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## Child Safety Reporting Policy

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### **Rationale**

St Scholastica's College is a Catholic secondary day and boarding School of Good Samaritan Education, committed to the education of girls and young women. St Scholastica's College commits to providing a safe and nurturing culture and learning environments for all children and young people.

The safety, protection and welfare of students is the responsibility of all staff members and encompasses a duty of care to ensure that reasonable steps are taken to prevent harm to students which could reasonably have been foreseen and obligations under child protection legislation.

Student safety concerns can take many forms. The nature of child abuse and other harm is complex. Abuse or other harm may occur over time and potential indicators of abuse or harm are often difficult to detect. The perpetrator may be a parent, carer, other family member, staff member, volunteer, contractor, another adult or even another child or young person. The legal obligations for reporting allegations of child abuse or other harm can vary depending on the circumstances of the student safety incident or concern. The different definitions of child abuse or other harm and their key indicators are set out in detail in the Definitions of Abuse and Other Harm.

### **Scope**

This policy applies to all adults in the College community, including staff, volunteers, contractors, and visitors.

### **Purpose**

This policy is intended to provide all staff, volunteers, contractors and visitors with clear direction regarding their responsibility to report when they become aware of, or receive information related to, child safety concerns. Staff members must adhere to the behaviours, processes and procedures outlined in this policy.

St Scholastica's College is subject to the following child protection related legislation in NSW:

- The *Children and Young Persons (Care and Protection) Act 1998*;
- The *Child Protection (Working with Children) Act 2012*;
- The *Children's Guardian Act 2019*;
- Part 3A Child Safe Scheme; and
- The Crimes Act 1900.

### **Responsibilities**

#### **The Principal**

In general, the Principal is responsible for ensuring that the School reports child safety matters where necessary to DCJ and Police. This centralised reporting approach is supported by DCJ in accordance with best practice principles.

As the Head of a relevant entity, the Principal is responsible for ensuring allegations of Reportable Conduct against staff members are appropriately investigated and reported to the Children's Guardian in accordance with the children's Guardian Act. The Principal may delegate these functions as head of a relevant entity to the Child Protection Officer.

## **Child Protection Officer**

Where instructed by the Principal, the Child Protection Officer is authorised to conduct investigations, or oversee the investigation of a matter by an external agency, of reportable allegations in accordance with the Children's Guardian Act and to exercise any functions as delegated by the Principal. The College Child Protection Officers are:

- Assistant Principal Pastoral Care & Wellbeing
- Assistant Principal Teaching & Learning
- Head of Boarding

## ***Raising Concerns About Safety***

Whenever there are concerns that a child or young person is in immediate danger, call the Police on 000 and/or the Child Protection Helpline (13 21 11) directly and then advise the Child Protection Officer, Principal or next most senior member of staff at the College as soon as possible.

Any person, including all staff, volunteers, contractors, parents/carers and students, can at any time contact the Department of Communities and Justice (DCJ) if they have reasonable grounds to suspect that a child or young person (aged under 18), or a class of children or young persons, is at risk of significant harm.

Voluntary reports to DCJ can be made by calling the Child Protection Helpline on 132 111 or 1800 212 936 (24 hours a day, 7 days a week). Matters that do not reach the reporting threshold may be referred to AISNSW for additional support if required. Please contact AISNSW on 9299 2845 for advice on how to manage matters that do not reach the reporting threshold (Risk of Significant Harm – ROSH).

## ***Internal Reporting by Students, Parents/Carers and the Community***

There are no limits on how or to whom students at the College can disclose any child safety incident or concern or make a complaint about a staff member, volunteer or contractor.

If a student has concerns about their safety, or the behaviour of others, it's important that they tell a trusted adult. This could be a parent or carer, a trusted teacher, counsellors, Head of Year or a College Child Protection Officer.

Our Staff are committed to ensuring that all students feel empowered to speak up and be heard and will take all concerns raised by students seriously and ensure that the student receives ongoing support. Information related to the welfare, wellbeing and safety of students including complaints about staff members, volunteers or contractors provided by students to parents, carers and staff of the College must be reported to Child Protection Officer.

Parents/carers, family members and other community members who have child safety concerns about a student at the College are asked to contact the College's Principal, by emailing [principal@scholastica.nsw.edu.au](mailto:principal@scholastica.nsw.edu.au).

## ***Internal and External Reporting by Staff, Volunteers and Contractors***

Staff members must raise concerns about a student who may be at risk or about whom they have concerns with Child Protection Officer as soon as possible to discuss whether the matter meets the threshold of 'risk of significant harm' and the steps required to report the matter.

