



## Reportable Conduct Procedure

### 1 Background

- 1.1 Pymble Ladies' College (the College) is committed to providing a safe and supportive environment for staff, students and visitors to the College. It recognises that both individuals and the College have a range of different obligations relating to the safety, protection, wellbeing and welfare of students.
- 1.2 The purpose of this procedure is to set out staff responsibilities for child protection and processes for staff to follow in relation to matters related to the reportable conduct of staff.

### 2 Purpose

- 2.1 This procedure applies to all staff members, which includes employees, contractors, volunteers and visitors associated with the activities of the College.
- 2.2 Staff members who fail to adhere to this procedure may be in breach of their terms of employment.
- 2.3 There are a number of other College Policies that relate to child protection including, but not limited to the:
  - *Staff Code of Behaviour* that outlines the standard of behaviour expected
  - *Work Health and Safety Policy* that identifies obligations imposed by work health and safety legislation
  - *Anti-Discrimination, Anti-Harassment and Anti-Bullying Policy* that summarises obligations in relation to unlawful discrimination, harassment and bullying
  - *Anti-Bullying Policy (Students)*
  - *Grievance and Dispute Resolution Policy* that sets out the expectations and management of grievances and disputes
  - *Complaints Policy* that sets out the framework for raising and managing complaints.

### 3 Definitions

- 3.1 In the context of this document definitions have been defined in accordance with the legislation and are in the relevant sections below.

## 4 Procedure

### 4.1 General

4.1.1 Section 29 of the *Children's Guardian Act 2019* (Act), requires the Heads of Entities, including non-government schools in New South Wales, to notify the Children's Guardian of all allegations of reportable conduct and convictions involving an "employee" and the outcome of the School investigation of these allegations.

4.1.2 Under the *Act*, allegations of child abuse only fall within the reportable conduct jurisdiction if the involved individual is an employee of the relevant entity at the time when the allegation becomes known by the Head of Entity.

4.1.3 Reportable conduct:

- Involves a child (a person under the age of 18 years) at the time of the alleged incident; and
- Involves certain defined conduct as described in the *Act* (see below).

4.1.4 The Office of the Children's Guardian (OCG):

- Must keep under scrutiny the systems for preventing reportable conduct by employees of non-government schools and the handling of, or response to, reportable allegations (including allegations which are exempt from notification) or convictions
- Must receive and assess notifications from non-government schools concerning reportable conduct or reportable convictions
- Is required to oversee or monitor the conduct of investigations by non-government schools into allegations of reportable conduct or reportable convictions
- Must determine whether an investigation that has been monitored has been conducted properly, and whether appropriate action has been taken as a result of the investigation
- May directly investigate an allegation of reportable conduct or reportable conviction against an employee of a non-government school, or the handling of or response to such a matter (e.g. arising out of complaints by the person who is the subject of an allegation) and
- May investigate the way in which a relevant entity has dealt with, or is dealing with, a report, complaint or notification, if the OCG considers it appropriate to do so.

4.1.5 Under the *Act*, reportable conduct is defined as:

- A sexual offence
- Sexual misconduct
- An assault against a child
- Ill-treatment of a child
- Neglect of a child
- An offence under section 43B (failure to protect) of Section 316A (failure to report) of the *Crimes Act 1900*; and

- Behaviour that causes significant emotional or psychological harm to a child.

#### 4.1.6 Reportable conduct does not extend to:

- Conduct that is reasonable for the purposes of the 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
- The use of physical force that, in all the circumstances, is trivial or negligible, and in the circumstances in which it was used have been investigated and the result of the investigation recorded in accordance with appropriate procedures.

## 4.2 Definitions

The following definitions relate to reportable conduct:

### 4.2.1 **Sexual Offence:** an offence of a sexual nature under a law of the State, another State, a territory, or the Commonwealth, committed against, with or in the presence of a child such as:

- Sexual touching of a child
- A grooming offence
- Production, dissemination or possession of child abuse material.

Definitions of 'grooming', within child protection legislation are complex. Under the *Crimes Act*, grooming or procuring a child under the age of 16 years for unlawful sexual activity is classed as a sexual offence. The *Crimes Act* (S73) also extends the age of consent to 18 years when a child is in a 'special care' relationship. Under Schedule 1(2) of the *Working With Children Act*, grooming is recognised as a form of sexual misconduct. The Act and this *Reportable Conduct Procedure* reflect these definitions within the context of the Reportable Conduct Scheme (Division 2).

An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of sexual offence.

### 4.2.2 **Sexual misconduct:** conduct with, towards or in the presence of a child that is sexual in nature (but not a sexual offence). The Act provides the following (non-exhaustive) examples:

- Descriptions of sexual acts without a legitimate reason to provide the descriptions
- Sexual comments, conversations or communications
- Comments to a child that express a desire to act in a sexual manner towards the child, or another child.

