

MOAMA ANGLICAN GRAMMAR SCHOOL



**STUDENT COUNSELLING AND WELLBEING SERVICES POLICY**

<b>POLICY TITLE</b>	STUDENT COUNSELLING AND WELL-BEING SERVICES POLICY
<b>POLICY TYPE</b>	MANAGEMENT
<b>DATE POLICY SIGHTED/RATIFIED BY BOARD</b>	15 January 2014
<b>BOARD APPROVAL (SIGNATURE OF BOARD REPRESENTATIVE)</b>	G Danher
<b>LEGAL ADVICE SOUGHT</b>	AIS
<b>DATE OF POLICY REVIEW</b>	
<b>PERSON RESPONSIBLE FOR POLICY DISSEMINATION</b>	PRINCIPAL
<b>PERSON REponsible FOR MONITORING AND IMPLEMENTATION</b>	HEAD OF PASTORAL CARE

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## 1. Overview

### 1.1 General

The School provides student wellbeing services to support the educational needs, learning, development, welfare and wellbeing of students at the School (**wellbeing services**). Wellbeing services may be provided by:

- counsellors and psychologists;
- medical health professionals (for example, School nurses);
- staff engaged by the School for the purpose of religious instruction or supervision of prayers or to undertake other religious duties of a non-teaching nature; and
- teachers involved in the School's pastoral care program (for example, year level coordinators).

For the purpose of this Policy, these staff are **wellbeing staff**.

The role of wellbeing staff is to support the School:

- in meeting the educational needs of students and guiding them towards their full academic potential; and
- in discharging its duty of care to take reasonable steps to prevent harm to students.

Accordingly, the role of wellbeing staff operates within the broader educational framework in place at the School. Wellbeing staff do not have an independent role from the School and are part of a team of staff dedicated to supporting the learning, development, welfare and wellbeing of students at the School.

### 1.2 Access to information and reporting of concerns

During the provision of wellbeing services, it is expected that wellbeing staff will, on behalf of the School:

- collect students' personal and health information; and
- create records of students' personal and health information. Privacy legislation will apply to those records.

This information is generally to be dealt with confidentially. However, wellbeing staff have obligations to report any concerns they may have to, and allow access to any student records they keep by, the Principal of the School or a delegate of the Principal. In addition, in some circumstances there may be a legal obligation to disclose information to a relevant authority.

## 2. The School's obligations

### 2.1 Privacy legislation

The School collects personal and health information from students to assist it in its function of providing education services to students.

**Personal information** means information or an opinion (whether true or not) about an individual whose identity is apparent or can be reasonably ascertained, from the information or opinion.

**Health information** means personal information that is information or an opinion about the health of an individual and includes personal information collected in the provision of a health service.

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The *Privacy Act 1988 (Cth)* and the *Health Records and Information Privacy Act 2002 (NSW)* provide for the handling of personal and health information collected and held on record by an organisation, such as the School. The legislation imposes various obligations on the School in this regard.

The key obligations imposed under Privacy legislation are as follows:

*Collection*

At the time of collection of personal or health information, or as soon as practicable thereafter, the School must inform the individual of specified matters including:

- (a) the purpose for which they are collecting the information;
- (b) who else they might give it to;
- (c) the fact that the individual is able to gain access to that information; and
- (d) any law that requires the information to be disclosed.

*Use and disclosure*

The School must not use or disclose personal or health information about an individual except in certain circumstances. Those circumstances include (but are not limited to) the following scenarios:

- (a) where the individual's consent is obtained;
- (b) where the School reasonably believes that that use or disclosure is necessary to lessen or prevent:
  - (i) a serious and imminent threat to an individual's life, health or safety; or
  - (ii) a serious threat to public health or public safety; and
- (c) where required or authorised by law.

**Use** means the handling of personal information within the School organisation (for example, the inclusion of information in a publication).

**Disclosure** means when the School releases information to others **outside** the School organisation. Disclosure **does not mean** an internal disclosure – that is, a disclosure within the School.

*Protection and security of information collected*

The School is required to take reasonable steps to:

- (a) protect personal and health information it holds from misuse and loss and from unauthorised access, modification and disclosure; and
- (b) destroy or permanently de-identify personal and health information if it is no longer needed for any purpose for which the information may be used or disclosed.