Staff members are not required to and must not, undertake any investigation of the matter. Other than the Principal or Child Protection Officer, staff members are not permitted to inform the parents or caregivers that a report to DCJ has been made.

Staff members are required to deal with the matter confidentially and only disclose it to the Child Protection Officer or Principal or the next most senior member of staff. Failure to maintain confidentiality will not only be a breach of this policy, but could incite potential civil proceedings for defamation. Centralised reporting is encouraged and supported by DCJ. However, should a staff member wish to report directly to DCJ using the Child Protection Helpline they may do so. If an internal report has been made, staff must check with the Principal or Child Protection Officer that their report has been addressed.

## **Key Definitions of Child Safety Concern**

At St Scholastica's College, we use the phrase "child safety incident or concern" to mean an incident of or concern about:

- A child or young person being at risk of significant harm, as defined in the Children and Young Persons (Care and Protection Act) 1998 (NSW) (Care and Protection Act)
- A child, young person or student aged 18 or over being, or at risk of being, the victim of a "child abuse offence" as defined in the Crimes Act 1900 (NSW)
- Reportable Conduct, as defined in the Children's Guardian Act 2019 (NSW) (Children's Guardian Act)
- A breach of our Child Safe Codes of Conduct.

### **At Risk of Significant Harm**

Section 23 of the Children and Young Persons (Care and Protection) Act 1998 (NSW) (Care and Protection Act) defines a child or a young person to be "at risk of significant harm" if current concerns exist for the safety, welfare or wellbeing because:

- The child's or young person's basic physical or psychological needs are not being met or are at risk of not being met
- The parents or carers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care
- The parents or carers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with the Education Act 1990 (NSW)
- The child or young person has been, or is at risk of being, physically or sexually abused or ill-treated
- The child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm
- A parent or other carer has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm

Mandatory reporting of risk of significant harm only applies to children (aged under 16). For more information, refer to the **Mandatory Reporting to DCJ** section below.

### **Domestic Violence as Harm to a Child or Young Person**

Domestic (or 'family') violence is incorporated into the definition of "child abuse and other harm" because living in a household in which there is domestic violence (i.e. being exposed to domestic violence) is one of the reasons by which a child or young person might be at risk of significant harm under the Care and Protection Act. The Domestic Violence Act defines a "domestic violence offence" as a "personal violence offence" committed by a person against another person with whom they have or had a domestic relationship. A personal violence offence includes multiple physical, sexual and intimidation offences under the Crimes Act as well as offences intended to coerce or control the victim or to cause that person to be intimidated or fearful.

Examples of domestic violence offences include, but are not limited to:

- Physical violence or threats of violence
- Verbal abuse including threats
- Emotional or psychological abuse
- Sexual abuse
- Financial and social abuse

### **Grooming as Harm to a Child or Young Person**

Grooming refers to behaviours that manipulate and control a child or young person, their family and other support networks, or institutions, with the intent of gaining access to the child or young person for the purposes of engaging in sexually harmful behaviour, obtaining the child or young person's compliance, maintaining the child or young person's silence, and avoiding discovery of the sexual abuse. Grooming behaviour can therefore refer to grooming of an adult with authority for a child or young person, to make it easier to procure the child or young person for sexual abuse or to ensure that, if the child or young person does disclose, that the adult does not believe the child or young person. Grooming is defined as:

- The use of a variety of manipulative and controlling techniques

- With a vulnerable subject
- In a range of inter-personal and social settings
- In order to establish trust or normalise sexually harmful behaviour
- With the overall aim of facilitating exploitation and/or prohibiting disclosure of the harmful behaviour.

Grooming of a child or young person is incorporated into the definition of 'child abuse and other harm' because it is:

- Conduct which may place a child or young person at risk of significant harm, which must be reported under the Care and Protection Act (refer to **Mandatory Reporting to DCJ**)
- In certain circumstances, an offence under sections 66EB and 66EC of the Crimes Act that must be reported to the NSW Police (refer to **Reporting to Police**) and from which persons at the College, who have the authority to do so, must protect students (refer to **Failure to Protect**)
- A sexual offence or sexual misconduct which must be reported to the NSW Children's Guardian under the Children's Guardian Act 2019 (NSW) (refer to **Reportable Conduct**)
- A breach of the Child Safe Codes of Conduct.

### **Training**

The College provides all staff members with a copy of this Policy at the time of employment and, as part of the induction process, are required to formally acknowledge that they have read and understood the Policy.

