



## Reportable Conduct Policy and Procedure

<b>Author</b>	Darren McPartland	
<b>Risk category</b>	People, culture and safety	
<b>NESA</b>	Registered and Accredited Individual Non-Government Schools (NSW) Manual - 3.6	
<b>Church</b>	St Peter's Anglican College Ordinance 2000 South Coast Anglican Schools Ordinance 2009	
<b>Relevant legislation/guidelines</b>	Children's Guardian Act 2019 (NSW) Children and Young Persons (Care and Protection) Act 1998	
<b>Related documents</b>	Reportable Conduct Fact Sheet NSW Mandatory Reporting Policy NSW Investigations Policy and Procedure	
<b>Document location</b>		
<b>Date of issue/last revision</b>	December 2022	
<b>Authorisation</b>	Principal	
<b>Date of formal ratification</b>	February 2023	
<b>Review cycle</b>	Biennial	
<b>Feedback</b>	Feedback on this policy can be emailed to the Principal – Mr Darren McPartland <a href="mailto:d.mcpartland@stpetersbroulee.nsw.edu.au">d.mcpartland@stpetersbroulee.nsw.edu.au</a>	
<b>Date modified</b>	<b>Modified by</b>	<b>Modifications made</b>

## Commitment

This *Reportable Conduct Policy and Procedure* reflects the commitment of St Peter's Anglican College (SPAC) (the College) and its employees to the safety and wellbeing of children and young people regardless of whether the personnel are mandated reporters under the provisions of the child protection legislation in the relevant state or territory.

SPAC has zero tolerance for child abuse in all its forms. We are committed to providing child safe environments where children and young people feel included, valued and their voices are heard. We understand the profound and long-term impact child abuse, neglect and trauma have on the health and wellbeing of people across the lifespan. The College's commitment to child safety aligns also with the expectation that all adult community members have responsibility for the protection, safety and wellbeing of children and young people. As a Faith based organisation whose interactions with young people have the ability to identify and refer vulnerable children, we are committed to the care and protection of children.

## Purpose and Scope

This policy sets out the principles, obligations and processes for SPAC to investigate reportable conduct (reportable allegations and reportable convictions) and report it to the New South Wales Office of the Children's Guardian (OCG). This document outlines SPAC's procedures to ethically and legally ensure the safety and wellbeing of all children and young people age 0-18 years.

## Definitions

**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).

**Child:** a person under 18 years of age.

**Confidentiality:** is a legal term that refers to the duty of an individual to refrain from sharing confidential information with others without the express consent of the other party.

**Emotional or psychological harm:** is 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.

**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:** is 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.

**Personnel:** means all staff, volunteers and contractors.

**Reportable allegation:** an express assertion that reportable conduct has happened.

**Reportable conviction:** a conviction or finding of guilt:

- for an offence, under Territory or a State or Commonwealth law, involving reportable conduct; and
- entered against the person before or after the commencement of the Reportable Conduct and Information Sharing Legislation Amendment Act 2016.

**Sexual misconduct:** conduct with, towards or in the presence of a child that is sexual in nature (but not a sexual offence). The Act includes but not limited to:

- 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).

**Sexual offences:** 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.

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.

**Worker:** All people carrying out work for the College including employees (permanent, casual, and temporary), contractors and sub-contractors, volunteers, apprentices, work experience students, or a minister, priest, or other religious leader or member of a religious organisation.

## Policy

Under NSW legislation, Section 29, Children's Guardian Act 2019 (NSW), SPAC must report to the OCG any reportable allegations/convictions that employees, or volunteers and contractors who provide services to children, have engaged in reportable conduct (defined below). It does not matter whether the reportable conduct happened to a student or another child – any allegations which meets the legal definition of reportable conduct related to work or in a personal capacity must be reported to the OCG. The Principal's duty is to ensure that the SPAC reportable conduct obligations are met consistently and in a timely manner. This policy and procedure sets out the delegated obligations and processes.