Note: crossing professional boundaries comes within the scope of the scheme to the extent that the alleged conduct meets the definition of sexual misconduct. That is, the conduct with, towards or in the presence of a child that is sexual in nature (but not a sexual offence).

4.2.3 **Assault:** an assault can occur when a person intentionally or recklessly (ie. knows that assault is possible but ignores the risk):

- Applies physical force against a child without lawful justification or excuse, such as hitting, striking, kicking, punching or dragging a child (actual physical force)
- Causes a child to apprehend the immediate and unlawful use of physical force against them, such as threatening to physically harm a child through words and/or gestures regardless of whether the person actually intends to apply any force (apprehension of physical force).

4.2.4 **Ill-treatment:** is defined as conduct towards a child that is:

- Unreasonable; and
- Seriously inappropriate, improper, inhuman or cruel.

Ill-treatment can include a range of conduct such as making excessive or degrading demands on a child, a pattern of hostile or degrading comments or behaviour towards a child and using inappropriate forms of behaviour management towards a child.

4.2.5 **Neglect:** defined as a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for a child that causes or is likely to cause harm, by a person who has care and/or responsibility towards a child.

Neglect can be an ongoing situation of repeated failure by a caregiver to meet a child's physical or psychological needs, or a single significant incident where a caregiver fails to fulfil a duty or obligation, resulting in actual harm to a child where there is a potential for significant harm to a child. Examples of neglect include failing to protect a child from abuse and exposing a child to a harmful environment.

4.2.6 Behaviour that causes significant **emotional and psychological harm** to a child is conduct that is intentional or reckless (without reasonable excuse), obviously or very clearly unreasonable and which results in significant emotional harm or trauma to a child.

For reportable allegations involving psychological harm, the following elements must be present:

- An obviously or very clearly unreasonable or serious act or series of acts in that the employees knew or ought to have known was unacceptable, and
- Evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self-harm, and
- An alleged causal link between the employee's conduct and the significant emotional or psychological harm to the child.

4.2.7 **Reportable allegation** is an allegation that an employee has engaged in conduct that may be reportable conduct.

4.2.8 **Reportable conviction** means a conviction (including a finding of guilt without the court proceeding to a conviction) in NSW or elsewhere, of an offence involving reportable conduct.

4.2.9 **Employee** of an entity includes:

- An individual employed by, or in, the entity
- A volunteer providing services to children
- A contractor engaged directly by the entity (or by a third party) where the contractor holds, or is required to hold a Working with Children Check (WWCC) clearance for the purposes of their work with an entity, and
- A person engaged by a religious body where that person holds or is required to hold a WWCC clearance for the purposes of their work with the religious body.

4.2.10 **ESOA** means Employee Subject of the Allegation.

4.2.11 **Head of Entity**: the Principal, for the purposes of the Children's Guardian Act.

#### 4.3 **Procedure for reporting of reportable conduct allegations or convictions**

##### **Staff Members**

- 4.3.1 Any concerns about current employees engaging in conduct that is considered inappropriate, reportable conduct, or any allegation that includes a historical context must be reported directly and in confidence to the Principal.
- 4.3.2 Where it is uncertain if the conduct is reportable conduct but is considered inappropriate behaviour this must also be reported to the Principal.
- 4.3.3 Staff members must also report to the Principal when they become aware that an employee has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction) involving reportable conduct. This includes information relating to the employee themselves.
- 4.3.4 If the allegation involves the Principal, the staff member must report it to the Chair of the Board.

##### **Students**

- 4.3.5 Students are encouraged to report any conduct that is in their view inappropriate, reportable or criminal conduct to a staff member. The trusted staff member will then follow the procedure for reportable conduct for staff members.

##### **Parents, carers and community members**

- 4.3.6 Parents, carer and community members are encouraged to report any conduct that is in their view inappropriate, reportable or criminal conduct to the Principal or their delegate.

## **The College**

4.3.7 The Principal, as the Head of Entity under the Act, must:

- Take reasonable steps to implement systems for preventing, detecting and responding to reportable allegations or convictions
- Submit a 7-day notification form to the OCG within 7 business days of becoming aware of a reportable allegation or conviction against an employee of the College (unless the Principal has a reasonable excuse).

4.3.8 The notification should include the following information:

- That a report has been received in relation to an employee of the College and
- The type of reportable conduct, and
- The name of the employee, and
- The name and contact details of the College and the Principal, and
- For a reportable allegation, whether it has been reported to Police, and
- If a report has been made to the Child Protection Helpline, that a report has been made, and
- The nature of the relevant entity's initial risk assessment and risk management action.