All staff members must participate in annual child protection training and additional training throughout the year as directed by the Principal. This compliance requirement is included within the College's annual Staff Professional Learning Program.

The training compliments this Policy and provides information to staff relating to their legal responsibilities related to child protection, Child safe standard and College expectations, including:

- Mandatory reporting
- Reportable conduct
- Working with children check
- Child Safety in NSW
- Child Safety Culture
- Child Safe Code of Conduct (Professional boundaries).

Child safety training is completed by all staff on annual basis, in person and online. The Risk and Compliance Officer keeps records of staff training including the content of training, dates and attendees.

### **Confidentiality and Privacy**

The College makes everyone at the College, including students, aware that all student safety incidents and concerns will be reported internally and/or to the relevant external bodies, and that confidentiality cannot be maintained in these instances. You must not provide undertakings that are inconsistent with your reporting obligations in the College's policy. You must not promise a student that you will not tell anyone about the student's disclosure. However, in all other respects, all staff, volunteers and contractors must maintain confidentiality and privacy and information regarding a student safety incident or concern should only be shared on a 'need to know' basis. Anyone who has access to information regarding a case of suspected child abuse or other harm must keep this information confidential and secure and must only disclose or discuss this information internally with those involved in managing the situation. The College should inform students and any other parties who become involved in the investigation of a child safety concern or incident (this may include other students) of the reporting process and require them to maintain confidentiality. Inappropriate disclosure will be subject to disciplinary action.

### **Relevant Policies and Procedures**

This section describes our work systems, practices, policies and procedures for reporting student safety incidents or concerns both internally and externally. This includes:

- [Reporting a student safety concern internally](#)
- [Failure to protect](#)

- C. [Mandatory reporting to DCJ](#)
- D. [Voluntary reporting to DCJ](#)
- E. [Reportable conduct](#)
- F. [Reporting to police](#)

### **A. Reporting a Student Safety Concern Internally**

Child safety situations can be very complex, not only from the perspective of ascertaining whether abuse or other harm has occurred but also in understanding what steps to take to protect the student/s involved. It is important to remember at all times that the safety and welfare of the student is paramount. While the Principal delegates certain responsibilities for receiving and managing internal reports to Child Protection Officers, the Principal retains ultimate responsibility and accountability for the internal reporting process.

#### **Obtain Advice**

If you suspect that a student may be experiencing abuse or other harm or that their safety may be at risk, but you are unsure whether your concern rises to the levels required for external reporting to the relevant authority, you should immediately raise your concerns with one of the Child Protection Officer. They will be able to assist you in clarifying your concerns, determining whether a report is necessary and managing the next steps to ensure the safety, welfare and wellbeing of the student/s involved.

#### **Internal Reporting Procedure**

If you know or have reasonable grounds to suspect that a student:

- Has been, is being or is at risk of being abused or otherwise harmed; or
- Is at risk of significant harm, for any reason, or
- You have concerns about the welfare, wellbeing and safety of a student.

You must report the matter internally to the Child Protection Officers (who are delegates of the Principal). If the allegations are about the person to whom you would otherwise report internally, you must instead report internally to the Principal or, if the incident or allegation involves the Principal, to the Chair of the College Board of Directors. You can report to the Chair of the College Board via [board.chair@scholastica.nsw.edu.au](mailto:board.chair@scholastica.nsw.edu.au).

### **B. Failure to Protect/ Duty to protect**

The College has a common law duty of care to protect all students from reasonably foreseeable risks of harm while at the College or engaging in the College activities.

The College expects all staff, volunteers and contractors to act to protect students from reasonably foreseeable risks of harm, including risks of harm that may arise from staff, volunteers and contractors and other people who are associated with the college (such as other students and visitors). Failure to do this is not only a breach of your duty of care, but may also be, in certain circumstances, a criminal offence.

#### **Obligations of Staff, Volunteers and Contractors**

Staff, volunteers and contractors at the College must comply with their obligations under the Common law duty to protect and the Failure to Protect offence.

To ensure that these obligations are met, it is the College's policy that if you know that any adult working in any capacity at the College:

- Poses a serious risk of committing a child abuse offence against a student aged under 18 or
- Poses a reasonably foreseeable risk of abuse or other harm to a student,

You must report the matter to the Principal or one of the College's Child Protection Officers (who are delegates of the Principal).

**Whenever there are concerns that a student is in immediate danger call the Police on 000**, and then report the matter to the Principal, Child Protection Officer or the next most senior person in the School.

## KEY DEFINITIONS

### Child Abuse Offence

The list of child abuse offences that are captured by the Failure to Protect offence is extensive.