**2.2 Duty of care**

The School has a duty of care to ensure that reasonable steps are taken to prevent harm to students. This is a positive duty, in the sense that it requires the School to take positive steps to prevent harm.

The duty of care held by the School is a non-delegable duty, meaning that the School cannot simply discharge the duty by putting a responsible third party, such as a member of staff, in charge. The School always has a responsibility to ensure that reasonable steps are taken for the safety of its students.

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**However, the School needs assistance from its staff, including its wellbeing staff, to ensure these reasonable steps are taken.**

If the School, through one of its employees, is aware of information relating to a student which, if acted on, could have prevented harm to that student, the School may be held legally responsible.

### **2.3 Other obligations under State legislation**

In addition to the above, the School and its staff (including its wellbeing staff) have a range of different legislative obligations in relation to child protection under State legislation.

These include obligations under the:

- *Child Protection (Working with Children) Act 2012* (NSW);
- *Children and Young Person (Care and Protection) Act 1998* (NSW); and
- *Ombudsman Act 1974* (NSW).

Those obligations are set out in detail under the Child Protection Policy and Staff Code of Conduct, which can be located in the Staff Handbook.

- The role of wellbeing staff at the School

Wellbeing staff are employed by the School to help the School achieve its ultimate objective of meeting the educational needs of its students and guiding them towards their full academic potential. Wellbeing staff, alongside all other staff of the School, have a role in assisting the School to discharge its duty of care to prevent harm to students.

### **3. Collection of student information**

In the delivery of wellbeing services, the School expects that wellbeing staff will collect personal and/or health information from students and will create records of this information and any advice or guidance provided.

These records may be created in written and electronic form.

It is important to be aware that, because wellbeing staff create these records in the course of their employment with the School, these records are created on **behalf of, and for, the School. These records are not the records of any individual wellbeing staff member but records of the School. They are the property of the School.**

### **4. Purpose of collection**

The purpose for which wellbeing staff collect and record information from students in the course of delivering their services is directly related to the School's objectives and not for any other purpose.

Therefore, any information collected and recorded during a wellbeing service on the School's behalf is for the purpose of:

- assisting the School in meeting the educational needs of students and guiding them towards their full academic potential;
- assisting the School to discharge its duty of care to take reasonable steps to prevent harm to students; and
- associated goals.

### **5. Accuracy of information collected**

Wellbeing staff should ensure that any information collected from students and which is held on record by the School is accurate, complete and up-to-date.

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## 6. Security of information collected

Any records of information generated in the delivery of wellbeing services to students will be stored:

- if made in writing, in securely locked files in the office of the relevant wellbeing staff member; and
- if made in electronic form, in secure electronic form.

Wellbeing staff are expected to work with the School to ensure that these records remain as confidential as practicable.

It is important to be aware that the nature of the School environment, and the purpose for which the information is collected and recorded, means that there are limits to confidentiality of that information.

## 7. Access to records

### 7.1 Request for access to records

Generally, wellbeing staff must keep records confidential and secure.

However, because the records created in the provision of wellbeing services are the property of the School, and are created and held to assist in achieving the School's objectives, wellbeing staff **must** provide access to such records to the Principal or a delegate of the Principal when requested to do so.

If a staff member is requested to provide access to such records, this will amount to a direction given by the School. If the staff member fails to comply with such a request, this may have consequences for his or her employment.

## 8. Reporting

### 8.1 General

Information gathered in the course of providing wellbeing services is generally confidential, although that will not always be the case. However, even if the information is generally confidential, there will also be certain circumstances in which wellbeing staff are required to report information, as set out below.

### 8.2 Where there are mandatory reporting obligations

A wellbeing staff member **must** report information in accordance with his or her mandatory reporting obligations under applicable Child Protection legislation.

Mandatory reporting obligations are set out in the Mandatory Reporting Policy, which is available in the Staff Handbook.

### 8.3 Where there is a concern about a student's wellbeing

A wellbeing staff member **must** report **any** concern he or she has about a student's wellbeing to the Principal or a delegate of the Principal. If the concern involves the Principal, the wellbeing staff member is required to report to the Board Chair.

The obligation to report such a concern is consistent with the School's duty of care to ensure that reasonable steps are taken to prevent harm to students.

