conduct Scheme in NSW is operated by the Office of the Children's Guardian under the *Children's Guardian Act 2019* (NSW).[1]

The scheme monitors how certain organisations ('relevant entities') investigate and report on types of conduct ('reportable allegations or reportable convictions') made against their staff members, volunteers or contractors who provide services to children.

Staff members are defined broadly within the Act to include any staff member of Marri Mittigar School or any individual engaged by Barker College to provide services to children – such as contractors, external providers, work experience participants (practicum teachers on placement), clergy, ministers of religion and instructors of religion who provide pastoral or liturgical services and volunteers.

Where there is a reference to staff member within Part B, it includes all of these individuals.

1.2 The NSW Office of the Children's Guardian

The NSW Office of the Children's Guardian:

a) must keep under scrutiny the systems for preventing reportable conduct by staff members of non-government Schools and the handling of, or response to, reportable allegations (including allegations which are exempt from written notice) or convictions;
b) must receive and assess written notice from non-government Schools concerning reportable conduct or reportable convictions;
c) is required to oversee or monitor the conduct of investigations by non-government Schools into allegations of reportable or reportable convictions;
d) must determine whether an investigation that has been monitored has been conducted properly, and whether appropriate action has been taken as a result of the investigation;
e) may directly investigate an allegation of reportable conduct or reportable conviction against a staff member of a non-government
School, or the handling of or response to such a matter (eg arising out of complaints by the person who is the subject of an allegation); and
f) may undertake 'own motion' investigations of non-government Schools where the Office of the Children's Guardian considers it appropriate to do so, including where there is evidence of systemic failure or serious conflict of interests.

1.3 Head of the Relevant Entity

The Head of the Relevant Entity for Marri Mittigar School is the Head of Barker College. Under the

Children's Guardian Act in NSW, the Head of the Relevant Entity is expected to:

---

[1] The Northern Territory does not operate a Reportable Conduct Scheme. Any allegation of child abuse, harm and/or exploitation against a Barker College staff member, contractor, or volunteer, would proceed under internal workplace investigation procedures under the Code of Conduct Policy and subject to any mandatory reporting in that jurisdiction, such as to the NT Police.

a) ensure systems are in place for recording and responding to allegations or convictions of a child protection nature against staff members. This includes reportable allegations and convictions and allegations that are exempt from written notice to the Office of the Children's Guardian;
b) provide information, as required, about the type and operation of systems for providing a safe environment for children in the entities' care, and systems for handling and responding to reportable allegations and convictions made against staff members;
c) make arrangements with the School to require all staff members to inform the Head of the Relevant Entity of any allegation or conviction of a child protection nature against a staff member of which they become aware as soon as practicable;
d) notify the Office of the Children's Guardian within 7 business days of reportable allegations or convictions made against a staff member of the School, assess the risk to the child and other children and the action the School intends to take and for what reason;
e) provide the Office of the Children's Guardian on request, documentary and other information with respect to an investigation being undertaken; and
f) forward to the Office of the Children's Guardian the final entity report within 30 calendar days or provide of an interim report with information about the progress of the investigation and an expected time frame for completion.

1.4 Obligations to Report

It is a condition of employment at Marri Mittigar School that all staff members, must report **any concerns** they may have about any other staff member, engaging in reportable conduct or any allegation of 'reportable conduct' that has been made to them, to the Head of Barker College, via the Child Safety Team at childsafetyreport@barker.nsw.edu.au **including information about themselves.**

If they are not sure whether the conduct is reportable conduct, but consider that it is inappropriate behaviour, it **MUST** still be reported. Marri Mittigar School considers this a positive duty to report and a finding of delay or failure to report potential breaches of the staff Code of Conduct or other child safety expectations may result in disciplinary employment actions.