## Reportable Conduct Procedure

### Responsibilities – Principal

The Principal as head of entity must:

- a) set up systems within their organisation to ensure that they are advised of any reportable allegations against employees;
- b) investigate a reportable allegation;
- c) notify the OCG (as outlined below) after being made aware of an allegation;
- d) notify the OCG whether or not the College plans to take disciplinary or other action in relation to an employee who is the subject of a reportable allegation or conviction, and the reasons for taking or not taking any such action as soon as practicable; and
- e) provide the OCG with any documentary and other information as the OCG may from time to time request to assist in the OCG's monitoring of an investigation.

Personnel must report to the Principal if 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 yourself.

If the allegation involves the Principal, it is required to be reported to the Chair of the College Board.

### Contact for Parents

The Principal is the contact point for parents if they wish to report a reportable allegation against an employee. The Principal can be contacted through the College Office by phone 44715111 or email [principal@stpetersbroulee.nsw.edu.au](mailto:principal@stpetersbroulee.nsw.edu.au). All such reports will be dealt with in accordance with the College 's complaint handling procedures.

## Timeframes

Reportable conduct must be notified to the OCG within 7 days of first being reported within the workplace (stages 2-5 must occur within 7 days).

If the full Reportable conduct process is not completed within 30 days of the allegation first being reported in the workplace (stages 2-7 within 30 days), an interim report must be sent to the OCG outlining progress and the reasons the process is not complete.

	Stage of Process	Action
1	Incident	An employee, volunteer or contractor becomes aware of concerning conduct or a criminal conviction that might be reportable conduct.
2	Report to manager verbally and via ISOPro	That person must report the alleged conduct to the Principal as soon as practicable – within 24 hours. The Principal will complete the MRG online and consult the Association of Independent Schools Child Protection Team whether the Guide suggests there is a case to investigate or otherwise. An ISOPro incident form must also be lodged.
3	Assessment of initial allegation	The Principal identifies and responds to risks in consultation with the ADS Director of Risk and Compliance and The Association of Independent Schools Child Protection Department.
4	Immediate action	The Principal must implement any mitigation strategies that are immediately necessary to reduce risk. The reporting staff member or outside person is to be notified of the action of the Principal. Should they not be entirely happy with a non report (should that be the action) they are to be encouraged to make a report themselves.
5	Notification	If the assessment determines the alleged conduct meets the definition of Reportable Conduct, the Principal calls the Child Protection helpline 132 111 and must conduct a risk assessment of the incident. This must occur within 7 days of Stage 2 occurring.
6	Investigation	The Principal (or an appointed external investigator from the ADS Investigations panel) will investigate the allegations. The investigator will report the outcome of the investigation and supporting evidence to the College. The report makes a recommendation to the Principal, who determines whether there should be a finding whether Reportable Conduct occurred. The OCG may monitor, oversee or participate in the investigation.
7	Report to the OCG	The Principal must report the outcome of the investigation and the decision to the OCG within 30 days of the allegation first being reported – or provide an interim report within 30 days.
8	Corrective action	If reportable conduct has occurred, the ADS Director of Risk and Compliance will assist the Principal, to coordinate support for the people affected, to appropriately manage the worker involved, and to eliminate or reduce the risk of further reportable conduct. Where there is an employment sanction

		this must be determined by the Principal in consultation with the ADS Director of Human Resources.
--	--	--

## What is reportable conduct?

In NSW, reportable conduct is:

- a sexual offence,
- sexual misconduct,
- ill-treatment of a child,
- neglect of a child,
- an assault against a child,
- an offence of failing to reduce or remove risk of a child becoming victim of child abuse by
- another worker, or of concealing a child abuse offence (43B or 316A of the Crimes Act 1900)
- behaviour that causes significant emotional or psychological harm to a child.

