

Child Protection- Child Abuse and Harm Definitions, Identification and Initial Responses

The McDonald College's Policy

All children and young people have the right to be protected from abuse and harm.

The McDonald College is committed to providing a safe environment for all our students.

It is our policy that:

- all staff are trained with respect to identification of child abuse and harm (including grooming) and relevant procedures
- all suspected cases of child abuse or harm (including grooming) that meet the relevant thresholds are reported to DCJ and/or the Police
- we maintain up-to-date procedures to assist staff in identifying and reporting child abuse or harm (including grooming)
- we work collaboratively with relevant external agencies that may be involved in child protection
- we act immediately to ensure the safety of students who have been or at risk of being abused or harmed
- we provide ongoing support and assistance to students who have been abused or harmed.

Definitions of Child Abuse and Harm

There are different legal definitions in NSW that are relevant to child abuse and harm. All of the below are considered child abuse and harm for the purposes of our Child Protection Policies.

Child abuse or harm may involve ongoing, repeated or persistent behaviour, actions or inactions, or it may arise from a single incident.

The perpetrator may be a parent/carer, other family member, staff member, Volunteer, Contractor, another adult or another child or young person.

Children and Young Persons (Care and Protection) Act 1998

There is no definition of 'child abuse' in the Children and Young Persons (Care and Protection) Act. Rather, children and young people may be "at risk of significant harm". A child (aged under 16) or a young person (aged 16 or 17) may be "at risk of significant harm" if current concern exists for their 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 (see the Neglect and Serious emotional or psychological harm sections of this policy)
- 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 (see the Neglect and Serious emotional or psychological harm sections of this policy)
- 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) (see the Neglect and Serious emotional or psychological harm sections of this policy)
- the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated (see the Physical abuse or harm and Sexual abuse sections of this policy and Child Protection – Detecting, Reporting and Addressing Grooming Behaviours)
- 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 (See the Family Violence as Harm to a Child or Young Person and Serious emotional or psychological harm sections of this policy)
- 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 (see the Serious emotional or psychological harm section of this policy).

Crimes Act 1900

The definition of “child abuse offences” in the Crimes Act 1900 (NSW) may assist in understanding what is considered ‘child abuse and harm’ in NSW. The phrase is also central to understanding obligations under our Child Protection – Duty to Protect Students from Child Abuse or Harm and Child Protection – Mandatory Reporting of Child Abuse Offences to Police policies.

Under sections 343B and 16A of the Crimes Act, a "child abuse offence" includes sexual offences (and attempts to commit these offences) such as:

- rape
- sexual abuse
- sexual touching
- production of child abuse material
- voyeurism
- grooming.

It also includes assaults and physical harm (and attempts to commit these offences), such as:

- wounding or causing grievous bodily harm
- assault causing actual bodily harm
- assault at a school (whether or not causing actual bodily harm)
- administering or causing the ingestion of an intoxicating substance
- female genital mutilation.

Some of these offences are only child abuse offences if the child is aged under 16.

There are also particular offences in the Crimes Act 1900 that are relevant to the College context and that are considered child abuse and harm for the purposes of our Child Protection Policies.

- **Grooming of a person with respect to a child “under the authority of the person”**
Section 66EC of the Crimes Act 1900 makes it a crime to groom an adult by providing any financial or material benefit to the adult for the purposes of making it easier to procure a child, who is under the adult’s authority, for unlawful sexual activity. See Child Protection - Detecting, Reporting and Addressing Grooming Behaviours.
- **Sexual intercourse with or sexual touching of a young person between 16 and 18 "under special care”**
Sections 73 and 73A of the Crimes Act 1900 make it a crime for adults who are in positions of special care for young people aged 16 and 17 to engage in certain conduct that would otherwise not be an offence due to the age of the young person. This conduct includes:
 - Sexual intercourse with the young person
 - Sexual touching involving the young person.

In the College context, adults with “special care” of young people include the Principal and Deputy Principal, all teaching staff, all non-teaching staff who have students under their care or authority (such as counsellors, nurses, religious leaders or officials, sports coaches, music, dance and acting tutors, learning assistance staff and youth workers) as well as all Direct Contact Volunteers and Direct Contact Contractors.

Family Violence as Harm to a Child or Young Person

Family (or ‘domestic’) violence is incorporated into the definition of ‘child abuse and harm’ because it is one of the reasons by which a child or young person might be at risk of significant harm under the Children and Young Persons (Care and Protection) Act 1998 (NSW).

The Crimes (Domestic and Personal Violence) Act 2007 (NSW) sets out the various criminal offences and procedural matters relating to domestic violence in NSW and as such is useful when considering a definition of “domestic” violence.

That 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 1900 (NSW) as well as behaviour intended to coerce or control the victim or to cause that person to be intimidated or fearful.

