



Reportable conduct policy and procedure

Policy document information

Policy name:	Reportable conduct policy and procedure
Author:	ADS
Trust & reputation	
NSW Education Standards Authority	Registered and Accredited Individual Non-government Schools (NSW) Manual Section 3.6 (Safe and supportive environment)
Legislation	<ul style="list-style-type: none"> • Children’s Guardian Act 2019 (NSW) • Children and Young Persons (Care and Protection) Act 1998
Relevant information	<ul style="list-style-type: none"> • Reportable conduct fact sheet NSW • Mandatory reporting policy NSW
Other policy relationships	<ul style="list-style-type: none"> • Code of Conduct • Mandatory reporting
Document Location	
Board Checklist	Verified by the most technically competent person inside or outside the organisation and confirmed by the Executive Principal / Head of Campus to be in accordance with the College Mission Statement and Board Governance Manual GM01.
Date of issue/last revision:	25 October 2022
Last Date submitted to Board of Directors:	20 October 2022
Date of Formal Ratification by the Principal on behalf of Board:	20 October 2022
Date set for review:	October 2024

Commitment

This Reportable conduct policy and procedure reflects the commitment of Sapphire Coast Anglican College (SCAC) 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.

SCAC 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 School'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 SCAC to investigate reportable conduct and report it to the New South Wales Office of the Children's Guardian. This document outlines SCAC the procedures to ethically and legally ensure the safety and wellbeing of all children and young people age 0-18 years.

Policy

Under NSW legislation, Section 29, Children's Guardian Act 2019 (NSW), SCAC must report to the Office of the Children's Guardian (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 SCAC 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 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 School 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.

An employee 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 School 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 School Office by phone or email. All such reports will be dealt with in accordance with the School'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 must telephone the Child Protection helpline 132 111 and lodge an ISOPro incident form.
3	Assessment of initial allegation	The Principal identifies and responds to risks in consultation with the ADS Director of Risk and Compliance.
4	Immediate Action	The Principal must implement any mitigation strategies that are immediately necessary to reduce risk.
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 School. The report makes a recommendation to the Principal, who determines whether there should be a finding whether Reportable Conduct occurred. The Office of the Children’s Guardian may monitor, oversee or participate in the investigation.
7	Report to the Children’s Guardian	The Principal must report the outcome of the investigation and the decision to the Children’s Guardian 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 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 school 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 school'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 school employee, volunteer or contractor against any child, while Mandatory reporting is conduct by anyone against an enrolled student.

Employees can refer to NSW Government Office of the Children's Guardian resources for more information about Reportable Conduct.

Section 30 exemption

In NSW, the Office of the Children's Guardian 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 Office of the Children's Guardian 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 Office of the Children's Guardian for auditing purposes, and
- provide to the Office of the Children's Guardian, 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.

The Principal who receive 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 Children's Guardian when the Guardian is notified of the allegations (stage 5).

The Child Protection Team – 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
 - School 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 Office of the Children’s Guardian of any allegation, before proceeding to formal investigation that meets the legal requirements of reportable conduct.

Once the Principal contacts The Office of the Children’s Guardian may monitor or participate in the subsequent investigation.

The notification to The Office of the Children’s Guardian 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 school 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 School (or external investigation) will conduct all investigations of Reportable conduct in line with the Reportable conduct policy 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 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 Institute for Professional Standards and Safeguarding must report to the Children’s Guardian 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 Institute for Professional Standards and Safeguarding 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
 - v. 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.

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.

Definitions

Child: a person under 18 years of age.

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

Reportable conviction: a conviction or finding of guilt:

- for an offence, under ACT 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.

Worker: All people carrying out work for the school 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.

Feedback

Feedback on this document can be emailed to admin@scac.nsw.edu.au

Review

This document is reviewed on a biennial basis and approved by the Principal.

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.