Examples might include:

- sexual assault of a child, or a child grooming offence, by a teacher or a volunteer (including before they started work/volunteering).
- a teacher or a volunteer pushing or hitting a child.
- Domestic violence or assault offences committed in the presence of a child.
- Allegations that a teacher or a volunteer was looking at pornography, making sexualised comments, or had sexually explicit communication with students (beyond reasonable sex education purposes).

Definitions and other examples can be found at sections 20-25 of the Children's Guardian Act 2019.

## What is Not Reportable Conduct?

Reportable conduct does not include reasonable discipline and other conduct that is appropriate under professional teaching standards.

In NSW the exact definition of what is not reportable conduct is:

- conduct that is reasonable for the purposes of discipline, management or care of a child, having regard to:
  - i. the age, maturity, health or other characteristics of the child, and
  - ii. any relevant code of conduct or professional standard, or
- the use of physical force if:
  - i. in all the circumstances, the physical force is trivial or negligible, and
  - ii. the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures.

For example, if the College receives a complaint that a teacher caused psychological harm to a child, the complaint will be assessed in line with the Reportable conduct process and the College's *Complaints Policy*. If the investigation finds that the conduct was reasonable under professional teaching standards, or was negligible, it is not Reportable conduct.

Reportable conduct is different to Mandatory reporting legislation, which requires separate reporting of harm to children to the NSW Department of Communities and Justice (see

*Mandatory Reporting Policy*). One of the key differences is that reportable conduct is conduct by a College employee, volunteer or contractor against any child, while Mandatory reporting is conduct by anyone against an enrolled student.

Employees can refer to OCG resources for more information about reportable conduct.

### Section 30 Exemption

In NSW, the OCG has determined under Section 30 of the Children's Guardian Act 2019 that some organisations have a standard of investigating complaints so some allegations do not need to be reported as reportable conduct. Alleged physical assault, or a threats of a physical assault, do not need to be reported to the OCG as a reportable allegation, unless it is alleged that:

- there was contact with any body part or area of a child that was clearly hostile and forceful, or;
- reckless, and which had the potential to, or resulted in significant harm or injury to the child; or;
- a child believed that the threat would result in significant harm or injury to them.

For example, it is not reportable conduct to touch a child in order to attract a child's attention, to guide a child or to comfort a distressed child. A school teacher raising his or her voice in order to attract attention or to restore order in the classroom is not reportable conduct, nor is conduct that is established to be accidental.

All allegations are taken seriously and even if conduct may not be reportable conduct, the Principal must:

- assess the allegation, including undertaking a risk assessment and making a finding as a result of that assessment,
- take appropriate action as a result of that investigation,
- keep adequate records of the investigation and the reasons for taking or not taking any action as a result of the investigation,
- keep adequate records of those matters covered by this determination and store these records in a place accessible to the OCG for auditing purposes, and
- provide to the OCG, every six months, the total number and category of allegations exempted from notification under the determination.

### Stage 2 - What to do if you suspect Reportable conduct?

If a worker becomes aware of any concerning conduct – either because of their own behaviour (e.g. conviction of an offence) or by a colleague – they must report that to their Principal.

**They may seek advice from the College Psychologist, College Counsellor or an Executive staff member.**

**The Principal must complete the MRG online.**

**The Principal must call the AISNSW Child Protection Team to seek advice.**

The Principal who receives any report of alleged reportable conduct must notify ADS via the online incident form lodged within ISOPro.

## Stages 3 and 4 – Risk Assessment and Immediate Action

NSW law requires that an allegation of reportable conduct must be examined for the risks associated with the alleged conduct. The risk assessment must be documented and details of it provided to the OCG when the Guardian is notified of the allegations (stage 5).

The Principal – or a worker they delegate – must complete the risk assessment and identify actions to mitigate risks to an acceptable or manageable level.

Appendix 1 risk rating table is attached to assist classify the level of risk identified.

