



# Guidelines and Procedures Reportable Allegations Against Employees

## 1. General Statement

The Children's Guardian Act 2019 (NSW) (*the Act*) requires the Children's Guardian to monitor investigations into allegations of child abuse against employees within institutions such as schools. Such conduct is termed 'reportable conduct' or 'reportable allegation', and guidelines for defining such conduct comes from the Children's Guardian Act 2019.

### Glossary

DCJ – Department of Communities and Justice

ESOR – Employee Subject of Report

HRE – Head of Relevant Entity

MRG - Mandatory Reporting Guide

OCG – Office of the Children's Guardian

SPCE – St Philip's Christian Education

WWCC – Working with Children Check

## 2. Head of Relevant Entity

The Head of Relevant Entity (HRE) for this school is the Principal of the College. He/she is responsible for reporting such matters to the Office of the Children's Guardian (OCG) and to investigate reportable allegations as required, according to the guidelines from the OCG. If the Principal is the Employee Subject of Report (ESOR) then the Executive Principal becomes the HRE. If the Executive Principal is the ESOR, then the Chairman of the Board of Directors reports the matter to the OCG.

## 3. Who is an Employee?

There are four groups of people who are considered to be employees:

- any employee of the entity, whether or not employed in connection with any work or activities of the entity that relate to children;
- a volunteer providing services to children;
- any individual engaged by the entity to provide services to children. (This includes contractors, and subcontractors, whether within the school, or whether involved with students on an activity or program external to the school, and in terms of risk assessment and monitoring, including out-of-State and overseas) where they hold or are required to hold a WWCC clearance for the purposes of their work with the entity;
- 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.

The *Children's Guardian Act 2019 (NSW)* requires the HRE to notify the OCG of allegations against employees that constitute sexual offences, misconduct, assault, ill-treatment, neglect, an offence under Section 43B or 316A of the Crimes Act 1900 (NSW) and behaviour that causes psychological harm to children. The HRE must also inform the Executive Principal that an allegation has been received and reported to OCG.

The responsibility for conducting investigations into allegations against employees lies with the School. In some circumstances, statutory agencies may undertake a parallel investigation for other purposes - such as assessing risk and care issues or conducting a criminal investigation i.e. DCJ, NSW Police. If this is the case, the statutory agencies will advise the HRE as to what they can or cannot do while they complete their investigation. Note that the school must continue its duty of care obligations, even if a statutory agency is conducting their investigation.

For a notification of child abuse or neglect to be made to DCJ, the school must have reasonable grounds to suspect that a child is in danger of being currently at **'significant risk of harm'** as guided by the Mandatory Reporting Guide (MRG). The OCG however, must be notified of **any** allegation against an employee of the College which meets the criteria of a reportable allegation, whether or not the school thinks there are reasonable grounds to believe that the notifiable abuse has taken place. Similarly, if the ESOR is a teacher, then NESAs must be notified (as per the SPCE TAA manual), and that teacher's registration may be suspended, during and pending the outcome of the investigation, depending on NESAs' ruling. That means that the ESOR may not be able to undertake any teaching duties during the investigation.

#### Allegations made against the Principal

Allegations of Reportable Conduct made against the Principal must be reported to the Executive Principal. After undertaking the initial procedures (as below), the Executive Principal will act as HRE and notify the OCG. The Executive Principal will follow the same procedures for responding to allegations.

#### **4. Convictions**

The Act also requires that any convictions for child abuse offences against an employee of the College ('reportable convictions') be made to the OCG. The conviction must be reported whether the abuse took place in the course of the person's employment or in any other situation.

#### **5. Support Structures for Staff**

If an allegation is made against an employee (ESOR), appropriate support measures will be instituted. These may include:

- a) Appointment of a support person to assist the staff member to:
  - i) Understand the process of investigation;
  - ii) Respond to the allegation; and
  - iii) Generally, support the ESOR whilst the allegation is taking place.
- b) Access to Counselling via the College's Employee Assistance Program (EAP)

#### **6. Definition of Reportable Conduct**

Under the Children's Guardian Act 2019, 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; and

- the allegation involves a child or young person (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).

**Reportable conduct** means the following conduct, whether or not a criminal proceeding in relation to the conduct has been commenced or concluded—

- (a) a sexual offence,
- (b) sexual misconduct,
- (c) ill-treatment of a child,
- (d) neglect of a child,
- (e) an assault against a child,
- (f) an offence under section 43B or 316A of the *Crimes Act 1900*,
- (g) behaviour that causes significant emotional or psychological harm to a child.

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 the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures; or
- conduct of a class or kind exempted from being reportable conduct by the Children's Guardian under section 30.

### **Sexual offences**

A sexual offence is 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 child 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 WWC Act, grooming is recognised as a form of sexual misconduct. The Children's Guardian Act 2019 and this Child Protection Policy 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.