Grooming as Harm to a Child or Young Person

Grooming of a child or young person, or of an adult with authority for a child or young person, is incorporated into the definition of ‘child abuse and harm’ for the purposes of our Child Protection Policies because it is:

- conduct which may place a child or young person at risk of significant harm, which must be reported under the Children and Young Persons (Care and Protection) Act 1998 (NSW) (see Child Protection – Mandatory Reporting of Child Abuse or Harm to DCJ)
- in certain circumstances, an offence under sections 66EB and 66EC of the Crimes Act 1900 (NSW) that must be reported to the NSW Police (see Child Protection – Mandatory Reporting of Child Abuse Offences to Police) and from which persons at the College, who have the authority to do so, must protect students (see Child Protection – Duty to Protect Students from Child Abuse or Harm)
- a sexual offence or sexual misconduct which must be reported to the NSW Children’s Guardian under the Children’s Guardian Act 2019 (NSW) (see Child Protection – Reportable Conduct of Staff, Volunteers and Others).

The McDonald College treats the commission of grooming behaviours on its premises, online, using College equipment, during its extra-curricular activities or in other related settings (e.g. the home of a teacher) as conduct which threatens the safety of students, and action must be taken as part of our Child Protection Program.

For more information, see our Child Protection - Detecting, Reporting and Addressing Grooming Behaviours policy.

Indicators of Child Abuse or Harm

Children and young people may show physical or behavioural indicators of abuse or harm whilst in their school environment. The following indicators may assist staff who are concerned about children or young people in their care.

Physical Abuse or Harm

Physical abuse or harm is a non-accidental physical injury or pattern of physical injuries to a child or young person caused by a parent, carer or any other person.

It includes, but is not limited to, injuries which are caused by:

- hitting;
- shaking;
- throwing;
- burning;
- biting;
- poisoning;
- giving children alcohol, illegal drugs or inappropriate medication;
- female genital mutilation.

Injuries can include bruising, lacerations or welts, burns, fractures or dislocation of joints. Physical abuse does not always leave visible marks or injuries. It is not how bad the mark or injury is, but rather the act itself that can cause injury or trauma to the child or young person.

Hitting a child or young person around the head or neck and/or using a stick, belt or other object to discipline or punish a child or young person (in a non-trivial way) is a crime.

Possible physical indicators of physical abuse or harm include:

- unexplained bruises
- bruises or welts on facial areas and other areas of the body, including back, bottom, legs, arms or inner thighs
- any bruises or welts in unusual configurations, or those that look like the object used to make the injury, for example, fingerprints, handprints, buckles, iron or teeth
- drowsiness, vomiting, fits or pooling of blood in the eyes, which may suggest head injury
- burns that show the shape of the object used to make them, such as an iron, grill, cigarette, or burns from boiling water, oil or flames
- dislocations, sprains, twisting injuries
- fractures of the skull, jaw, nose or limbs, especially in younger children and especially when not consistent with the explanation offered

- cuts and grazes to the mouth, lips, gums, eye area, ears or external genitalia
- human bite marks
- bald patches where hair has been pulled out
- multiple injuries, old and new.
- Possible behavioural indicators of physical abuse or harm include:
- inconsistent or unlikely explanation for an injury
- inability to remember the cause of an injury
- fear of specific people
- wearing clothes unsuitable for weather conditions (such as long sleeved tops) to hide injuries
- wariness or fear of a parent/carer and reluctance to go home
- no reaction or little emotion displayed when hurt
- little or no fear when threatened
- habitual absences from the College without explanations (the parent/carer may be keeping the child or young person away until signs of injury have disappeared)
- overly compliant, shy, withdrawn, passive and uncommunicative
- fearfulness when other children cry or shout
- unusually nervous or hyperactive, aggressive, disruptive and destructive to self and/or others
- excessively friendly with strangers
- regressive behaviour, such as bed wetting or soiling
- poor sleeping patterns, fear of dark, nightmares
- sadness and frequent crying
- drug or alcohol misuse
- poor memory and concentration

- suicide threats or attempts
- academic problems.

Sexual Abuse

Sexual abuse is when someone involves a child or young person in a sexual activity by using their power over them or taking advantage of their trust. Often children and young people are bribed or threatened physically and psychologically to make them participate in the activity.

Child sexual abuse is a crime.

Sexual abuse includes sexual activity or behaviour that is imposed, or is likely to be imposed, on a child or young person by another person. Sexual abuse or exploitation can be physical or verbal and can include the following:

Contact Behaviours:

- kissing, touching or holding a child or young person in a sexual manner
- penetration of the vagina or anus by digital, penile, or any other object
- oral sexual contact
- coercing the child or young person to perform a sexual act on him/herself or anyone else.

Non-Contact Behaviours:

- talking in a sexually explicit manner to a child or young person
- making obscene remarks to a child or young person via any form of communication
- flashing/exposing to a child or young person
- having a child or young person pose or perform in a sexual manner
- voyeurism and invasion of privacy
- looking at child's or young person's genitals for sexual gratification
- exposure of the child or young person to sexually explicit material or acts (including pornographic material)
- communication of graphic sexual matters (including by social media or any other electronic means).

Sexual abuse also includes prostitution or exposure to circumstances where there is a risk that the child or young person may be sexually exploited.