All Marri Mittigar School staff members must also report to the Head of Barker College if they become aware if they or another staff member has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction) involving crimes against children and/or reportable conduct allegations or findings. This includes information relating to the staff member themselves. If the allegation involves the Head of Barker College, a staff member is required to report to the Chair of the Council of Barker College.

1.5 Contact for Parents/Guardians

The Head of Barker College is the contact point for parents/guardians if they wish to report an allegation of reportable conduct against a staff member.

2. *REPORTABLE CONDUCT*

2.1 Definition of Reportable Conduct

The *Children's Guardian Act 2019* (NSW) defines reportable conduct as being:

a) a sexual offence committed against, with or in the presence of a child;
b) sexual misconduct with, towards or in the presence of a child;
c) ill-treatment of a child;
d) neglect of a child;
e) an assault against a child;
f) behaviour that causes significant emotional or psychological harm to a child; and
g) any offence under section 43B Failure to reduce or remove risk of child becoming a victim of Child Abuse or 316A for concealing a Child Abuse offence of the *Crimes Act 1900* (Cth), whether or not, with the consent of the child.

Reportable conduct does not extend to:

a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards; or
b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures; or
c) conduct of a class or kind exempted from being reportable conduct by the Office of the Children's Guardian under section 25CA. This requires an agreement with the Office of the Children's Guardian documenting it is satisfied that the Schools investigative practices have reached an acceptable standard and are confident that this standard will be maintained.

Examples of conduct that would not constitute reportable conduct include (without limitation) touching a child in order to attract a child's attention, to momentarily guide a child or to comfort a distressed child; a school teacher raising their voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.

Sometimes an allegation may fall within more than one category.

2.2 Other Relevant Explanations

E**xplanations** of the various terms which may be referred to in relation to **reportable conduct allegations** **For the purposes of Children's Guardian Act in NSW a "child" is a person under the age of 18 years.**

Sexual offence

The term 'sexual offence' encompasses all criminal offences involving a sexual element that are 'committed against, with or in the presence of a child'.

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

- indecent assault;
- sexual assault;
- aggravated sexual assault;
- sexual intercourse and attempted sexual intercourse;
- possession/dissemination/ production of child pornography or child abuse material;
- using children to produce pornography;
- grooming or procuring children under the age of 16 years for unlawful sexual activity; or
- deemed non-consensual sexual activity on the basis of special care relationships.

Sexual misconduct

For sexual misconduct to constitute reportable conduct, the alleged conduct must have been committed against, with or in the presence of a child.

There are various types of sexual misconduct including (but not limited to):

- sexually explicit comments and other overtly sexual behaviour; and
- grooming behaviour.

Sexually explicit comments and other overtly sexual behaviour

Sexual misconduct includes a broad range of sexualised behaviour with or towards children. While it is not possible to provide a complete and definitive list of unacceptable sexual conduct involving children, the following types of behaviour give strong guidance:

- sexualised behaviour with or towards a child (including sexual exhibitionism);
- inappropriate conversations of a sexual nature;
- comments that express a desire to act in a sexual manner;
- unwarranted and inappropriate touching involving a child;

- personal correspondence and communications (including emails, social media and web forums) with a child or young person in relation to the adult's romantic, intimate or sexual feelings for a child or young person;
- exposure of children and young people to sexual behaviour of others including display of pornography; or
- watching children undress in circumstances where supervision is not required and it is clearly inappropriate.

Grooming Behaviour

Grooming or procuring a child under the age of 16 years for unlawful sexual activity is a sexual offence and under Schedule 1(2) of the *Child Protection (Working With Children) Act* (NSW) grooming is also a form of sexual misconduct.

Behaviour is seen as 'grooming' where there is evidence of a pattern of conduct that is consistent with grooming the alleged victim for sexual activity, and that there is no other reasonable explanation for it. The types of behaviours that may lead to such a conclusion includes (but is not limited to) the following:

- Persuading a child or group of children that they have a 'special' relationship, for example by:
  - spending inappropriate special time with a child;
  - inappropriately giving gifts;
  - inappropriately showing special favours to them but not other children;
  - inappropriately allowing the child to overstep rules; or
  - asking the child to keep this relationship to themselves.