Risks that might be assessed include:

- If the risk relates to the child who has been subjected to the behaviour:
  - i. Does the child and other family members require specific protection and support?
  - ii. Is the welfare of the child threatened?
  - iii. Is the child or employee the subject of the allegation able to interact with parties involved in the allegation in the normal course of school activities?
  - iv. Does the allegation constitute a criminal offence?
  - v. Is there risk of self-harm?
- If the risk relates to an employee:
  - i. What personal support is required for the employee?
  - ii. Should the employee remain in their current position? This will depend on:
    - Nature and seriousness of the allegation
    - The requirements of the child/ren
    - Reactions of employer to allegation with specific consideration to their current welfare
    - College Community reaction to the allegation (if known) and the viability of the employee remaining in the current position whilst the matter is investigated
    - Nature and type of work done by the employee
    - Supervision controls that are in place or could be put in place
    - Support mechanisms that could be put in place to support the employee in their current role
    - The employees workplace misconduct history and any current employment sanctions
- If the risk relates to others what changes need to be actioned to ensure:
  - i. Safety
  - ii. Wellbeing such as other students and staff who have witnessed or are aware of the allegation
  - iii. The ability to continue their role and responsibilities.

If child welfare agencies or law enforcement agencies are involved, the actions of those organisations should be included as follow up information in ISOPro original report. This information may affect the actions taken to manage and mitigate risk factors.

Risk should be managed on a continuing basis. If new risks are identified or risk ratings change, the Principal should identify, implement and record new strategies to manage the risks. If no new risks emerge, the fact of the assessment and no new risks should be noted in records.

The Principal must implement any identified actions that are immediately required to mitigate risk, before moving on to further stages.



## Stage 5 – Preliminary Notification to the Children’s Guardian and Record Management

The Principal must attach the completed risk assessment to the original incident form in ISOPro.

The follow up information will conclude whether a reportable conduct allegation was sustained; not sustained (lack of evidence); not sustained (lack evidence of weight); false; or not reportable conduct.

The Principal will make the formal decision from the five categories and ensure that the ISOPro incident is updated with this information.

The Principal must notify the OCG of any allegation, before proceeding to formal investigation that meets the legal requirements of reportable conduct.

Once the Principal contacts The OCG may monitor or participate in the subsequent investigation.

The notification to the OCG must include (s29 of the NSW Children’s Guardian Act 2019):

- that a report has been received in relation to an employee of the relevant entity,
- the type of reportable conduct the subject of the report,
- the name of the employee,
- the name and contact details of the College and the contact details for ADS Director of Risk and Compliance,
- for a reportable allegation—whether the Commissioner of Police has been notified of the allegation,
- if a report has been made under section 24 of the Children and Young Persons (Care and Protection) Act 1998—that the report has been made,
- the nature of the relevant entity’s initial risk assessment and risk management action, and
- any other information prescribed by the regulations
- The notice must also include the following information, if it is known to the principal:
  - details of the reportable allegation or conviction considered to be a reportable conviction,
  - the date of birth and working with children number, if any, of the employee the subject of the report,
  - for a reportable allegation of which the Commissioner of Police has been notified—the police report reference number,
  - if a report has been made under section 24 of the Children and Young Persons (Care and Protection) Act 1998—the report reference,
  - 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 contractor.

### Procedural Fairness

The Principal must provide procedural fairness to people that may be adversely affected by a decision. This includes ensuring:

- the decision-maker and process is free from bias;
- decisions are based on evidence that supports the facts, and
- any person that may be adversely affected by decisions has an opportunity to present their case and have their input considered before a decision is made.

Because this stage is a legally mandated notifying of allegations (not a decision), the opportunity to provide a response will not occur before this stage. It is a formal part of the investigation (see subsection 34(2) of the Children’s Guardian Act 2019).

## Stage 6 – Reportable Conduct Investigation and Relationship to other potential Workplace Investigations

The College (or external investigation) will conduct all investigations of reportable conduct in line with the *Reportable Conduct* and the *Investigation Policy and Procedure*. This procedure incorporates mandatory considerations in Division 6 of the Children’s Guardian Act 2019.

