Legal Framework
The legislation pertinent to the protection of children and young people is:

- The Ombudsman Act 1974 (this Act includes the amendment enacted in the Ombudsman Amendment (Child and Community Services) Act 1998
- The Commission for Children and Young People Act 1998
- The Children and Young Persons (Care and Protection) Act 1998
- Child Protection (Offenders Registration) Act 2000
- Child Protection Legislation Amendment Act 2003
- Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009

The Ombudsman Act 1974 applies to all those people in child-related employment and others who are employed by government and non-government agencies who are engaged to provide services to children and are covered by the reporting requirements of the Ombudsman Act. The Ombudsman Act applies equally to all staff.

Definitions under the Ombudsman Act 1974 and the Child Protection Legislation Amendment Act 2003

A Child means a person under the age of 18 years and young person, one who is under 18 years of age.

Under the Children and Young Persons (Care and Protection) Act 1998

A Child means a person under the age of 16 years and young person, one who is under 18 years of age.

For the purposes of this legislation every student under the age of 18 will be deemed a child.

Reportable conduct means:

a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), or
b) any assault, ill-treatment or neglect of a child, or
c) any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.

Reportable conduct does not extend to:

a) conduct that is reasonable for the purposes of discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or

b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or

c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

Reportable allegation means:

An allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.

EMPLOYEE

- Any person who is employed by an agency whether or not they are employed in connection with any work or activities that relates to children.
- Any person “engaged” to provide services to children, including volunteers, foster carers, contractors, work-experience participants, students on placement, clergy, minister of religion or member of religious orders.

Relevant employment proceedings means:

Disciplinary proceedings (in this State or elsewhere) against an employee by the employer or by a professional or other body that supervises the professional conduct of the employee, being proceedings involving:

- Reportable conduct by the employee; or
- An act of violence committed by the employee in the course of employment and in the presence of a child has occurred, or, there is some evidence it occurred but the finding is inconclusive.

HEAD OF AGENCY

For Santa Sabina College, a Catholic Independent School, this is the Principal of the College. The Principal ensures that policies and procedures comply with the package of Child Protection legislation to maintain the safety of children.
**Under the Ombudsman Act**

The **Head of Agency** is required to:

- Report to Ombudsman, within 30 days of becoming aware, any reportable convictions of allegations or reportable conduct made against employees.
- Conduct investigations into reportable conduct allegations or convictions including allegations which are exempt from reporting and take appropriate action as a result.

The Head of Agency may delegate responsibility for reporting and conducting investigations but must ensure that the report is made and the investigation conducted.

**UNDER THE CHILD PROTECTION (PROHIBITED EMPLOYMENT) ACT 1998**

The **Head of Agency** is required:

- To conduct a Working with Children Check (paid/unpaid) where one of the essential duties of the position involves direct unsupervised contact with children.
- Not to employ a ‘Prohibited Person’ – unless an exemption is granted by the IRC, ADT or CCYP that the Prohibited Person status is not to apply.

A ‘Prohibited Person’ may not apply for or undertake or remain in child related employment.

**UNDER THE COMMISSION FOR CHILDREN & YOUNG PEOPLE ACT**

**Employers** are required to:

- Conduct employment screening by an approved screening agency for preferred applicants in paid child related employment
- Notify the Commission for Children & Young People of ‘relevant employment proceedings’ taken against an employee
- Notify the Commission of applicants who have not been offered child related employment as a result of an ‘at risk’ assessment by an approved screening agency

**UNDER THE CHILDREN & YOUNG PERSONS (CARE AND PROTECTION ACT) 1998**

- Ensure that employees are aware of their mandatory notification responsibility to Community Services if a child is believed to be at “significant risk of harm”.

UNDER THE CHILD PROTECTION (PROHIBITED EMPLOYMENT) ACT 1998 INDIVIDUALS ARE:

• Required to consent to Employment Screening on employment.
• Required to disclose their status relating to a ‘Prohibited Person.’
• Not to apply or remain in child related employment if a ‘Prohibited Person’.
• Prohibited from working with children if that work involves ‘direct unsupervised contact’ if convicted of serious sex offences.