### 8.4 Awareness of information that could assist the School in meeting the educational needs of a student

All staff members need to be alert to the needs of students in order to assist the School in its provision of education to students.

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If, in the course of providing wellbeing services, a wellbeing staff member becomes aware of information that could assist the School in this regard, that information **must** be reported in a timely manner to the Principal or a delegate of the Principal.

The obligation to report this information is consistent with the role of wellbeing staff to assist the School in meeting the educational needs of students and guiding them towards their full academic potential.

## 8.5 Sharing of information

Management of student education or welfare may sometimes mean that other staff need to be made aware of information a wellbeing staff member provides to the Principal or their delegate.

At times it may also be appropriate for the information provided to wellbeing staff to be communicated to other members of staff.

A wellbeing staff member should **not** generally share information provided by a student in the context of being provided with wellbeing services with other members of School staff except where authorised by the Principal or their delegate. The greater the confidentiality of the issue raised by a student, the greater the need for wellbeing staff to limit the access to the information.

Because wellbeing staff are approached by students in a variety of contexts, they may be privy to information from students that is of a general and not confidential nature and may wish to share this information with other staff. However, staff should err on the side of caution in relation to this – if in doubt, discuss with the Principal or delegate before disclosing the information. Where appropriate, the Principal or delegate may share information provided to them by a wellbeing staff member to other staff members or a student's parents. That will be a decision for the Principal or delegate.

## 9. Advice to students prior to commencement of services

Students should be encouraged to access wellbeing services at any time during their education at the School.

The School wants wellbeing staff and students to establish a mutual relationship of trust and understanding.

It is important to be aware that students who access wellbeing services may think that what they say during the course of that service will be kept confidential.

However, students need to understand that there are limits to the confidentiality that wellbeing staff can provide.

In some circumstances, students may approach wellbeing staff in an informal manner. Similarly, the nature of issues raised by a student may not be confidential in nature or be of limited confidentiality. Ideally, even in this situation, prior to the commencement of any wellbeing service, wellbeing staff should explain to the student the limits of confidentiality including that in some cases the law requires or authorises disclosure of certain information.

Wellbeing staff should keep a record that they have explained this to the student. **If the circumstances are such that this explanation is not practical or appropriate, at the very least, wellbeing staff must make sure that under no circumstances do they ever provide an undertaking to any student that the information that they share with that wellbeing staff member will not be disclosed.**

In circumstances where the wellbeing service is being formally administered (for example, where a student attends an appointment to see the relevant wellbeing staff member), it is vital that the student understands that the wellbeing staff member is:

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- required to provide access to information held on record in relation to them at the request of the Principal or their delegate;
- required to report certain information to the Principal or their delegate (and to external authorities where required or authorised by law); and
- information may be disclosed to their parents.

Wellbeing staff must keep a record that they have explained this to the student.

Again, in this situation, wellbeing staff must make sure that under no circumstances do they ever provide an undertaking to any student that the information that they share with that wellbeing staff member will not be disclosed.

#### 11. A common misconception...

**Won't wellbeing staff breach Privacy laws if they provide access to or report information in accordance with this Policy?**

No.

Applicable Privacy legislation **is intended to prohibit external disclosures** by the School (subject to exceptions). **It is not intended** to catch a disclosure made by staff **within the School**. Accordingly: a wellbeing staff member:

- **will not** be in breach of Privacy legislation if he or she provide access to records of information generated in the course of wellbeing services to the Principal or a delegate of the Principal, because it is not a disclosure prohibited by Privacy legislation;
- **will not** be in breach of Privacy legislation if he or she reports information he or she becomes aware of in the course of wellbeing services to the Principal or a delegate of the Principal, because it is not a disclosure prohibited by Privacy legislation; and
- **will not** be in breach of Privacy legislation if he or she share information that he or she become aware of in the course of wellbeing services with other members of School staff, as authorised by the Principal or their delegate or otherwise.

It is important to note, however, that any disclosure a wellbeing staff member makes external to the School (except in accordance with the law) may breach the School's obligations under Privacy legislation.

#### ACKNOWLEDGEMENT

I \_\_\_\_\_ have read, understood and agree to comply with the terms of this Student Wellbeing Services Policy.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated

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