It includes sexual offences such as rape, sexual abuse, sexual touching, production of child abuse material, voyeurism and grooming offences or attempts to commit those offences. It also includes assaults and physical harm, such as wounding or causing grievous bodily harm, assault causing actual bodily harm, assault at the College (whether or not causing actual bodily harm), administering or causing the ingestion of an intoxicating substance, and female genital mutilation. For more information on what constitutes a child abuse offence, refer to Offences under the Crimes Act 1900 (NSW).

### Child-related work

Child-related work, for the purposes of the Failure to Protect offence, has the same meaning as in the Child Protection (Working with Children) Act 2012 (NSW). Therefore, the workers from whom a student must be protected include:

- The College Board members
- The Principal
- Members of the Executive Leadership Team
- All staff (including teaching and non-teaching staff)
- Volunteers (other than parents, except in certain circumstances)
- Contractors
- External education providers

### *C. Mandatory Reporting to Department of Communities and Justice (DCJ)*

#### Source of obligation

Section 27 of the Children and Young Persons (Care and Protection) Act 1998 (NSW) requires that Mandatory Reporters must make a report to the Department of Communities and Justice (DCJ) if they:

- Have reasonable grounds to suspect that a child (aged under 16) is, or a particular group of children are, at risk of significant harm; and
- Those grounds arise during the course of the person's work

#### Who is a Mandatory Reporter?

In NSW, the following people are Mandatory Reporters:

- Anyone who in the course of their professional work or other paid employment delivers health care, welfare, education, children's services, residential services or law enforcement wholly or partly to children
- Anyone who holds a management position in an organisation and whose duties include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services or law enforcement wholly or partly to children
- Anyone in religious ministry or who provides religion-based activities to children
- All registered psychologists, when providing professional services as a psychologist.

This means that at St Scholastica's College, all employees, casuals, contractors and volunteers (including board members) are Mandatory Reporters.

#### Application to Students aged 16 or over

Mandatory Reporting to DCJ applies only to concerns about children aged under 16. Therefore, reasonable grounds to suspect that a student aged 16 or over may be at risk of significant harm cannot be the subject of a Mandatory Report to DCJ. However, for students aged 16 and 17, these concerns can still be reported to DCJ. For more information, refer to Voluntary Reporting to DCJ. Knowledge or suspicions of abuse or other harm of a student aged 18 years or older cannot be reported to DCJ. These should instead be reported to the NSW Police if appropriate, provided that the student consents to the report.

It is the College's policy that all student safety incidents and concerns involving a student, including those involving students aged 16 and over, must be reported internally to the Child Protection Officer in accordance with the

centralised reporting model. For more information, refer to **Reporting a Student Safety Incident or Concern Internally** (above).

### **When to Make a Mandatory Report**

A Mandatory Report must be made when you have reasonable grounds to suspect that a child (aged under 16) is, or a particular group of children are, at risk of **significant harm**, and those grounds arose during the course of your work. Where a Mandatory Reporter has concerns that a child or young person has been or is at risk of being abused or otherwise harmed, the [Mandatory Reporter Guide](#) (MRG) must be used to determine whether or not those concerns reach the Risk of Significant Harm (ROSH) threshold. If your concerns do reach the ROSH threshold, a report must be made as soon as practicable after you consider that you have the required reasonable grounds to suspect the significant risk of harm.

### **What if I am unsure if I have a reasonable ground to suspect or if the risk of harm is ‘significant’?**

If you are concerned that a student may be experiencing abuse or other harm, or their safety may be at risk, but you are unsure whether your concern rises to the level of ‘reasonable grounds to suspect that a child is at risk of significant harm’, you should immediately raise your concerns with one of the Child Protection Officers of the College. Our Child Protection Officers are able to assist you in clarifying your concerns and managing the next steps. Where a Mandatory Reporter has any concerns that a child or young person has been or is at risk of being abused or otherwise harmed, you can use the Mandatory Reporter Guide (MRG) to determine whether or not those concerns reach the Risk of Significant Harm (ROSH) threshold.

### **How to Make a Mandatory Report Internally**

Where a Mandatory Reporter forms a reasonable belief that a student is at risk of significant harm, they must make a report directly to the Principal, who will then make the necessary report to DCJ. The Principal, or the Assistant Principal Pastoral Care and Wellbeing, must make the required Mandatory Report to DCJ and must provide feedback to the Mandatory Reporter that the report to DCJ has been made. Mandatory Reporters are encouraged to follow up with the Principal if a reasonable time has passed and they haven’t received such feedback.