- Testing boundaries, for example by:
  - undressing in front of a child;
  - encouraging inappropriate physical contact (even where it is not overtly sexual);
  - talking about sex; or
  - 'accidental' intimate touching.

- Inappropriately extending a relationship outside of work unknown to the School (except where there iss a pre-existing friendship with the child's family or as part of normal social interactions in the community).

- Inappropriate personal communication (including emails, telephone calls, text messaging, social media and web forums) that invites contact, explores sexual feelings or intimate personal feelings with a child.

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

Assault

An assault can occur when a person intentionally or recklessly applies physical form against a child without their consent (**actual physical force**), or intentionally or recklessly causes a child to apprehend the imminent use of physical form against them without their consent (**apprehension of physical force**).

Actual physical force can comprise conduct such as hitting, pushing, shoving or throwing objects. Apprehended physical force can comprise words and/or gestures that lead the child to apprehend the imminent application of physical force, regardless of whether the person actually intends to apply any force.

The element of intention or recklessness relations only to the application of physical force or the creation of the apprehension. The person must either intend to apply physical force or to create the apprehension, or know that it is possible this will happen but ignore the risk. It is not necessary that the person intends to harm or injure the child.

For an assault to occur, it is not necessary that the person act with hostility or that the child sustain an injury. However, the presence or absence of any hostility or injury may be significant when deciding whether the physical force used, or the apprehension created, constituted an assault.

In addition, the *Children's Guardian Act* (NSW) specifically outlines certain conduct which does **not** need to be reported:

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

Serious physical assault

A physical assault **is not serious** where:

- it only involves minor force; and
- it did not and was not ever likely to result in serious injury.

A physical assault is serious where:

- it results in the child being injured, beyond a type of injury like a minor scratch, bruise or graze; or
- it had the potential to result in a serious injury; or
- the injury suffered may be minor, but the assault is associated with aggravating circumstances (in this regard, aggravating circumstances might include associated inhumane or demeaning behaviour by the staff member, for example kicking a child, pulling a child by grabbing the child around the neck).

Ill-treatment

Ill-treatment captures those circumstances where a person treats a child or young person in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner.

The focus is on the alleged conduct rather than the actual effect of the conduct on the child or young person.

Ill-treatment can include disciplining or correcting a child in an unreasonable and seriously inappropriate or improper manner; making excessive and/or degrading demands of a child; hostile use

of force towards a child; and/or a pattern of hostile or unreasonable and seriously inappropriate, degrading comments or behaviour towards a child.

Neglect

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

Supervisory neglect:

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

Carer neglect:

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

Failure to protect from abuse:

- An obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.

Reckless acts (or failure to act):

- A reckless act, or failure to act, that:

- involves a gross breach of professional standards, and
- has the potential to result in the death of, or significant harm to, a child.

An incident can constitute neglect if it contains any element within this definition.

NOTE: 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 or where there is the potential for significant harm to a child.

Behaviour that causes psychological harm to a child

Behaviour that causes psychological harm is conduct that is obviously or very clearly unreasonable and results in significant emotional harm or trauma to a child.

There needs to be a proven causal link between the inappropriate behaviour and the harm, and the harm must be more than transient.

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

- an obviously or very clearly unreasonable or serious act or series of acts that the staff member 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 staff member's conduct and the psychological harm to the child.

Psychological harm can include the exacerbation or aggravation of an existing psychological condition, such as anxiety or depression.

When it is **alleged** that an adult's behaviour has caused psychological harm to a child, it will often be necessary to obtain a psychological or medical assessment of the child to determine whether psychological harm can be established.

