

Reportable Conduct Policy



Source of Obligation

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, the Leadership Team, parents / carers and students via our public website and CompliSpace.

Who Is An Employee?

Section 3 of the Act, “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.

A minister of religion or a religious leader is also an employee.

Of relevance to the College, the following people are considered to be employees:

- Leadership Team
- the Principal
- staff members
- Volunteers
- Third Party Contractors
- External Education Providers.

For the purposes of this policy, all of the above are referred to collectively as “Staff” or “Staff Members”.

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; or
- sexual misconduct committed against, with or in the presence of, a child; or
- physical violence committed against, with or in the presence of, a child; or
- 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
- 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 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 includes an act that causes physical injury or pain. Examples of physical violence can include:

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

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.

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

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

- patterns of out-of-character behaviour
- regression in behaviour
- distress and anxious behaviours
- other physical symptoms, such as self-harm.

The exacerbation or aggravation of an existing mental health disorder may also cause emotional or psychological harm.

Examples of emotional or psychological harm may include:

- exposure to violence or threats of violence
- self-destructive behaviour
- antisocial behaviour
- persistent hostility / rejection
- humiliation / belittling
- scapegoating.

It will not be reportable conduct if:

- a person takes reasonable steps to protect a child from immediate harm
- a person with responsibility for discipline takes lawful and reasonable disciplinary action, such as sending a child to sit in 'time out' for a period of time
- an appropriately qualified person, gives medical treatment in good faith such as a first aid officer administering first aid.

Neglect occurs when a person does not meet their obligations and responsibilities to keep a child safe and well. The neglect:

- must be more than minor and insignificant
- does not need to have a lasting or permanent effect
- may be an ongoing situation or a one-off incident, as long as it is not minor in nature.

Our **Child Protection Code of Conduct** outlines expected standards of behaviour for all staff, Volunteers and Third Party 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 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.

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 a Staff Member 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.

Guidance from the CCYP states that **reasonable belief** is more than a suspicion. There must be some objective basis for the belief. However, it is not the same as proof and does not require certainty.

Who Must Make the Notification?

Any person may disclose a reportable allegation to the CCYP by using an online form available from the CCYP's website, by phone or by letter.

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

The "head" of the College has distinct responsibilities under the Reportable Conduct Scheme. The "head" of the College is the Principal.

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.

Fulfilling the Principal's Responsibilities

The Principal is responsible for ensuring the College complies with the reportable conduct obligations under the Act. However, the CCYP does not expect the Principal to practically carry out their responsibilities alone. They may seek help from other people within the College. This may include creating and developing systems, sending approved notifications to the CCYP, or conducting investigations on the behalf of the Principal.

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.

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.

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** obligation under the Crimes Act 1958 (Vic)
- **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. A Police investigation will take priority over any investigation conducted by the College under this policy.

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 (a reportable allegation), the person must notify the Principal. The report may be made verbally or in written form using the Responding to Suspected Child Abuse Template located on our website or CompliSpace.

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

Where the reportable allegation involves the Principal, the Staff Member must notify the Deputy Principal or the CCYP using an online form available from the CCYP's website, by phone or by letter.

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 Staff Member has a reasonable belief that the Principal has engaged in reportable conduct, verbal and written reports should be given to the Deputy Principal or the CCYP using an online form available on the CCYP's website, by phone or by letter.

Reporting to the CCYP: The Principal or the Deputy Principal

Where the Principal receives a reportable allegation from any person, including a Staff Member, they must notify the CCYP within three business days.

Where the reportable allegation involves the Principal, the person must notify the Deputy Principal who will become the "head" of the College for the purposes of reporting the reportable allegation.

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 the Principal being notified of the reportable allegation (**Stage One Report**)
- 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 any former name and alias, if known) and date of birth, if known, of the Staff Member
- whether the Victoria Police has been contacted about the reportable allegation
- the name, address and telephone number of the College
- 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** policy. The timing of making a Stage One Report to the CCYP 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
- any written submissions made to the Principal concerning the reportable allegation that a Staff Member 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 child abuse, including physical violence, significant emotional or psychological abuse, sexual offences or significant neglect, must be reported to the Victorian Police. A Police investigation will take priority over any investigation conducted by the College under this policy.

What Happens After a Report to the CCYP is Made?

After the Principal or the Deputy Principal has made a report to the CCYP, they must ensure that an appropriate investigation of the reportable allegation is conducted.

The investigation can be conducted by the Principal or the Deputy Principal (if authorised by the Principal or the allegation involves the Principal). Alternatively, the College can appoint a regulator (for example the VIT) 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 Deputy 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 Principal should consult with the Police before commencing an investigation to find out if the Police are, or will be, conducting an investigation; or
- the College's investigation should be put on hold until the Police investigation is complete.

The Principal or Deputy 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
- 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 at the conclusion of an investigation.

Information Sharing: Children and Parents / Carers

Under the Act, the Principal or Deputy Principal (if authorised by 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
- an action taken in response to those findings

to:

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

Information Sharing: Schools, the CCYP and Others

Under the Act, the Principal or Deputy Principal (if authorised by 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
- any action taken in response to those findings

to:

- the CCYP
- 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 Regulation
- a relevant Minister.

Publication of Information

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

- a person or who notified the CCYP
- 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.

Powers of the Commission

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.

Record Keeping

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

Refer to our **Child Protection Record Keeping Policy** available on our website and CompliSpace.