Should the allegation involve the Principal, the report is to be made to the Chair of the College Board.

### **What happens after I make a report?**

The Child Protection Helpline will assess the information that is provided, along with information that may be known to DCJ, to determine whether the child is actually at risk of significant harm.

Mandatory Reporters will be informed of the action that will be taken by DCJ in writing, including whether the report made met the threshold of significant harm and/or whether no further action was recommended.

Mandatory Reporters should note that the MRG is a tool that assists Mandatory Reporters to make an appropriate reporting decision. It is not designed to determine whether the matter constitutes actual risk of significant harm. If a decision is made by DCJ that a report did not meet the ROSH threshold, even though the Mandatory Reporter used the MRG to guide the making of the report, this does not necessarily mean the report should not have been made. Ultimately, every report made that raises a concern that a child or class of children is at ROSH is in their best interests. Even after a report to the Child Protection Helpline has been made, Mandatory Reporters must continue to respond to the needs of the child within the terms of their work role. This may include making a report to the NSW Police and/or arranging for medical care. Reports that do not meet the threshold may be referred to the Child Protection team AISNSW at 9299 2845 for advice on how to support the student.

### **Record Keeping about Mandatory Reports**

When a Mandatory Report is made in response to a child safety incident or concern this must be recorded regardless of whether the report was made to:

- To the Principal, Assistant Principal Pastoral Care and Wellbeing or their delegate, and/or
- To DCJ

However, if the person who made the Mandatory Report does not wish to be identified, there are legislative protections for that person under the Children and Young Persons (Care and Protection) Act 1998 (NSW). The College will take all reasonable steps to de-identify that information in the event that this is necessary.

The Principal is responsible for keeping all child protection records, including records of allegations, investigations and findings made under this procedures, up-to-date and secure. Records are located in the Principal's Office.

## KEY DEFINITIONS

### Reasonable Grounds to Suspect

- The concept of reasonable grounds to suspect requires you to consider whether another person, when faced with similar information, would also draw the same conclusion. It does not mean reporters are required to be certain, A student states they have been physically or sexually abused
- A student states that they know someone who has been physically or sexually abused
- Someone who knows the student states that the student has been physically or sexually abused
- A student shows signs of being physically or sexually abused
- The staff member is aware of persistent family violence or parental substance misuse, psychiatric illness or intellectual disability that is impacting on a student's safety, stability or development
- The staff member observes signs of abuse or other harm, including non-accidental or unexplained injury, persistent neglect, poor care or lack of appropriate supervision
- A student's actions or behaviour indicate that they may be at risk of significant harm and the student's parents are unwilling or unable to protect the student

Grounds for belief include matters of which a person has become aware and any opinions based on those matters.

### Risk of Significant Harm (ROSH)

Significant harm is not minor or trivial and may reasonably be expected to produce a substantial and demonstrably adverse impact on the student's safety, welfare or wellbeing.

The risk of significant harm must be as a result of one or more of the following circumstances:

- The child or young person's basic physical or psychological needs are not being met or are at risk of not being met
- The parents/carers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care
- The parents/carers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with the Education Act 1990 (NSW)
- The child or young person has been or is at risk of being physically or sexually abused or ill-treated
- The child or young person is living in a household where there have been incidents of domestic violence and as a consequence the child or young person is at risk of serious physical or psychological harm
- A parent/carer has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious physical or psychological harm
- The child was the subject of a pre-natal report (because there were reasonable grounds to suspect that the child could be at risk of significant harm after his or her birth) but the birth mother did not engage successfully with support services to eliminate or minimise that risk

Additional grounds for making a mandatory report, which are not included in the Children and Young Persons (Care and Protection) Act 1998 (NSW), are listed in the MRG, being 'Danger to Self or Others', 'Relinquishing Care' and 'Unborn Child'. Refer to the MRG for more information on these grounds for making a mandatory report.

The circumstances that are causing concern for the safety, welfare or wellbeing of the child or young person must be present to a significant extent. 'Significant' means that which is sufficiently serious to warrant a response by a statutory authority irrespective of a family's consent. Significant harm can result from a single act or omission or an accumulation of these.

### ***D. Voluntary Reporting to Department of Communities and Justice (DCJ)***

This policy deals with the reporting of student safety incidents or concerns to the Department of Communities and Justice (DCJ) when that reporting is not legally required under the Children and Young Persons (Care and Protection) Act 1998 (NSW) (the Act). You should make a Voluntary Report to DCJ under this policy only if you do not have an obligation to report under Mandatory Reporting to DCJ.