However, a clinical diagnosis will not be required in every circumstance – particularly if the assessment itself may cause harm. In addition, in certain serious and/or ongoing domestic violence cases, it may be open to infer that a child has been psychologically harmed, in the absence of a clinical diagnosis of such harm.

Finally, it is important to stress that, when a report has established a child has a psychological condition, it is still necessary to show the condition was caused by the staff member's conduct.

Misconduct that may involve Reportable Conduct

The Children's Guardian Act (NSW) provides that a reportable allegation may include 'an allegation of misconduct that may involve reportable conduct.'

Some of the behaviours that could be misconduct that may involve reportable conduct include:

a) socialising with a child outside of the workplace in breach of the School's *Code of Conduct*;
b) purchasing gifts or paying special attention to the child (the gifts do not necessarily have to be expensive; they may include simple things such as lollies and ice creams);
c) attempts to isolate the child from a group;
d) attempts to befriend the child's family and offers to take the child to various places, assist the child with their schooling outside the workplace and in breach of the School's *Code of Conduct*;
e) touching that may not be sexual in nature, but may elicit a level of discomfort from the victim or from others who observe the behaviour;
f) inappropriate or suggestive comments or jokes directed toward the child;
g) providing alcohol or drugs to children; or
h) a staff member taking a child to their own home, or transporting a child to and from School or any other

place in breach of the School's *Code of Conduct*.

WHAT HAPPENS WHEN AN ALLEGATION OF REPORTABLE CONDUCT IS MADE?

2.3 Initial Steps

Once an allegation of reportable conduct against a staff member is received, the Head of the Relevant Entity is required to:

a) determine on face value whether it is an allegation of reportable conduct;
b) assess whether the Department of Communities and Justice or the NSW Police need to be notified (i.e. if there are reasonable grounds to suspect that a child is at risk of significant harm or a criminal offence has occurred);
c) notify the child's parents/guardians (unless to do so would be likely to compromise the investigation or any investigation by the Department of Communities and Justice or the NSW Police);
d) notify the Office of the Children's Guardian within 7 days of receiving the allegation;
e) carry out a risk assessment and take action to reduce/remove risk, where appropriate; and

f) investigate the allegation or appoint someone to investigate the allegation.

2.4 Investigation Principles

The Marri Mittigar School will:

a) be mindful of the principles of procedural fairness;
b) inform the person subject of the allegation (PSOA) of the substance of any allegations made against them and provide them with a reasonable opportunity to respond to the allegations;
c) make reasonable enquiries and conduct an investigation (if relevant) before making a decision;
d) conduct the investigation without unjustifiable delay;
e) avoid conflicts of interest;
f) handle the matter as confidentially as possible;
g) provide appropriate support for all parties including child/children, parents/guardians, witnesses and the PSOA; and
h) be aware of, and sensitive to, children with culturally and linguistically diverse or indigenous backgrounds and cultural practices.

2.5 Investigation Steps

In an investigation, the Head of the Relevant Entity or appointed investigator will generally:

a) Interview the person who is the subject of the allegation;
b) interview relevant witnesses and gather relevant documentation;
c) provide a letter of allegation to the PSOA;
d) interview the PSOA;
e) consider relevant evidence and make a preliminary finding in accordance with the Office of the Children's Guardian guidelines;
f) inform the PSOA of the preliminary finding and provide them with an opportunity to respond;
g) consider any response provided by the PSOA;
h) make a final finding in accordance with the Office of the Children's Guardian Guidelines;
i) advise the PSOA of the final findings and their right of reply to the final finding (if relevant);
j) decide on the disciplinary action, if any, to be taken against the PSOA; and
k) apply the Office of the Children's Guardian (OCG) Guidelines and decide if the matter is reportable to the OCG, or
l) Decide on the disciplinary action to be taken if, at the end of the investigation, the allegation is found to be false and vexatious.

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 Department of Communities and Justice or the NSW Police.

The PSOA may have an appropriate support person with them during the interview process. Such a person

is there for support only and as a witness to the proceedings and not as an advocate or to take an active role.