4.3.9 The notice must also include the following, if known to the Principal:

- The details of the reportable allegation or conviction considered to be a reportable conviction
- The date of birth and WWCC number, if any, of the employee subject of the report,
- The police report reference number, if police were notified
- The report reference number if reported to the Child Protection Helpline
- The names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or a contractor.

4.3.10 Maximum penalty for failure to notify within 7 business days is 10 penalty units.

## **4.4 Process for investigating an allegation of reportable conduct**

4.4.1 The Principal is responsible for ensuring, so far as is reasonably practicable, that the following steps are taken to investigate an allegation of reportable conduct.

### **Initial steps**

4.4.2 Once an allegation of reportable conduct against an employee is received, the Principal is required to:

- Determine whether it is an allegation of reportable conduct
- Assess whether the NSW Department of Communities and Justice (DCJ) or the Police need to be notified (i.e. if reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence). If they have been notified, seek

clearance from these statutory agencies prior to the College proceeding with the reportable conduct investigation

- Notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by DCJ or the Police)
- Notify the OCG within 7 business days of receiving the allegation
- Carry out a risk assessment and take action to reduce/remove risk, where appropriate, and
- Provide an initial letter to the Employee Subject of the Allegation (ESOA) advising that an allegation or reportable conduct has been made against them and the College responsibility to investigate this matter under section 34 of the Act, and
- Investigate the allegation or appoint someone to investigate the allegation.

### **Investigation principles**

4.4.3 During the investigation of a reportable conduct allegation the College will:

- Follow the principles of procedural fairness
- Inform the ESOA of the substance of any allegations made against them, at the appropriate time in the investigation and provide them with a reasonable opportunity to respond to the allegations
- Make reasonable enquiries or investigations before making a decision
- Avoid conflicts of interest
- Conduct the investigation without unjustifiable delay
- Handle the matter as confidentially as possible, and
- Provide appropriate support for all parties including the child/children, witnesses and the ESOA.

### **Investigation steps**

4.4.4 In an investigation, the Principal or appointed investigator will generally:

- Interview relevant witnesses and gather relevant documentation
- Provide a letter of allegation to the ESOA
- Provide the ESOA with the opportunity to provide a response to the allegations either in writing or at interview
- Consider relevant evidence and make a preliminary finding in accordance with the *OCG Guidelines*
- Inform the ESOA of the preliminary finding in writing by the Principal and provide them with an opportunity to respond or make further submission prior to the matter moving to the final findings
- Consider any response provided by the ESOA
- Make a final finding in accordance with the *OCG Guidelines*
- Decide on the disciplinary action, if any, to be taken against the ESOA
- If it is completed, send the final report to the OCG within 30 business days after having received the allegation as per section 36 of the Act
- Should the final report be unfinished within 30 business days, the Principal must provide at a minimum, an interim report to the OCG within 30 business days of having received the allegation, as per section 38 of the Act.

Submission of an interim report must include:

- A reason for not providing the final report within 30 days and an estimated time frame for completion of the report
- Specific information, including (if known), the facts and circumstances of the reportable allegation, any known information about a reportable conviction, action taken since the OCG received a notification about the reportable allegation or reportable conviction, further action the Principal proposes to take in relation to the reportable allegation or reportable conviction, including if the Principal proposes to take no further action, the reason for the action taken and the action proposed to be taken or the reasons for the decision to take no further action, other information prescribed by the regulations, and
- Be accompanied by copies of documents in the College's possession, including transcripts of interviews and copies of evidence.

4.4.5 The steps outlined above may need to be varied on occasion to meet particular circumstances. For example, it may be necessary to take different steps where the matter is also being investigated by the DCJ or police.

4.4.6 An ESOA may have an appropriate support person with them during the interview process. Such a person is there for support only and as a witness to the proceedings, not as an advocate or to take an active role.

#### **4.5 Risk management throughout an investigation of a reportable conduct allegation**

4.5.1 Risk management means identifying the potential for an incident or accident to occur and taking steps to reduce the likelihood or severity of its occurrence.

4.5.2 The Principal is responsible for risk management throughout the investigation and will assess risk at the beginning of the investigation, during and at the end of the investigation.

##### **Initial risk assessment**

4.5.3 Following an allegation of reportable conduct against an employee, the Principal conducts a risk assessment to identify and minimise the risks to:

- The child(ren) who are the subject of the allegation
- Other children with whom the employee may have contact
- The ESOA
- The College, and
- The proper investigation of the allegation.

4.5.4 The factors which will be considered during the risk assessment include the:

- Nature and seriousness of the allegations
- Vulnerability of the child(ren) the ESOA has contact with at work
- Nature of the position occupied by the ESOA

- Level of supervision of the ESOA, and
- Disciplinary history or safety of the ESOA and possible risks to the investigation.