### **Source of obligation**

Under section 24 of Act 1998, any person (including all members of the College community) may make a report to DCJ if they have reasonable grounds to suspect that a child or young person (aged under 18), or a class of children or young persons, are at risk of significant harm. We call this Voluntary Reporting to DCJ.

### **Reporting Abuse and Other Harm of Students Over the Age of 16 – the College’s Policy**

Although Mandatory Reporting to DCJ in NSW applies only to children under the age of 16, Voluntary Reports to DCJ can be made about young people aged 16 and 17 who are at risk of significant harm.

It is the College’s policy that, in addition to their Mandatory Reporting obligations, Mandatory Reporters at the College who have reasonable grounds to suspect that a young person aged 16 or 17 attending the College is at risk of significant harm **must** make a report to DCJ under section 24 of the Act. However, wherever possible, this should be done with the consent of the young person. It is also the College’s policy that all student safety incidents and concerns involving a student, including those involving students aged 16 and over, must be reported internally. For more information, refer to **Reporting a Student safety Incident or Concern Internally**.

Therefore, any knowledge or reasonable grounds to suspect abuse or other harm to a young person should be reported both internally and to DCJ as soon as practicable in communication with one of the Child Protection Officers. Knowledge or suspicions of abuse or other harm of a student aged 18 years or older cannot be reported to DCJ. These should be reported to the NSW Police if appropriate, provided that the student consents to the report.

### **When to Make a Voluntary Report to DCJ**

It is the College’s policy that, where a Voluntary Report is to be made, it must be made without delay as soon as the reasonable grounds to suspect that the child or young person is at risk of significant harm arose. This must be done regardless of any other action you take in relation to the child or young person.

### **What if I am unsure if I have a reasonable ground to suspect or if the risk of harm is ‘significant’?**

If you are concerned that a student may be experiencing abuse or other harm, or their safety may be at risk, but you are unsure whether your concern rises to the level of ‘reasonable grounds to suspect that a child is at risk of significant harm’, you should immediately raise your concerns with one of the College’s Child Protection Officers. Our Child Protection Officers are able to assist you in clarifying your concerns and managing the next steps. Where a Mandatory Reporter has any concerns that a child or young person has been or is at risk of being abused or otherwise harmed, you can use the Mandatory Reporter Guide (MRG) to determine whether or not those concerns reach the Risk of Significant Harm (ROSH) threshold.

### **How to Make a Voluntary Report**

If you suspect on reasonable grounds that a child or young person is suffering abuse or other harm, or you wish to discuss your concerns about a child or young person, you can call the Child Protection Helpline on 132 111 or 1800 212 936 (24 hours a day, 7 days a week). If you need to report an offence that requires immediate Police attention, call the Police on 000. For more information, support or advice on reporting you can contact a College Child Protection Officer, the Principal, or the Child Protection Helpline on 132 111 or 1800 212 936.

## ***E. Reportable Conduct***

### **Source of obligation**

The Children's Guardian Act 2019 (NSW) (the Act) requires the College to investigate and report to the NSW Children's Guardian (Children's Guardian) allegations of Reportable Conduct against ‘employees’ or any conviction of an ‘employee’ for an offence involving Reportable Conduct.

### **What must be reported?**

Under the Act, the College’s Head of Entity (HOE) must notify the NSW Children's Guardian of any reportable allegation or reportable conviction against a staff member, volunteer or contractor (known in the Act as an ‘employee’) of which the HOE becomes aware. The HOE must also notify the NSW Children's Guardian of the outcomes of the College’s internal investigation into the matter.

Under the Act, the College's Head of Entity (HOE) must notify the NSW Children's Guardian of any reportable allegation or reportable conviction against a staff member, volunteer or contractor (known in the Act as an 'employee') of which the HOE becomes aware. The HOE must also notify the NSW Children's Guardian of the outcomes of the College's internal investigation into the matter. At the College, the "Head of Entity" for the purpose of the Reportable Conduct Scheme is the Principal. If a reportable allegation or conviction involves the Principal, then the Chair of the College Board will take on the role of the "Head of Entity" of the College. If a staff member forms a reasonable belief that an employee at the College has engaged in reportable conduct or misconduct that may involve reportable conduct, or otherwise becomes aware of a reportable allegation or reportable conviction against an employee, the staff member must report this internally, as soon as possible, to:

- The Principal
- The Chair of the College Board if the allegations involve the Principal; or
- If the Principal is absent the allegation is referred to the Acting Principal or delegate.