RISK MANAGEMENT

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

The Head of the Relevant Entity is responsible for risk management throughout the investigation and will assess risk at the beginning of the investigation, during and at the end of the investigation.

2.6 Initial Risk Assessment

One of the first steps following an allegation of reportable conduct against a staff member is for the Head of the Relevant Entity to conduct a risk assessment.

The purpose of this initial risk assessment is to identify and minimise the risks to:
a) the child(ren) who are the subject of the allegation;
b) other children with whom the PSOA may have contact;
c) the PSOA;
d) Marri Mittigar School, and
e) the proper investigation of the allegation.

The factors which will be considered during the risk assessment include:
a) the nature and seriousness of the allegation;
b) the vulnerability of the child(ren) the PSOA has contact with at work;
c) the nature of the position occupied by the PSOA;
d) the level of supervision of the PSOA; and
e) the disciplinary history or safety of the PSOA and possible risks to the investigation.

The Head of the Relevant Entity will take appropriate action to minimise risks. This may include the PSOA being temporarily relieved of some duties, being required not to have contact with certain students, or being suspended from duty until an investigation is complete and final findings are made. When taking action to address any risks identified, the Marri Mittigar School will take into consideration both the needs of the child(ren) and the PSOA.

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

2.7 Ongoing Risk Management

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

2.8 Risk Management at the Conclusion of the Investigation

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

WHAT INFORMATION WILL BE PROVIDED TO THE PSOA?

The PSOA will be advised:
a) that an allegation has been made against them (at the appropriate time in the investigation); and
b) of the substance of the allegation of any preliminary finding and the final finding.

The PSOA **does not** automatically have the right to:
a) know or have confirmed the identity of the person who made the allegation; or

b) be shown the content of the Office of the Children's Guardian written notice or other investigation material that reveals all information provided by other staff members or witnesses.

DISCIPLINARY ACTION

As a result of the allegation, investigation and final finding, the School may take disciplinary action against the PSOA (including termination of employment).

In relation to any disciplinary action the School will:

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

CONFIDENTIALITY

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

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

Records about allegations of reportable conduct against staff members will be kept in a secure area and will be accessible by the Head of Barker College or with the Head of Barker College's express authority.

No staff member may comment to the media about an allegation of reportable conduct unless expressly authorised by the Head of Barker College to do so.

If you become aware of a breach of confidentiality in relation to a reportable conduct allegation you must immediately advise the Head of Barker College.

INFORMATION EXCHANGE

Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) provides for certain Human Services and Justice Agencies and non-government organisations to share information relating to the safety, welfare or well-being of children or young people.

This additional Chapter in the legislation aims to improve interagency collaboration in the provision of services to meet the needs of children and young people and their families. Chapter 16A overrides privacy legislation because the safety, welfare and well-being of children and young persons are paramount.

As a 'prescribed body' under this legislation, Barker College is therefore required to share information under Chapter 16A where there is a risk to the safety and welfare of children

PART C: CRIMES ACT

CRIMINAL OFFENCES

In 2018 the *Crimes Act 1900* (Cth) 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.

1.1 Failure to Protect Offence

An adult working in a school will commit an offence if they know another adult working there poses a 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 known and serious risk, rather than using their power to protect children.

1.2 Failure to Report Offence

Any adult 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 Barker College via the Child Safety Team and is aware that the matter has been reported to the Police.

PART D: WORKING WITH CHILDREN ACT (NSW)

GENERAL

The Office of the Children's Guardian (OCG) is responsible for employment screening for child related employment. A Working With Children Check (Check) clearance is a prerequisite for anyone in child-related work. It involves a national criminal history check and review of misconduct involving children. The result of a Check is either a clearance to work with children for five years, or a bar against working with children. Cleared applicants are subject to ongoing monitoring by the OCG, and any relevant new records which appear against a cleared applicant's name may lead to the clearance being revoked.