4.5.5 The Principal will take appropriate action to minimise risks. This may include the ESOA being temporarily relieved of some duties, being required not to have contact with certain students, being asked to take paid leave or being suspended from duty. When taking action to address any risks identified, the College will take into consideration both the needs of the child(ren) and the ESOA.

4.5.6 A decision to take action on the basis of a risk assessment is not indicative of the findings of the matter. Until the investigation is completed and a finding is made, any action, such as an employee being suspended, is not to be considered to be an indication that the alleged conduct by the employee did occur.

### **Ongoing Risk Management**

4.5.7 The Principal will continually monitor risk during the investigation including in the light of any new relevant information that emerges.

### **Findings**

4.5.8 At the completion of the investigation, a finding will be made in relation to the allegation and a decision made by the Principal regarding what action, if any, is required in relation to the ESOA, the child(ren) involved and any other parties.

### **Information for the ESOA**

4.5.9 The ESOA will be advised:

- That an allegation has been made against them (at the appropriate time in the investigation), and
- Of the substance of the allegation, or of any preliminary finding and the final finding.

4.5.10 The ESOA does not automatically have the right to:

- Know or have confirmed the identity of the person who made the allegation, or
- Be shown the content of the OCG notification form or other investigation material that reveals all information provided by other employees or witnesses.

4.5.11 The *WWC Act* (section 46), enables a person who has a finding referred to the OCG under the *WWCC Act* to request access to the records held by the College in relation to the finding of misconduct involving children.

### **Disciplinary Action**

4.5.12 As a result of the allegations, investigation or final findings, the College may take disciplinary action against the ESOA (including termination of employment).

4.5.13 In relation to any disciplinary action the College will give to the ESOA:

- Details of the proposed disciplinary action, and
- A reasonable opportunity to respond before a final decision is made.

4.5.14 Where a staff member, a Contractor Working Directly with Children, a Regular Indirect Contact Contractor or a Volunteer Working Directly with Children breaches any obligation, duty or responsibility within the Child Protection Policy, the College may take disciplinary action that may result in a range of measures including (depending on the severity of the breach):

- remedial education
- counselling
- increased supervision
- the restriction of duties
- appointment to an alternate role
- suspension
- in the case of serious breaches, this may include termination of employment, contract or engagement, and/or ejection and ban (temporary or ongoing) from the College premises.

4.5.15 Where any other member of the College community, including Casual Indirect Contact Contractors and Casual Indirect Contact Volunteers, breaches any obligation, duty or responsibility within the Child Protection Policy, the College will take appropriate action. If members of the College community engage in certain conduct in breach of this Program, their conduct may also be subject to Mandatory Reporting to DCJ, Voluntary Reporting to DCJ, Reportable Conduct and/or Offences under the *Crimes Act 1900* (NSW) that require Reporting to Police, which will be reported to the relevant external agency.

## 4.6 Confidentiality

- 4.6.1 It is important when dealing with allegations of reportable conduct that the matter be dealt with as confidentially as possible.
- 4.6.2 The College requires that all parties maintain confidentiality during the investigation including in relation to the handling and storing of documents and records.
- 4.6.3 Records about allegations of reportable conduct against employees will be kept in a secure area and will be accessible by the Principal or with the Principal's express authority.
- 4.6.4 No employee may comment to the media about an allegation of reportable conduct unless expressly authorised by the Principal to do so.
- 4.6.5 Staff members who become aware of a breach of confidentiality in relation to a reportable conduct allegation must advise the Principal.

## 5 Guidelines

5.1 Nil

## **6 Responsibilities**

6.1 Chair of the Board

6.2 Principal

## **7 Related Documents**

7.1 Child Protection Policy

7.2 EYS – Child Protection Policy

7.3 OSHC – Child Protection Policy

7.4 Mandatory Reporting Procedure

7.5 Working With Children Check Procedure

7.6 Staff Code of Behaviour

7.7 Work Health and Safety Policy

7.8 Anti-Discrimination, Anti-Harassment and Anti-Bullying Policy

7.9 Anti-Bullying Policy (Students)

7.10 Grievance and Dispute Resolution Policy

7.11 Student Code of Behaviour Policy

7.12 Complaints Policy

7.13 Contractors and Volunteers Induction Handbook

7.14 NSW Department of Community and Justice ([www.dcj.nsw.gov.au](http://www.dcj.nsw.gov.au))

7.15 The Office of Children's Guardian ([www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au))

7.16 Department of Premier and Cabinet – Keep Them Safe ([www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au))

## **8 Authorisation**

8.1 Principal

8.2 Chair of the Board

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