

Reportable Conduct of Staff, Volunteers and Others

1. PURPOSE

The Child Wellbeing and Safety Act 2005 (Vic) (the Act) requires the College to investigate and report to the Commission for Children and Young People (CCYP) allegations of “employee” reportable conduct or misconduct that may involve reportable conduct.

The College has developed the following policy which sets out our systems for enabling persons to report reportable conduct and for such reports to be investigated and responded to. This policy is made available to all staff, volunteers, third party contractors, members of the College Council, parents/guardians/carers and students via our public website and on Compass (for staff).

The CCYP’s website provides additional guidance and materials which assist the College to understand and meet their obligations under the Act.

2. SCOPE

The Victorian Reportable Conduct Scheme imposes obligations on the Heads of organisations such as School Principals.

3. KEY RESPONSIBILITIES

Position/Roles	Responsibilities
College Council	<ul style="list-style-type: none">• Be aware of the Reportable Conduct Scheme and its obligations for Schools• Ensure the College complies with this legislation• Chair of Council to report and investigate any allegations of reportable conduct against the Principal.
Principal	<ul style="list-style-type: none">• Is responsible for ensuring the College complies with the reportable conduct obligations under the Act.• the Principal may seek help from other people within the College to meet the requirements of the Act including in creating and developing systems, sending approved notifications to CCYP, or conducting investigations on their behalf.• the Principal cannot delegate their responsibilities under the Act – they are still solely responsible for ensuring the College’s compliance with the Reportable Conduct Scheme.
Deputy Principal	<ul style="list-style-type: none">• The Principal has authorised the Deputy Principal to carry out physical or practical tasks such as making notifications to the CCYP or liaising with the CCYP, when the Principal is unavailable.
All College Staff	<ul style="list-style-type: none">• Keep the Principal informed of any allegations of reportable conduct.

4. KEY ELEMENTS OF THE SCHEME

4.1 Who is an Employee?

Section 3 of the Act defines 'employee' as a person aged 18 years or over who is:

- employed by the College whether or not that person is employed in connection with any work or activities of the College that relate to children; or
- engaged by the College to provide services, including as a volunteer, contractor, office holder or officer, whether or not the person provides services to children; or
- a labour hire worker or volunteer (someone who is supplied by another organisation, under an agreement or contract between the person and that organisation, to work or volunteer at or for the College); or
- a secondee (someone who is employed by another organisation but is supplied for a temporary secondment period to work at or for the College); or
- a minister of religion, a religious leader, or an employee or officer of a religious body.

Of relevance to the College, the following people are considered to be employees (provided that they are aged 18 or over):

- College Council Members;
- the Principal;
- employed staff members;
- Volunteers;
- Contractors (including individuals who are engaged directly by the College as a contractor as well as both individual business owners and employees of companies that are engaged as a contractor by the College, for example as an External Education Provider);
- labour hire workers and volunteers (such as relief teachers and higher education students on placement at the College);
- secondees; and
- ministers of religion.

For the purposes of this policy, all of the above are referred to collectively as "staff" or "staff members".

4.2 What is Reportable Conduct?

Reportable conduct is defined in section 3 of the Act to mean:

- a sexual offence committed against, with or in the presence of, a child, whether or not a criminal proceeding in relation to the offence has been commenced or concluded;
- sexual misconduct, committed against, with or in the presence of, a child;
- physical violence committed against, with or in the presence of, a child;
- any behaviour that causes significant emotional or psychological harm to a child; or
- significant neglect of a child.

"Sexual misconduct" includes:

- behaviour, physical contact or speech or other communication of a sexual nature, for example 'sexting';

- inappropriate touching or physical contact;
- grooming behaviour; and
- voyeurism.

"Sexual offence" for the purposes of the Reportable Conduct Scheme means a serious sexual offence as set out in clause 1 of Schedule 1 of the Sentencing Act 1991 (Vic), which includes rape, attempted rape, sexual assault, incest, indecent act with a child, persistent sexual abuse of a child, grooming and the production or possession of child pornography.

"Significant" means, in relation to emotional or psychological harm or neglect, that the harm or neglect is more than trivial or insignificant, but need not be as high as serious and need not have a lasting permanent effect.

The CCYP has provided guidance on how to identify physical violence, behaviour that causes emotional or psychological harm to a child and neglect.

Physical Violence

"Physical violence" can fall into two categories: actual physical violence and apprehended physical violence.