It is the responsibility of the Marri Mittigar School staff member to ensure that when they are legally required to apply for a Check clearance or when their Check clearance is up for renewal that they do so.

RESPONSIBILITIES

The object of the WWC Act is to protect children:

a) by not permitting certain persons to engage in child-related work; and
b) by requiring persons engaged in child-related work to have Working With Children Check clearances.

Schools are required to:

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

All Barker College and Marri Mittigar School staff members and other individuals, including contractors, external providers and volunteers are required to:

a) hold and maintain a valid clearance;
b) not engage in child-related work at any time that they are subjected to an interim bar or a bar; and
c) report to the Head of Barker College if they are no longer eligible for a clearance, if the status of

their clearance changes or if they are notified by the OCG that they are subjected to a risk assessment.

RELEVANT EXPLANATIONS

1.1 Bars

Interim Bar - An interim bar is used to prevent high risk individuals from working with children while a risk assessment is conducted and until a final decision is made. A person who is subject to an interim bar must not engage in child-related employment while it is in force. An interim bar may be imposed for up to 12 months.

Not everyone who is subject to a risk assessment will receive an interim bar.

Receiving a notification of a final bar

If the Children's Guardian has decided not to grant you a clearance to work with children (that is, to impose a bar), you will receive a letter informing you of this decision. The letter will also provide you with the reasons for the decision.

Barker College will also be notified that you have become barred and instructed to remove you from child-related work. However, no information regarding your work or criminal records will be shared with Barker College.

What is the difference between a bar and an interim bar?

A bar is applied once a final decision has been made that an individual must not engage in child-related work for five years (unless circumstances have changed that permit an earlier application).

What is the effect of a bar?

Once a bar is in place, it is an offence to work with children for five years and penalties apply. If you are already working with children, you must immediately remove yourself from this work. It does not matter whether the work is paid or voluntary.

Child-related work

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

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

Child-related worker

A person who has physical contact or face to face contact with children in work outlined above in 3.2, including schools; or the person has access to confidential records or information regarding children as part of their role. This may include volunteer work.

Any paid or volunteer work in a child facing role at Marri Mittigar School can only commence once the clearance process has been completed and verified by Barker College.

Any staff member of Marri Mittigar School or any individual engaged by Marri Mittigar School to provide services to children – such as contractors, external providers, work experience participants (practicum teachers on placement), clergy, ministers of religion and instructors of religion who provide pastoral or liturgical services and volunteers is a child- related worker.

Where there is a reference to staff member within Part C, it includes all of these individuals.

Disqualified person

A disqualified person is:

a) a person who has been convicted of or against whom proceedings have been commenced for an offence outlined in Schedule 2 of WWC Act, which lists all disqualifying offences; and/or
b) a person who has a bar preventing them from working with children in child-related work.

It is an offence for any employer, including Barker College, to knowingly engage a child-related worker or other individual when they do not hold a clearance or any individual who has a bar or an

interim bar against them.

It is an offence for a staff member to engage in child-related work when they do not hold a clearance or have a bar or an interim bar against them.

Findings of Misconduct Involving Children

The School will report to the OCG when a finding has been made that the PSOA subject to the finding engaged in:

c) sexual misconduct committed against, with or in the presence of a child, including grooming of a child; or
d) any serious physical assault of a child; or
e) when directed to do so by the Office of the Children's Guardian or requested by NSW Police.

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

Reporting body

Barker College is defined as a reporting body by the WWC Act.
Section 35 of the WWC Act requires this School to notify the OCG of findings of misconduct involving children made against a staff member or other individual. The School may also be obliged to report, amend or provide additional information to the OCG as outlined in the WWC Act.