### **What is Reportable Conduct?**

Reportable Conduct is conduct by, or alleged to have been committed by, an employee that involves:

- Sexual offence committed against, with or in the presence of, a child, such as child pornography offences, offences involving child sexual abuse, and grooming offences;
- Sexual misconduct with, towards or in the presence of a child, such as sexual comments, conversations or communications with or in the presence of a child, and watching a child undress in circumstances where supervision is not required and clearly inappropriate;
- Assault, ill-treatment or neglect of a child; or
- Behaviour that causes significant emotional or psychological harm to a child.

The conduct does not have to have occurred at or in the course of the employee's work at or for the College.

### **What is not Reportable Conduct?**

Reportable Conduct does **not** include:

- Conduct that is reasonable for the purpose of discipline, management or care of children, having regard to age, maturity, health or other characteristics of the children and any relevant codes of conduct or professional standards
- The use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter has been investigated and the result of the investigation recorded under workplace employment procedures.

### **Process for reporting of reportable conduct allegations or convictions**

#### **Staff members**

Concerns about staff members engaging in conduct that is considered inappropriate, or reportable conduct, or any allegation of inappropriate or reportable conduct made to the staff member or about the staff member themselves must be reported to the Principal. Where it is uncertain if the conduct is reportable conduct but is considered inappropriate behaviour, this must also be reported.

Staff members must also report to the Principal when they become aware that another person 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 staff member themselves.

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

Parents, carers, and other College community members are encouraged to report any conduct that is in their view inappropriate, reportable, or criminal conduct to the Principal. All such reports will be dealt with in accordance with the College's Complaints Handling Policy.

#### **The College**

The Principal, must:

- Ensure specified systems are in place for preventing, detecting, and responding to reportable allegations or convictions

- Submit a 7-day Notification form to the OCG within seven (7) business days of becoming aware of a reportable allegation or conviction against a staff member of the College (unless the Principal has a reasonable excuse). The notification should include the following information:
  - that a report has been received in relation to a staff member of the College and
  - the type of reportable conduct, and
  - the name of the staff member, and
  - the name and contact details of 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 initial risk assessment and risk management action.

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

- details of the reportable allegation or conviction considered to be a reportable conviction
- the date of birth and WWC number, if any, of the staff member the 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 staff member, whether or not directly, to provide a service to children, including as a volunteer or contractor.

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

The Principal is responsible for ensuring the following steps are taken to investigate an allegation of reportable conduct.

#### **Initial steps**

Once an allegation of reportable conduct against a staff member is received, the Principal is required to:

- Determine whether it is an allegation of reportable conduct.
- Assess whether the 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 the DCJ or Police).
- Notify the OCG within seven (7) business days of receiving the allegation.
- Carry out a risk assessment and take action to reduce/remove risk, where appropriate.
- Provide an initial letter to the PSOA advising that an allegation of reportable conduct has been made against them and the College's responsibility to investigate this matter under Section 34 of the Children's Guardian Act, and
- Investigate the allegation or appoint someone to investigate the allegation.

#### **Investigation principles**

During the investigation of a reportable conduct allegation the College should:

- Follow the principles of procedural fairness.
- Inform PSOA 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 reaching 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 PSOA.

#### **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 PSOA.

- Provide the PSOA 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 PSOA of the preliminary finding in writing by the Principal 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 PSOA.
- Make a final finding in accordance with the OCG guidelines.
- Decide on the disciplinary action, if any, to be taken against the PSOA.
- If it is completed, send the final report to the OCG within 30 days after having received the allegation, as per section 36 of the Children’s Guardian Act.
- Should the final report be unfinished within 30 days, the Principal must provide, at minimum, an interim report to the OCG within 30 days of having received the allegation, as per section 38 of the Children’s Guardian 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 no further action is proposed
    - the reasons 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.

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.

A PSOA 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.

### **Initial risk assessment**

Following an allegation of reportable conduct against a staff member, 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 staff member may have contact
- The PSOA
- The College, 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 PSOA has contact with at work
- The nature of the position occupied by the PSOA
- The level of supervision of the PSOA, and
- The disciplinary history or safety of the PSOA and possible risks to the investigation.

The Principal will take appropriate action to minimise risk. This may include the PSOA 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 identified risk the College will take into consideration both the needs of the child(ren) and the PSOA.

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 a staff member being suspended, is not to be considered to be an indication that the alleged conduct by the staff member did occur.

### **Ongoing risk assessment**

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

### **Findings**

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 PSOA, the child(ren) involved and any other parties.

### **Information for the PSOA**

The PSOA 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 PSOA 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 information provided by other staff members or witnesses.