Allegations of this nature will normally involve the Police. Once their investigation is completed and any proceedings are undertaken, then the entity is still required to complete an appropriate investigation.

**Sexual misconduct:** In contrast to "sexual offences", sexual misconduct includes behaviour that can reasonably be construed as involving an inappropriate and overly personal or intimate relationship with, conduct towards, or focus on a child or young person, or a group of children or young persons (but not a sexual offence). For example, sexually explicit comments, personal correspondence with sexual references or connotations, exposure of children and young people

to sexual behaviour of others, and watching children in intimate contexts (e.g. watching them undress when supervision is not required or justified).

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 is not a sexual offence).

*Sexual misconduct* means conduct with, towards or in the presence of a child that—

- (a) is sexual in nature, but
- (b) is not a sexual offence.

#### **Examples of sexual misconduct—**

- 1 descriptions of sexual acts without a legitimate reason to provide the descriptions
- 2 sexual comments, conversations or communications
- 3 comments to a child that express a desire to act in a sexual manner towards the child or another child

***Physical Assault*** is any act by which a person intentionally or recklessly (ie. knows the assault is possible but ignores the risk) inflicts unjustified use of physical force against another (including another person being reasonably apprehensive that unjustified force is going to be used on them)

*Assault* means—

- (a) the intentional or reckless application of physical force without lawful justification or excuse, or
- (b) any act which intentionally or recklessly causes another to apprehend immediate and unlawful violence.

#### **Examples of assault—**

- 1 hitting, striking, kicking, punching or dragging a child (actual physical force)
- 2 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)

***Ill-Treatment*** is where a person treats a child in an obviously or very clearly improper manner (malevolent acts, with the focus on the alleged conduct rather than impact).

*Ill-treatment*, of a child, means conduct towards a child that is unreasonable and seriously inappropriate, improper, inhumane or cruel.

#### **Examples of ill-treatment—**

- 1 making excessive or degrading demands of a child
- 2 a pattern of hostile or degrading comments or behaviour towards a child
- 3 using inappropriate forms of behaviour management towards a child

***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 has responsibility towards a child, such as:

- (a) a person with parental responsibility for the child, or
- (b) an authorised carer of the child, or
- (c) an employee, if the child is in the employee's care.

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 fulfill a duty or obligation, resulting in actual harm to a child where there is the 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.

Neglect includes either an action or inaction by a person who has responsibilities towards a child (this level of neglect would normally result in significant harm). It is the absence of duty of care e.g. supervisory neglect.

#### **Examples of neglect—**

- 1 failing to protect a child from abuse
- 2 exposing a child to a harmful environment, for example, an environment where there is illicit drug use or illicit drug manufacturing

#### **An offence under section 43B or 316A of the Crimes Act 1900**

**- Failure to protect offence** (Crimes Act (NSW) 43B Failure to reduce or remove risk of child becoming victim of child abuse)

An adult working in a school will commit an offence if they know another adult working there poses as serious risk of committing a child abuse offence and they have the power to reduce or remove the risk, and they negligently fail to do so either by acts and/or omissions.

**- Failure to report offence** (Crimes Act (NSW) 316A Concealing child abuse offence)

Any adult will commit an offence if they know, believe or reasonably ought to know that a child abuse offence has been committed and fail to report that information to police, without a reasonable excuse. A reasonable excuse would include where the adult has reported the matter to the Principal and is aware that the Principal has reported the matter to the police.

**Emotional or Psychological Harm** is obvious act(s) that are unacceptable (c.f. SPCE Staff Code of Conduct) that results in a causal link to psychological harm to the child.

Behaviour that causes significant ***emotional or 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 a reportable allegation involving psychological harm, the following elements must be present:

- An obviously or very clearly unreasonable or serious act or series of acts 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.

#### **Examples of indicators of significant emotional or psychological harm**

- 1 displaying behaviour patterns that are out of character
- 2 regressive behaviour
- 3 anxiety or self-harm

**Reportable Allegation** – is an allegation that an employee (paid or unpaid) has engaged in conduct that may be reportable conduct.

**Reportable Conviction** – means a conviction (including a finding of guilt without the court proceeding to a conviction)

Please note that investigations are to be undertaken regardless of where the allegation is said to have occurred – for example, if an employee were alleged to have engaged in reportable conduct at a weekend sports match on a child from outside the School, an investigation would be undertaken.

## **7. Process for Investigating an Allegation of Reportable Conduct**

The Principal ensures that the following steps are taken to investigate an allegation of reportable conduct.

