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Reportable Conduct

Source of Obligation

The Child Wellbeing and Safety Act 2005 (Vic) (the Act) requires School 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 School 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 St Francis of the Fields School Advisory Board, parents/carers and students via our public website and School intranet.

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

Who is an employee?

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

- employed by the School whether or not that person is employed in connection with any work or activities of the School that relate to children; or
- engaged by the School 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 School, the following people are considered to be employees:

- St Francis of the Fields School Advisory Board Members
- 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;
- 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
- 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 (refer to our Student Discipline Policy)
- 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.

Refer to Definition and Key Risk Indicators of Abuse for more information about sexual offences, grooming, physical violence, emotional or psychological harm and neglect.

Our Child Safe Code of Conduct outlines expected standards of behaviour for all staff, Volunteers and Third Party Contractors at the School. 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 School 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.

What must be notified?

Under the Act, the School 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 School.

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 (section 16L of the Act).

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

The "head" of the School has distinct responsibilities under the Reportable Conduct Scheme. The "head" of the School is the Canonical Administrator.

It is a criminal offence for the Canonical Administrator 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 Canonical Administrator must make a report using an online form available from the CCYP's website.

Fulfilling the Canonical Administrator 's Responsibilities

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

The Canonical Administrator cannot delegate their responsibilities under the Act - they are still solely responsible for ensuring the School's compliance with the Reportable Conduct Scheme.

The Canonical Administrator 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 Canonical Administrator 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 School 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 School has engaged in reportable conduct or misconduct that may involve reportable conduct (a reportable allegation), the person must notify the Canonical Administrator.

The report may be made verbally or in written form using the Responding to Suspected Child Abuse Template available here.

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 Canonical Administrator, 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 Canonical Administrator within 48 hours of the verbal report.

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

Reporting to the CCYP: The Canonical Administrator or Deputy Principal

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

There are two stages of reporting.

The CCYP must be notified by the Canonical Administrator in writing of:

- the reportable allegation as soon as possible, and in any event within three business days of the Canonical Administrator 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 School
- the name of the Canonical Administrator.

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 School must immediately notify the Victorian Institute of Teaching (VIT) under our Conduct that is Reportable to the Victorian Institute of Teaching policy. 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 School 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 Canonical Administrator 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 criminal conduct, 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 School under this Policy.

What happens after a report to the CCYP is made?

After the Canonical Administrator 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 Canonical Administrator or the Deputy Principal (if authorised by the Canonical Administrator or the allegation involves the Canonical Administrator). Alternatively, the School can appoint a regulator (for example the VIT) or an independent investigator. A regulator engaged by the School for the purposes of an investigation may also appoint an independent investigator.

The Canonical Administrator or the 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 School. On becoming aware that the Police are investigating a reportable allegation:

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

The Canonical Administrator 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 School proposes to take in relation to the Staff Member and the reasons for that action
- if the School 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 Canonical Administrator or Deputy Principal (if authorised by the Canonical Administrator) 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 reporting 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 Canonical Administrator or Deputy Principal (if authorised by the Canonical Administrator) 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 School 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 CCYP

The CCYP has broad powers under the Act in relation to investigating a reportable allegation at the School. The CCYP may visit the School, inspect documents and interview Staff or students involved in the reportable allegation.

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

Record Keeping

The School 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 Policy.