Risk assessment

Risk assessment is an evaluation of an individual's suitability for child-related work.
The OCG will conduct a risk assessment on a person's suitability to work with children when a new record is received which triggers a risk assessment. This may include an offence under Schedule 1 (refer to Fact Sheet 14; *Assessment Requirement Triggers Schedule 1*), pattern of behaviour or offences involving violence or sexual misconduct representing a risk to children, findings of misconduct involving children or written notice made to OCG.

When is a risk assessment applied?

A person is subject to a risk assessment if any of the matters specified in Schedule 1 of the *Child Protection (Working with Children) Act 2012* apply to the person. These matters are referred to as "Assessment Requirement Triggers".

Offences under Schedule 1

Schedule 1 records may include convictions (spent or unspent), charges (heard, unheard or dismissed) and juvenile records. It also includes an intention to commit an offence of the type listed, attempting, conspiring or inciting such offences. (refer to Fact Sheet 14; *Assessment Requirement Triggers Schedule 1*).

Findings of misconduct

A finding by a reporting body that the following conduct occurred:

a) Sexual misconduct committed against, with or in the presence of a child, including grooming a child
b) Any serious physical assault of a child.

A pattern of behaviour

Convictions or pending charges for offences involving violence or sexual misconduct may also trigger a risk

assessment if they indicate a pattern of behaviour that warrant an investigation because of child safety concerns. Records do not need to be listed in Schedule 1 or 2 of the *Child Protection (Working with Children) Act 2012* to be considered in this type of risk assessment trigger.

Guidelines for Assisting a Child or Young Person who has Disclosed Abuse at Marri Mittigar School

GENERAL

When a student discloses abuse a Marri Mittigar School staff member must be prepared to listen and respond appropriately. Children generally disclose with great hesitation and often with a mix of intense emotions, including fear, embarrassment and guilt. Sometimes they may only hint at or tell a small part of their experience to see how the staff member reacts, before fully disclosing. It is essential that the staff member remains calm and supportive of the student and escalates the report promptly.

HOW TO RESPOND TO A CHILD DISCLOSING ABUSE

If a student discloses that they have been subject to abuse a Marri Mittigar School staff member should:

a) listen in a calm way;
b) thank the student for making the disclosure to you;
c) acknowledge that the disclosure was a difficult step for the student to take;
d) inform the student of the next steps you will take to assist them.
This will include telling them that you have a responsibility to inform the Child Safety Team

TRAINING

The School

The Deputy Head of People & Culture will ensure all staff members are provided with a copy of this Policy and will arrange and require all staff members to participate in child protection awareness training at least annually. That training may be face to face or via an online module at a time to be notified to staff. Satisfactory participation will be recorded online or evidenced by attendance records.

Staff Members

All new staff members to Marri Mittigar School 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 awareness training and any additional training, as directed by the Head of Barker College or their delegate. The training complements this Policy and provides information to staff about their legal responsibilities related to child protection and School expectations, including:

a) mandatory reporting
b) reportable conduct
c) working with children checks
d) professional boundaries
e) staff code of conduct.

Child Protection Acknowledgement Form

I confirm I have read, understood and agree to comply with the terms of this Child Protection Policy, or have had the content of this Child Protection Policy explained to me.

By signing this Acknowledgement Form, I acknowledge that I fully understand the content and agree to comply with all requirements set out within it.

Name: _____

Signature: _____

Date: _____

References:

The key pieces of child protection-related legislation applicable to schools in New South Wales:

- the Education Act 1990 (NSW)
- the Children and Young Persons (Care and Protection) Act 1998 (NSW)
- the Child Protection (Working with Children) Act 2012 (NSW)
- the Child Protection (Working with Children) Regulation 2013 (NSW)
- the Children's Guardian Act 2019 (NSW)
- the Crimes Act 1900 (NSW) and
- the Civil Liability Act 2002 (NSW).

Next review:

Policy Owner	Date Reviewed	Comments
Head of Barker College	12/6/26	Administrative Update from 2024

Next Review Date	Reviewed by:
12/6/29	Director Legal Risk & Compliance