GUIDELINES

It is an expectation of Santa Sabina College that employees will comply with the Legislation and it is not intended to create any rights or obligations beyond those stipulated in the legislation.

This policy document contains guidelines for all members of staff and adheres to the New South Wales Legislative procedures so that the students in our care are protected. It should be read in conjunction with other College policies including the Code of Professional Practice, Pastoral Care Policy and the Student Welfare Guidelines and the Guidelines for Teachers in Catholic Schools.

PROCEDURAL FAIRNESS

The College will respond to allegations of reportable conduct with due process in a manner which is fair and equitable, keeping in mind the dignity and respect for the individuals involved. To that end:

• A person against whom a reportable allegation is made will be informed of the reportable allegation in as much detail as possible and given an opportunity to respond, and given an opportunity to respond to any new material.
• Confidentiality will be maintained at all times.
• An investigation will be conducted in a reasonable manner prior to a decision being reached regarding possible action.
• The Principal will ensure that individuals involved in the conduct of an investigation are accredited to carry out such an investigation.
• The Principal will ensure that individuals involved in an investigation do not have a conflict of interest and act fairly and without bias.
• Allegations and the subsequent investigation will be conducted without undue delay.
• Care and support will be offered to individuals.

DOCUMENTATION AND RECORD-KEEPING

• Information regarding notification to the Ombudsman will be kept indefinitely and stored in a secure place separate to personnel files.
• The Principal is responsible for these records and maintaining their confidentiality.

**Risk Management**

On an allegation being made against an employee the Principal will conduct an initial risk assessment in regard to the continued access of that employee to children. Factors considered include:

• Nature of the allegation
• Vulnerability of children and alleged victim
• Nature of the position of the employee and possible supervision

**Under the Commission for Children and Young People Act**

Employees must report concerns that a child or young person is at “significant risk of harm” to the Head of Agency.

**Volunteers and Contractors**

The College will ensure that all volunteers and contractors who come into contact with children complete a Prohibited Employment declaration prior to commencing work at the College.

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<thead>
<tr>
<th><strong>Policy Name</strong></th>
<th><strong>Date of Origin</strong></th>
<th><strong>Ownership</strong></th>
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<tbody>
<tr>
<td>Child Protection Policy</td>
<td>2002</td>
<td>College Board</td>
</tr>
<tr>
<td></td>
<td></td>
<td>College Principal</td>
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**Review Date:**
As legislation dictates

<table>
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<tr>
<th><strong>Location:</strong></th>
<th><strong>Bos Annual Report</strong></th>
<th><strong>Attachments:</strong></th>
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<tr>
<td>College Intranet</td>
<td>Reporting Area 5</td>
<td>Duty of Care</td>
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<tr>
<td>Staff Handbooks – campus specific</td>
<td>Student Welfare Policies</td>
<td>Child Protection Code of Professional Standards for Catholic School Employees</td>
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</tbody>
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**Last Updated:**
May 2010

**By Whom:**
College Board

**Authorised By:**
College Board
PROCESS OF INVESTIGATION

Where an allegation of reportable conduct is made the following process will be applied:

Principal receives complaint *

PrINCIPAL ASSESSES RISK

PRINCIPAL AS HEAD OF AGENCY NOTIFIES THE OMBUDSMAN, COMMUNITY SERVICES AND POLICE WHEN NECESSARY

PLAN FOR INVESTIGATION OF ALLEGATION IS DRAWN UP.

EMPLOYEE INFORMED OF COMPLAINT

EMPLOYEE:
  a. Continues Duties or
  b. is suspended with pay or
  c. is suspended without pay.

EMPLOYEE GIVEN OPPORTUNITY TO RESPOND

ALLEGATIONS ASSESSED IMPARTIALLY, CONFIDENTIALLY AND WITH EQUITY

FINAL REPORT, INCLUDING OUTCOMES PROVIDED TO THE OMBUDSMAN AND CCYP

EMPLOYEE PROVIDED WITH FEEDBACK AS TO OUTCOME OF INVESTIGATION

* Where an allegation is made which is not deemed to be “reportable conduct”, the College will investigate the matter and record the results of the investigation. Elements of Procedural Fairness will be adhered to at all stages of an investigation and confidentiality maintained.