"Actual Physical violence" is intentionally or recklessly using physical force against, with or in the presence of a child which has the ability to cause physical injury or harm to the child. It does not matter whether injury or harm was actually caused to the child. Examples of actual physical violence can include:

- hitting/kicking/punching
- pushing/shoving/grabbing/throwing/shaking
- using an object to hit or strike
- using inappropriate restraint/excessive force.

Actual physical violence does not include:

- reasonable steps taken to protect a child from immediate harm, such as taking a child's arm to stop them from going into oncoming traffic
- medical treatment given in good faith by an appropriately qualified person, such as a first aid officer administering first aid.

"Apprehended Physical Violence" is intentionally or recklessly engaging in conduct or behaviour against, with or in the presence of a child (such as words, gestures or actions) that causes the child to think that physical force is about to be used against them or another person. It does not matter whether or not the person actually intended to carry out the physical violence.

For more information, refer to the CCYP's *Information Sheet 10: Physical Violence*.

Behaviour that causes significant emotional or psychological harm

"Behaviour that causes significant emotional or psychological harm" to a child requires a clear link between the alleged conduct and the significant harm suffered (significant is defined above).

When determining whether behaviour has caused significant emotional or psychological harm to a child, consider the following questions:

- what were the staff member's behaviours?
- was the child significantly emotionally or psychologically harmed and did the behaviour cause

the harm?

- is the behaviour subject to an exception?

What were the staff member's behaviours?

A broad range of behaviours can cause significant harm, including acts/gestures/communication, one-off or a series of behaviours, and behaviours that are linked to or independent of other reportable conduct.

Examples of behaviour that can cause significant emotional or psychological harm may include:

- exposure to violence or threats of violence
- verbal abuse
- coercive or manipulative behaviour
- persistent hostility/rejection
- humiliation/belittling
- scapegoating.

Regardless of the type of behaviour, it must be either intentional or reckless on the part of the staff member.

Was the child significantly emotionally or psychologically harmed and did the behaviour cause the harm?

Signs that a child may have been significantly emotionally or psychologically harmed may include:

- suicidal action, suicidal ideation or self-harm
- self-destructive, antisocial or anxious behaviour
- ongoing sleep disturbance, nightmares or bedwetting
- intense visible distress, withdrawal, fear, anxiety, anger, or despair, particularly over an extended period
- other dramatic changes that are out-of-character for the child (e.g. a usually shy child becoming defiant or a usually outgoing child becoming withdrawn)
- the child is assessed as having experienced a significant delay in their emotional or intellectual development or that their functioning has been impaired.

There must be a clear link between the behaviour and the harm. The behaviour need not be the sole cause of the harm, but it must be the main cause. For example, behaviour that exacerbates or aggravates a child's existing mental health disorder may be behaviour that also causes significant emotional or psychological harm.

Is the behaviour subject to an exception?

It will not be reportable conduct if:

- a staff member takes reasonable steps to protect a child from immediate harm
- a staff member with responsibility for discipline takes lawful and reasonable disciplinary action, such as sending a child to sit in 'time out' for a short period of time in line with disciplinary policy (Refer to our *Behaviour Management Policy*)
- an appropriately qualified staff member, gives medical treatment in good faith such as a first aid officer administering first aid.

For more information, refer to the CCYP's *Information Sheet 18: Behaviour that causes significant emotional and psychological harm*.

Significant Neglect

“**Significant Neglect**” occurs when there is a significant, deliberate or reckless failure to meet the basic needs of a child in circumstances where the staff member:

- understood the needs of the child, or could have understood those needs if they had turned their mind to the question; and
- had the opportunity to meet those needs; and
- failed to do so.

To be reportable conduct under this category, the neglect itself (not the harm) must be “significant”: it must be more than trivial or insignificant but need not be as high as serious and need not have a lasting permanent effect.

The CCYP says that neglect is “significant” if there has been a deliberate or reckless omission or omissions that have had, or could have, considerable force or effect on the safety or wellbeing of the child who is the victim of the neglect.

There are four types of significant neglect that may amount to reportable conduct:

- Supervisory neglect – a failure to exercise adequate supervision or control of a child (such as leaving a child alone or unsupervised for an extended period of time or exposing the child to inappropriate material or environments)
- Physical neglect – a failure to meet a child’s physical needs (such as inadequate food, clothing, shelter or hygiene)
- Educational neglect – a failure to ensure that a child’s formal educational needs are met (such as failing to register a child in school or condoning truancy)
- Emotional neglect – a failure to provide adequate nurturing, affection, encouragement and support (such as rejecting, shaming or isolating a child, or permitting or encouraging the child to engage in criminal behaviour).

For more information, refer to the CCYP's *Information Sheet 11: Significant neglect*.