### **7.1 Initial steps**

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

- determine on face value whether it is an allegation of reportable conduct;
- assess whether DCJ or the police need to be notified (ie, 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 school proceeding with the Reportable Conduct investigation;
- notify the OCG within seven (7) business days of receiving the allegation;
- Notify the Executive Principal (or his/her delegate) that a reportable allegation has been received and the OCG has been informed;
- notify the child's parents if instructed by the OCG (unless to do so would be likely to compromise the investigation or any investigation by DCJ or police);
- carry out a risk assessment and take action to reduce/remove risk, where appropriate; and provide an initial letter to the ESOR advising that an allegation of reportable conduct has been made against them and the school's responsibility to investigate this matter under Division 5, 34 of the Children's Guardian Act 2019;
- If a teacher, Principal contacts NESAs to inform that the teacher is an ESOR. Teachers may be suspended from their teaching duties, as their NESAs teaching registration may be suspended pending the outcome of the investigation. Any decision to act as a result of a risk assessment is in no way an indication of the guilt of the employee concerned;
- investigate the allegation or appoint someone to investigate the allegation.

### **7.2 Investigation principles**

During the investigation of a reportable conduct allegation the School will:

- follow the principles of procedural fairness;
- inform the ESOR 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 (mindful of the OCG 30-day timeframe);
- handle the matter as confidentially as possible;

- provide appropriate support for all parties including the child/children, witnesses and the ESOR.

### 7.3 Investigation steps

In an investigation the Principal or appointed investigator will generally:

- interview relevant witnesses and gather relevant documentation;
- provide a letter of allegation to the ESOR;
- provide the ESOR with the opportunity to provide a response to the allegations either in writing or at interview;
- an ESOR 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 and not as an advocate or to take an active role.
- consider relevant evidence and make a preliminary finding in accordance with the OCG guidelines;
- inform the ESOR of the preliminary finding/s in writing by the HRE and provide them with a further opportunity to respond or make a further submission prior to the matter moving to Final Findings;
- consider any response provided by the ESOR;
- make a final finding in accordance with the OCG guidelines;
- decide on the disciplinary action, if any, to be taken against the ESOR;
- inform the ESOR of the final finding and the school's legal reporting obligations in accordance with Part 3A, Children's Guardian Act 2019, and NES A Teacher Accreditation (if a teacher) and in accordance with the Child Protection (Working with Children) Act 2012.
- Submit to the OCG an 'entity report' or an 'interim entity report' within 30 days of the allegation being received (under section 38 of the Children's Guardian Act)
- Securely store the investigation file in a Confidential file.
- 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 DCJ or police.

## 8. Risk management throughout an investigation of a reportable conduct allegation

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.

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.

### 8.1 Initial risk assessment

Following an allegation of reportable conduct against an employee the Principal conducts an initial 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 ESOR;
- the School, and
- the proper investigation of the allegation.

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

- the nature and seriousness of the allegations;
- the vulnerability of the child(ren) the ESOR has contact with at work;
- the nature of the position occupied by the ESOR;
- the level of supervision of the ESOR; and

- the disciplinary history or safety of the ESOR and possible risks to the investigation.

The Principal will take appropriate action to minimise risks. This may include the ESOR 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 School will take into consideration both the needs of the child(ren) and the ESOR.

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.

## **8.2 Ongoing risk assessment**

The Principal will continually monitor risk during and on completion of the investigation, updating the risk assessment in the light of new relevant information that emerges. These are to securely stored with the Confidential investigation file.

## **9. Information for the ESOR**

The ESOR 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.

The ESOR 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 Children's Guardian notification or other investigation material that reveals information provided by other employees or witnesses.

The WWC Act (Part 7, section 46) enables a person who has a finding referred to the OCG under the Act to request access to the records held by the School in relation to the finding of misconduct involving children, once final findings are made. The entitlements of a person to request access to information in terms of Section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made.

## **10. Disciplinary action**

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

In relation to any disciplinary action the school will give the ESOR:

- details of the proposed disciplinary action; and
- a reasonable opportunity to respond before a final decision is made.

## **11. Confidentiality**

It is important when dealing with allegations of reportable conduct that the matter be dealt with as confidentially as possible.

The School requires that all parties maintain confidentiality during the investigation including in relation to the handling and storing of documents and records.



Records about allegations of reportable conduct against employees will be kept in a secure area and will be only accessible by the HRE or with the HRE's express authority.

No employee may comment to the media about an allegation of reportable conduct unless expressly authorised by the Principal to do so.  
Staff members who become aware of a breach of confidentiality in relation to a reportable conduct allegation must advise the Principal.

## **12. Related Documents**

- AIS/IEU Protocols for Investigation
- Overview of the Investigative Process

## **13. Relevant Legislation**

- Children's Guardian Act 2019 (NSW)

## **14 Document history**

Written 24/10/2012 by E. Moir

Reviewed and Updated 2015, 2017; 2020, 2024



## **Guidelines and Procedures Reportable Allegations Against Employees**

### **ACKNOWLEDGEMENT**

(please print)

Name: \_\_\_\_\_

School: \_\_\_\_\_

Role/Job Title: \_\_\_\_\_

I (name) \_\_\_\_\_ have read, understood and agree to comply with the terms of this Reportable Allegations against Employees Guidelines and Procedures (Child Protection).

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

Please return this signed acknowledgement form to your Principal.