The WWC Act enables a person who has a sustained finding referred to the OCG to request access to the records held by the College 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.

Staff who make an internal report about Reportable Conduct, as well as employees who are the subject of a reportable allegation, and who are not satisfied with how the College has responded to the reportable allegation can complain directly to the Office of the Children's Guardian.

### **Disciplinary action**

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

In relation to any disciplinary action the College will give the PSOA:

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

### **Confidentiality**

It is important when dealing with allegations of reportable conduct that the matter be dealt with as confidentially as possible. The College 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 staff members will be kept in a secure area and will only be accessible by the Principal or delegate with express authority. No staff member 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 as soon as practically possible.

## Definitions

### 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 child grooming offence
- Production, dissemination, or possession of child abuse material.

### Grooming

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 if the 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 Children's Guardian Act 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.

### 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 is not a sexual offence).

### Assault

An assault can occur when a person intentionally or recklessly (i.e. knows the 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) or
- 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).

### Ill-treatment

Conduct towards a child that is:

- Unreasonable, and
- Seriously inappropriate, improper, inhumane, or cruel.

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

### Neglect

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.

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 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.

### **Behaviour that causes significant emotional or psychological harm to a child**

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 staff member 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 staff member's conduct and the significant emotional or psychological harm to the child.

### **Reportable allegation**

An allegation that a staff member has engaged in conduct that may be reportable conduct.

### **Reportable conviction**

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

### **Reasonable grounds**

Reasonable grounds refers to the need to have an objective basis for suspecting that a child or young person may be at risk of significant harm based on:

- Firsthand observations of the child, young person, or family
- What the child, young person, parent, or another person has disclosed
- What can reasonably be inferred based on professional training and / or experience.

'Reasonable grounds' does not mean a person is required to confirm their suspicions or have clear proof before making a report.

### **PSOA**

Person Subject of the Allegation.

## ***F. Reporting to Police***

### **Mandatory Reporting to Police (Failure to Report)**

Under section 316A of the Crimes Act, any adult who:

- Knows, believes or reasonably ought to know that a child abuse offence has been committed against another person; and
- Knows, believes or reasonably ought to know that he or she has information that might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for that offence,

Must bring that information to the attention of a member of the NSW Police Force as soon as it is practicable to do so. We call this Mandatory Reporting to Police. Failure to report this information to the Police without reasonable excuse is a criminal offence and carries a prison term. This criminal offence is colloquially known as "Failure to Report," though its full title is "Concealing child abuse offence." Mandatory Reporting to Police applies to everyone in NSW aged 18 years or over, including all staff, volunteers, contractors and students aged 18 and over at the College.

### **What must be reported?**

Any person aged 18 or over who knows, believes or reasonably ought to know that a child abuse offence has been committed against another person must report to police any information they have that might be of material

assistance in securing the apprehension of the offender or the prosecution or conviction of the offender. If a report has been made to DCJ in accordance with Mandatory Reporting to DCJ requirements or to the NSW Children's Guardian in accordance with Reportable Conduct requirements, an additional report to the Police will not usually be required.

### **Reasonable Excuse for Not Reporting to Police**

You will not need to report to Police if you have a reasonable excuse for not doing so. Under the Act, a reasonable excuse includes:

- Believing, on reasonable grounds, that the Police already know the information, or
- Making a mandatory report under Mandatory Reporting laws or believing on reasonable grounds that another person has done so
- Reporting the information to the NSW Children's Guardian under Reportable Conduct laws or believing on reasonable grounds that another person has done so
- Having reasonable grounds to fear for the safety of the person or any other person (other than the offender) if the information were to be reported to the Police
- The information was obtained (received or become aware of) by the person when they were under the age of 18 years
- The alleged victim was an adult at the time that the information was obtained by the person and the person believes on reasonable grounds that the alleged victim does not wish the information to be reported to Police
- Unacceptable reasons for not reporting include if you are concerned about the interests (including the reputation, legal liability or financial status) of:
  - The person who may have committed a child abuse offence
  - Any organisation (such as the College)

### **KEY DEFINITIONS**

#### **Child Abuse Offence**

The list of child abuse offences that are captured by this provision is extensive. It includes sexual offences such as rape, sexual abuse, sexual touching, production of child abuse material, voyeurism and grooming offences or attempts to commit those offences. It also includes assaults and physical harm, such as wounding or causing grievous bodily harm, assault causing actual bodily harm, assault at the College (whether causing actual bodily harm), administering or causing the ingestion of an intoxicating substance, and female genital mutilation.