

Child Protection - Duty to Protect Students from Child Abuse or Harm

Duty to Protect Students from Abuse or Harm

The School has a common law duty of care to protect all students from reasonably foreseeable risks of harm while at the School or engaging in School activities. The School expects all staff, volunteers and contractors to act to protect students from reasonably foreseeable risks of harm.

Failure to do this is not only a breach of your duty of care, but may also be, in certain circumstances, a criminal offence.

The School also has a civil law duty to protect students from physical or sexual abuse perpetrated by an individual associated with the School.

Criminal Law Offence of Failure to Reduce or Remove Risk of Child becoming Victim of Child Abuse (Failure to Protect)

Under section 43B of the Crimes Act 1900 (NSW), an adult (aged 18 or over) who works (whether as an employee, Contractor, Volunteer or otherwise) at the School will commit a criminal offence if they:

- **know** that another adult who is engaged in **child-related work** at the School:
 - poses a **serious risk** of committing a **child abuse offence**
 - against a child (aged under 18) who is under the care, supervision or authority of the School, and
- have, by reason of their position, the power or responsibility to reduce or remove that risk, and
- negligently fail to do so.

This criminal offence is commonly known as 'Failure to Protect'.

The failure to protect offence applies to staff, volunteers and contractors where they have the power to act to reduce the risk of abuse to the child or young person. The offence covers failures to protect a child or young person from child abuse offences by any other staff, Direct Contact Volunteer, Direct Contact Contractor or External Education Provider.

Where any staff member, volunteer, or contractor becomes aware that another adult working (whether paid or unpaid) at School poses a serious risk of committing a child abuse offence against a student or students under their care, they should immediately:

- take any and all reasonable steps to remove or reduce the risk to the student or students, which may include immediately removing the person from contact with the student or students
- report the matter to the Principal (or the President of Council if the allegation is about the Principal), as soon as practicable
- document the actions taken - This documentation is maintained by the **HR Manager** and secured in the **HR Office**.
- report to external authorities, if appropriate.

Know

Knowledge is not defined in the Crimes Act 1900 (NSW). It is likely to be more than holding a tentative belief or mere suspicion.

If a person with the power and responsibility to act, by reason of their position at School, has a suspicion or belief (rather than ‘knowledge’) that students are at risk of harm from an adult working at the School they should take steps to follow up on that suspicion or belief by investigating further and should raise the issue with the **Principal**.

Child-related work

Child-related work has the meaning given in the Child Protection (Working with Children) Act 2012 (NSW). Therefore, the workers from whom a student must be protected include:

- Council members
- members of the Executive Team
- Principal
- All Staff (including teaching and non-teaching Staff)
- Direct Contact Volunteers (other than parents, except in certain circumstances)
- Direct Contract Contractors
- External Education Providers

Serious Risk

A serious risk is not defined in the Crimes Act. It is likely that a serious risk would mean that a reasonable person would consider, on the balance of probabilities, that the risk of a child abuse offence being committed against the student to be probable.

Child Abuse Offence

The list of child abuse offences that are captured by the Failure to Protect offence is extensive and includes rape, sexual abuse, sexual touching, production of child abuse material and grooming offences as well as attempts to commit those offences.

It also includes assaults and physical harm, such as wounding or causing grievous bodily harm, assault causing actual bodily harm, assault at a school (whether or not causing actual bodily harm), administering or causing the ingestion of an intoxicating substance, and female genital mutilation.

For more information on what constitutes a child abuse offence, refer to **Child Protection – Child Abuse and Harm Definitions, Identification and Initial Responses**.

Civil Law Duty to Prevent Abuse

Section 6F of the Civil Liability Act 2002 (NSW) imposes a duty of care on the School to take reasonable precautions to prevent an individual associated with the School from perpetrating physical or sexual abuse of a child in connection with the School’s responsibility for the child. If the victim of physical or sexual abuse alleged to have occurred at the School or to have involved School Staff, Volunteers or Contractors, brings a negligence claim against the School, a court will presume that the School breached its duty of care unless the School can prove that it took reasonable precautions to prevent the abuse.

Whether or not the School took reasonable precautions will be assessed by a court in accordance with considerations set out in the Civil Liability Act and case law.



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In determining whether the School took reasonable precautions to prevent child abuse, a court may take into account any of the following:

- the nature of the School
- the resources reasonably available to the School
- the relationship between the School and the child
- whether the School has delegated in whole or in part the exercise of care, supervision or authority over a child to another organisation
- the role in the School of the individual who perpetrated the child abuse
- the level of control the School had over the individual who perpetrated the child abuse
- whether the School complied with any applicable standards in respect of child safety
- any other matters the court considers relevant.

It is critical that the School maintains accurate and comprehensive records not only of child safety incidents and concerns involving School Staff, Volunteers and Contractors, but also of:

- actions taken in response (including systemic reviews and resulting improvements) and
- reviews of and improvements to our child protection policies, procedures, work systems and strategies

as these could be required as evidence in relation to possible future negligence claims against the School for damages in respect of child physical or sexual abuse.

These records must be kept for at least 50 years.

Version details

Version 1. Approved by Executive on 18 May 2020

Owner: Risk and Compliance Officer