Our *Child Safety Code of Conduct* outlines expected standards of behaviour of staff, Volunteers and Contractors at the College. It is important to note that a breach of this Code will not always constitute an incident of reportable conduct. Such breaches can often be dealt with at the College level and don't need to be reported to the CCYP. For example, reasonable discipline of a student would not amount to behaviour that causes emotional or psychological harm to a child and therefore is not reportable conduct.

4.3 What must be notified?

Under the Act, the College must notify the CCYP of a **reportable allegation** against a staff member.

Reportable allegation is defined in section 3 of the Act to mean any information that leads a person to form a reasonable belief that an employee (member of staff) has committed:

- reportable conduct; or
- misconduct that may involve reportable conduct –

whether or not the conduct/misconduct is alleged to have occurred in the course of the person's employment at the College.

4.4 Who must make the notification?

Any person may disclose a reportable allegation to the CCYP using an online form available from the CCYP's website, by phone or by letter (Section 16L of the Act).

While any person may disclose a reportable allegation, the Principal of the College must notify the CCYP of a reportable allegation (section 16M).

It is a criminal offence for the Principal to fail to disclose a reportable allegation to the CCYP without a reasonable excuse. The Act doesn't define what a reasonable excuse may be, but section 16M(5) provides an exemption if they honestly and reasonably believed that another person had notified the CCYP.

The Principal must make a report using an online form available from the CCYP's website.

4.5 Reportable Conduct and Other Reporting Obligations

The Reportable Conduct obligation covered in this policy is separate and distinct from the:

- [Mandatory Reporting](#) obligation under the Children, Youth and Families Act 2005 (Vic);
- [Obligation to Report a Sexual Offence \(the "Failure to Disclose" offence\)](#) obligation under the Crimes Act 1958 (Vic); and
- Conduct that is Reportable to the Victorian Institute of Teaching under the Education and Training Reform Act 2006 (Vic).

The threshold for reporting allegations of reportable conduct is much lower than these other reporting obligations.

Any allegations of criminal conduct, including physical violence, significant emotional or psychological abuse, sexual offences and significant neglect must be reported to the Victorian Police as the first priority.

4.6 Internal Reporting of Reportable Allegations

As soon as a person, including a staff member, forms a reasonable belief that a staff member at the College has engaged in reportable conduct or misconduct that may involve reportable conduct (the reportable allegation), the person must notify a College **Child Safety Officer** who must then notify the **Principal**. The report may be made verbally or in written form using the [Responding to Suspected Child Abuse Template](#) in the Department of Education (Vic) PROTECT program website.

This Template was created for reporting abuse, rather than reportable conduct but, it is an excellent way to record as much information about reportable allegations as is available.

Where the reportable allegation involves the Principal, the staff member must notify the Deputy Principal who must then notify the Chair of the College Council.

It is important to note that a College **Child Safety Officer** does not have a formal role under the Act (unless they are the 'head' of the school). However, it is the College's policy that a College Child Safety Officer or Principal is notified first.

Where a verbal report is made by a staff member, it should be followed up with a written report provided to the Principal within 48 hours of the verbal report.

Where a reasonable belief exists that the Principal has engaged in reportable conduct or misconduct that may involve reportable conduct, verbal and written reports should be given to the Deputy Principal or to the Chair of the College Council. The Chair of College Council should lodge the allegation and documents with the CCYP using the online form or by phone or letter.

4.7 Reporting to the Commission: The Principal or Chair of the College Council

Where the Principal/Council Chair receives a reportable allegation from any person, including a staff member, they must notify the CCYP within **three business days**.

There are two stages of reporting.

The CCYP must be notified by the Principal in writing of:

- the reportable allegation as soon as possible, and in any event within three business days of being notified (**Stage One Report**); and
- the proposed next course of action (see below), as soon as practicable, and within 30 days of becoming aware of the reportable allegation (**Stage Two Report**).

Stage One Report

The report to the CCYP must state:

- that a reportable allegation has been made against a staff member;
- the name (including former name and alias, if known) and date of birth, if known, of the staff member;
- whether Victoria Police has been contacted about the reportable allegation;
- the name, address and telephone number of the College; and
- the name of the Principal.

An online form available on the CCYP's website must be used for the Stage One Report.

If the staff member is a registered teacher and the misconduct involves a charge, conviction or finding of guilt of a sexual offence, the College must immediately notify the Victorian Institute of Teaching (VIT) under conduct that is reportable to the Victorian Institute of Teaching. The timing of making a Stage One Report to the Commission under this policy will coincide with the timing of a report made to the VIT.

