



ST PATRICK'S COLLEGE

Child Protection: A Guide to Misconduct and Reportable Conduct relating to Workers and Employees of St Patrick's College

Misconduct

Edmund Rice Education Australia (EREA) requires all Workers within the St Patrick's College community to carry out their duties in line with the EREA Code of Conduct which also includes a Child Safe Code of Conduct. Workers include all employees, supply, relief, aide, volunteer, placed or work experience teachers, support and administration staff, contractors, sub-contractors, volunteers, members of Boards and Councils. A breach of the Code may be considered:

- a disciplinary matter for Edmund Rice Education Australia and may result in performance management, formal warning, suspension, demotion or termination in accordance with industrial processes
- a disciplinary matter for the College and may result in performance management, formal warning, suspension, demotion or termination in accordance with industrial processes
- a contractual matter (breach, termination)
- professional misconduct referred to relevant authorities
- reportable conduct reported to relevant authorities
- a regulatory matter referred to relevant authorities
- a breach of statute referred to relevant authorities
- a criminal matter referred to relevant authorities
- a civil matter referred for legal advice and remedy.

Any disciplinary process in relation to a breach of the Code will be managed with procedural fairness and in keeping with the principles of natural justice.

Any allegations of misconduct or breaches of the Code of Conduct by Workers will be investigated. Any alleged misconduct that amounts to 'Reportable Conduct' will be managed in accordance with the following procedures.

Reportable Conduct

The Ombudsman Act 1974 (NSW) requires St Patrick's College to investigate and report to NSW Ombudsman all allegations of Reportable Conduct made against 'employees' or any conviction of an offence involving Reportable Conduct as defined by the Ombudsman Act.

What is Reportable Conduct?

Reportable Conduct is defined by Section 25A of the Ombudsman's Act. Reportable Conduct means:

- any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence, or an offence involving child abuse material); or
- any assault, ill-treatment or neglect of a child; or
- any behaviour that causes psychological harm to a child (whether or not, in any case, with the consent of the child).

A child is defined as a person under the age of 18 years.

What Conduct is not Reportable Conduct?

Reportable Conduct does not extend to conduct that is:

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

Some examples of conduct that are not reportable include touching a child to get their attention, to guide them or comfort them, a College teacher raising their voice to attract attention or restore order in the classroom or conduct that is established to be accidental.

Who is an 'employee' for the purposes of the Reportable Conduct requirement?

The Ombudsman Act defines who are considered to be 'employees' for the purposes of Reportable Conduct reporting. This includes St Patrick's College:

- staff
- volunteers
- contractors
- student teachers on placement
- religious instructors.

Allegations

Any allegation of misconduct relating to a student should be immediately reported to the Principal or Deputy Principal. The Principal is the Senior Child Safety Officer at the College. Should the matter involve the Principal or the Deputy Principal, the report should be made to the Edmund Rice Education Australia (EREA) Regional Director (Eastern Region) on (02) 9426 3200.

There are two stages of reporting to the Ombudsman. The Ombudsman must be notified:

- of the reportable allegation or conviction as soon as possible or within 30 days of St Patrick's College becoming aware of the allegation or conviction (completion and submission of Form A)
- of the findings of the investigation, as soon as possible once the investigation has been finalised (completion and submission of Form B).

Prior to making the report, St Patrick's College may call the NSW Ombudsman on the Employment-Related Child Protection line for guidance.

Investigations of Reportable Allegations

Once a reportable allegation or conviction has been made (which does not require a mandatory report to Family and Community Services) and the NSW Ombudsman has been notified, an investigation by an investigator appointed by the Principal will be conducted in such a manner as the circumstances demand. The NSW Ombudsman may intervene in an investigation or ask for further information during the course of the investigation.

Risk Management: Risk Assessments

The Principal is responsible for ensuring a risk assessment is conducted in respect of:

- the child(ren) who were the subject of the allegation
- the employee who was the subject of the allegation; and
- other relevant parties including parents/carers.

These risk assessments will be conducted after a reportable allegation is made, during the investigation and at the end of the investigation.

Stage One: After a reportable allegation is made, the Principal will ensure a risk assessment is conducted which considers:

- the nature and seriousness of the allegation(s)
- the vulnerability of the children who the employee would be in contact with while at the College – considering their age, communication skills etc
- the nature of the position occupied by the employee including the level and the interaction they have with children
- the level of supervision available for the employee
- the availability of support for the employee on a day to day basis if their duties are unchanged
- the employee’s disciplinary history; and
- other possible risks to the investigation.

These factors will assist the Principal to make a decision about whether to move the employee from direct contact work, or suspend them from work during the investigation. The decision the Principal makes after the first risk assessment should not influence the final findings of the investigation.

Stage Two: During the investigation

New risks may emerge during the investigation into an allegation and it is important that such risks are managed and as such, the Principal will ensure support is provided for:

- the child(ren) who were the subject of the allegation
- the employee who was the subject of the allegation; and
- other relevant parties, including parents/carers.

Stage Three: This is covered in the Making A Finding of Reportable Conduct section of this policy below:

Making a Finding of Reportable Conduct

Once the investigation has been conducted, the Principal as the decision maker, will assess the evidence regarding the allegations of Reportable Conduct against the employee, as well as any conclusions or recommendations made by others involved in the investigation and make a finding in relation to each allegation.

The Principal’s finding will inform the College’s child protection risk assessment and any future action taken to mitigate ongoing risks.

When deciding as to whether the reportable allegation amounts to a finding of Reportable Conduct at the conclusion of their investigation, the Principal must consider:

- the reliability of all evidence collected
- the relevancy of all evidence collected to the alleged conduct
- whether accounts of the alleged conduct are consistent over time, with other evidence
- whether the evidence collected is plausible; and
- whether there is any other evidence to corroborate or contradict an allegation.

Caution will be exercised when the matter involves a criminal allegation such as sexual assault. The Principal will take care to base their decision on clear and cogent evidence. The more serious the alleged wrongdoing, the more care the Principal will exercise in making their decision as to whether they are satisfied the alleged conduct is sustained. For more information refer to the *Notifying and Identifying Reportable Conduct* and *Making a Finding of Reportable Conduct* guides from the NSW Ombudsman.

Possible Findings to be Made by the Principal

There are five possible findings that the alleged conduct did indeed occur:

- Sustained
- Not Sustained; insufficient evidence
- Not Sustained; lack of weight
- False
- Not Reportable Conduct.

Disclosing Information about Reportable Conduct to affected Children, Parents and Carers

Section 25GA of the Ombudsman Act affords legal protection to the head of St Patrick's College and any person acting at the direction of, and with specific knowledge of, the head of the St Patrick's College. The following information can be disclosed to the child who was allegedly the subject of the reportable conduct, however the information that is disclosed is a matter of what is appropriate in the circumstances.

- information about the progress of the investigation
- the findings of the investigation; and
- any action taken in response to those findings.

Impact on Working with Children Check

Where the investigation has led to findings against the employee, depending upon the seriousness of the allegations, the Principal may also need to notify the Office of the Children's Guardian of the findings of the investigation which may initiate a review of the employees Working with Children Check.

Workers Responsibility

All employees of St Patrick's College are responsible to ensure:

- reports of employee misconduct are made as soon as possible to the Principal or Deputy Principal
- the Principal is notified of any convictions which relate to Reportable Conduct
- cooperation in any investigation
- confidentiality is maintained throughout the process; and
- records of all verbal and written communications are maintained and stored securely.



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