An allegation of reportable conduct may also involve a breach of other policies such as the *Staff Code of Conduct*, *Work Health and Safety Policy*, or other policies and procedures.

The Principal or their delegate will investigate alleged breaches of other requirements simultaneously with reportable conduct investigations, where possible by the same investigator. This assists to minimise any contamination of evidence, undue effect on the welfare of the parties, and improves the consistency of investigative processes.

## Stage 7 – Report to the Children’s Guardian

The Principal must report to the OCG on the outcome of an investigation or determination within 30 days of the matter first being reported in the workplace (s 36 – see below for mandatory content)). If the final report will not be provided within 30 days, the Principal must provide an interim report before the 30 day deadline and a reason the final report is not complete (s 38 – see below for mandatory content).

Under section 36, the final report must include:

- a) in relation to a reportable allegation
  - i. the facts and circumstances of the reportable allegation,
  - ii. the findings made about the reportable allegation after the investigation, including whether the head of the relevant entity has made a finding of reportable conduct,
  - iii. an analysis of the evidence and the rationale for the findings,
- b) in relation to a conviction considered to be a reportable conviction—
  - i. information about the conviction considered to be a reportable conviction,
  - ii. the determination the head of the relevant entity has made about the conviction
- c) a copy of any written submission made by the employee under section 34(2),
- d) information about what action has been, or will be, taken in relation to the reportable allegation or conviction considered to be a reportable conviction, including:
  - i. remedial or disciplinary action in relation to the employee,
  - ii. whether information about the matter has been referred to a different entity,
  - iii. changes to systems or policies,
  - iv. if no further action is to be taken—that no further action is to be taken, and the reasons for the action taken, including taking no further action.

The final report must be accompanied by any copies of documents that are relevant to the report, including transcripts of interviews and copies of evidence.

Under Section 38, an interim report must include:

- a) in relation to a reportable allegation—if known, the facts and circumstances of the reportable allegation,
- b) in relation to a conviction considered to be a reportable conviction—any known information about the conviction,
- c) action taken since the Children’s Guardian received a notification about the reportable allegation or the conviction considered to be a reportable conviction, and
- d) further action the head of the relevant entity proposes to take in relation to the reportable allegation or conviction considered to be a reportable.

## 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 employees, including reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions, will be kept in the Principal’s Office and will be accessible by the Principal or with the Principal’s express authority.

No employee may comment to the media about an allegation or reportable conduct unless expressly authorised by the Principal to do so. If an employee becomes aware of a breach of confidentiality in relation to a reportable allegation the Principal must be advised.

## Information Sharing under the Reportable Conduct Scheme

Section 57 of the Children’s Guardian Act 2019 permits information about reportable conduct to be shared in specific circumstances. Other information-sharing and privacy legislation may also apply.

To ensure compliance with the reportable conduct scheme and privacy, child protection and other relevant legislation, only the Principal in consultation with the ADS Director of Risk and Compliance, is authorised to share information about reportable conduct and reportable convictions.

All requests relating to information sharing must be referred immediately to the Principal.

## Compliance

Non-compliance with this policy may result in disciplinary action up to and including dismissal.

## Appendix 1

Risks are assessed using the following likelihood and consequence matrix:

Consequence →			Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood	Is expected to occur in most circumstances	Almost Certain	Medium	Medium	High	Extreme	Extreme
	Will probably occur	Likely	Medium	Medium	High	High	Extreme
	Might occur at some time in the future	Possible	Low	Low	Medium	High	High
	Could occur but doubtful	Unlikely	Very Low	Low	Medium	Medium	High
	May occur in exceptional circumstances	Rare	Very Low	Very Low	Low	Medium	Medium

Using the above information and matrix, a risk rating can be applied to any risk.