Stage Two Report

The report to the CCYP must state:

- detailed information about the reportable allegation;
- whether or not the College proposes to take any disciplinary or other action in relation to the staff member and the reasons why it intends to take, or not to take, that action; and
- any written submissions made to the Principal concerning the reportable allegation that an employee wished to have considered in determining what, if any, disciplinary or other action should be taken in relation to the staff member.

Any allegation of criminal conduct, including physical violence, significant emotional or psychological abuse, sexual offences or significant neglect, must be reported to the Victorian Police. A Victoria Police investigation will take priority over any investigation conducted by the College under this Policy.

4.8 What happens after a report to the CCYP is made?

After the Principal or Council Chair (where the reportable allegation involves the Principal) has made a report to the Commission, they must ensure that an appropriate investigation of the reportable allegation is conducted.

The investigation can be conducted by the Principal or Council Chair (if the allegation involves the Principal) or the College can appoint a regulator (for example the Victorian Institute of Teaching) or an independent investigator. A regulator engaged by the College for the purposes of an investigation may also appoint an independent investigator.

The Principal or Council Chair (where the reportable allegation involves the Principal) must notify the CCYP of who will be conducting the investigation.

The investigation must be conducted in accordance with the rules of procedural fairness and natural justice. For example, the investigation should be conducted without bias and the person against whom the allegation is made should be given the right to respond. Refer to the CCYP's *Information Sheet 4: Investigation overview* for more information on what to consider when conducting an investigation.

A Police investigation into any matter takes priority over an investigation by the College. On becoming aware that the Police are investigating a reportable allegation:

- the College should consult with the Police before commencing an investigation to find out if the Police are, or will be, conducting an investigation
- the College's investigation should be put on hold until the Police investigation is complete.

The Principal or Council Chair (where the reportable allegation involves the Principal) must give the CCYP:

- a copy of the findings of the investigation and the reasons for those findings;
- details of any disciplinary or other action that the College proposes to take in relation to the staff member and the reasons for that action; and
- if the College does not propose to take any disciplinary or other action in relation to the staff member, the reasons why no action is to be taken.

Under the Act, a staff member may seek a review by the CCYP of a finding made by it at the conclusion of an investigation by the CCYP.

4.9 Information Sharing: Children and Parents/Carers

Under the Act, the Principal may disclose:

- information about the progress of the investigation;
- the findings, reasons for the findings and the recommendations made at the conclusion of the investigation;
- any action taken in response to those findings;

to:

- the child who is the subject of the reporting allegation
- a parent
- a carer, or
- the DHHS if the child is under its care.

4.10 Information Sharing: To Schools, the Commission and Others

Under the Act, the Principal may disclose information in relation to:

- a reportable allegation;
- a concern that reportable conduct has been committed;
- the investigation of a reportable allegation or concern about reportable conduct;
- the findings of an investigation and the reasons, or recommendations made at the conclusion of the investigation; or

- any action taken in response to those findings.

The Principal may disclose this information to:

- the Commission;
- the head of another entity governed by the Act, such as another school;
- a regulator;
- the Chief Commissioner of Police;
- if necessary for the purposes of an investigation, an independent investigator;
- if necessary for the purposes of a Working with Children Check, the Secretary to the Department of Justice and Community Safety; and
- a relevant Minister.

Publication of Information

The College must not publish information that would enable the identification of:

- a person who has notified the Commission;
- a child in relation to whom a reportable allegation was made or a finding of reportable conduct was made.

The Act provides more information on the meaning of 'publish', which includes making the information publicly available in writing or email.

4.11 Powers of the CCYP

The CCYP has broad powers under the Act in relation to investigating a reportable allegation at the College. The CCYP may visit the College, inspect documents and interview staff members or children involved in the reportable allegation.

The College must assist the CCYP in all reasonable aspects of its investigation.

4.12 Record Keeping

The College maintains records of these reportable allegations, written reports and reportable conduct investigation findings indefinitely.

Records relating to a child protection incident are only disposed of in accordance with our records management procedures.

5. RELATED POLICIES

- Child Safe Policy
- Code of Conduct
- Responding to Concerns of Child Abuse, Neglect, or Safety, and the Child Safety Officers' Role
- Records Management Policy
- Behaviour Management Policy

6. REFERENCES

- Complispace: Child Protection Program / Procedures for Responding to and Reporting Allegations of Child Abuse / Reportable Conduct (March 2020)

- Child Wellbeing and Safety Act 2005 (Vic)
- The Children, Youth and Families Act 2005 (Vic)
- Commission for Children and Young People Reportable Conduct Information Sheets on Commission's website.