Possible physical indicators of sexual abuse include:

- injury to the genital or rectal areas, such as bruising or bleeding
- vaginal or anal bleeding or discharge
- discomfort in urinating or defecating
- the presence of foreign bodies in vagina and/or rectum
- inflammation or infection of the genital area
- sexually transmitted diseases
- pregnancy, especially in very young adolescents
- bruising and other injury to breasts, buttocks or thighs
- anxiety related illnesses such as anorexia or bulimia
- frequent urinary tract infections.

Possible behavioural indicators of sexual abuse:

- the student discloses sexual abuse
- the student exhibits sexually harmful behaviour towards others
- persistent and age-inappropriate sexual behaviour, including excessive masturbation, masturbation with objects, rubbing genitals against adults, playing games that act out a sexually abusive event
- drawings or descriptions in stories that are sexually explicit and not age appropriate
- a fear of home, a specific place, a particular adult, or excessive fear of men or of women
- poor or deteriorating relationships with adults and peers
- poor self-care/personal hygiene
- regularly arriving early at the College and leaving late

- complaining of headaches, stomach pains or nausea without physiological basis
- frequent rocking, sucking or biting
- sleeping difficulties
- reluctance to participate in physical or recreational activities
- regressive behaviour, such as bed wetting or speech loss
- the sudden accumulation of money or gifts
- unplanned absences or running away from home
- delinquent or aggressive behaviour
- depression
- self-injurious behaviour, including drug/alcohol abuse, prostitution, self-mutilation, or attempted suicide
- the sudden decline in academic performance, poor memory and concentration
- wearing of provocative clothing
- promiscuity.

Grooming

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 sexually harmful behaviour.

For information on behaviours that might be considered Grooming and on the physical and behavioural indicators of Grooming, see Child Protection – Detecting, Reporting and Addressing Grooming Behaviours.

Serious Emotional or Psychological Harm

The infliction of emotional or psychological harm is one of the most common forms of child abuse and other harm. It can occur where the behaviour of an adult associated with the child or young person damages the confidence and self-esteem of the child or young person, resulting in serious emotional deprivation or trauma.

Although it is possible for 'one-off' incidents to cause serious harm, in general it is the frequency, persistence and duration of the adult's behaviour that is instrumental in defining the consequences for the child or young person.

A range of behaviours can cause serious emotional or psychological harm to a child or young person. These may include:

- making excessive or degrading demands of a child or young person
- a pattern of hostile or degrading comments towards the child or young person
- excessive criticism
- withholding affection
- exposure to domestic violence
- intimidation or threatening behaviour.

Where the adult who undertakes this behaviour is a parent or carer of the child or young person, it is a ground for suspecting that the child or young person is at risk of significant harm, and – in the case of a child – must be reported to DCJ (see Child Protection – Mandatory Reporting of Child Abuse or Harm to DCJ).

Other adults associated with a child or young person can also subject the child or young person to behaviours that may cause serious emotional or psychological harm. At the College, this can include teachers, sporting coaches, music, dance or acting tutors and Direct Contact Volunteers or Direct Contact Contractors. This behaviour constitutes ill-treatment or behaviour causing psychological harm to a child or young person, which must be reported to the NSW Children's Guardian under the Children's Guardian Act 2019 (NSW) (see Child Protection – Reportable Conduct of Staff, Volunteers and Others).

Possible physical indicators of serious emotional or psychological harm:

- speech disorders
- delays in emotional, mental or even physical development
- physical signs of self-harming.

- Possible behavioural indicators of psychological abuse or harm include:
- constant feelings of worthlessness about life and themselves
- unable to value others
- lack of trust in people
- lack of people skills necessary for daily functioning
- extreme attention-seeking behaviour
- obsessively eager to please or obey adults
- takes extreme risks, is markedly disruptive, bullying or aggressive
- highly self-critical, depressed or anxious
- suicide threats or attempts
- persistent running away from home
- anti-social, destructive behaviour
- low tolerance or frustration
- unexplained mood swings
- behaviours that are not age-appropriate, for example, overly adult (parenting of other children), or overly infantile (thumb sucking, rocking, wetting or soiling)
- fear of failure, overly high standards and excessive neatness
- violent drawings or writing
- isolation from other students.

Neglect

Neglect is the continued failure to provide a child or young person with the basic things needed for their growth and development, such as food, clothing, shelter, medical and dental care and adequate supervision. It includes a failure to meet a child or young person's physical and/or psychological needs.

Where the adult who fails to provide these basic necessities is a parent or carer of the child or young person, it is a ground for suspecting that the child or young person is at risk of significant harm, and – in the case of a child – must be reported to DCJ (see Child Protection – Mandatory Reporting of Child Abuse or Harm to DCJ).

Other adults associated with a child or young person can also neglect the child or young person.

Under section 228 of the Children and Young Persons (Care and Protection) Act 1998 (NSW), it is a criminal offence for any person, whether or not the parent of the child or young person, to – without reasonable excuse – neglect to provide adequate and proper food, nursing, clothing, medical aid or lodging for a child or young person in his or her care. In the context of the College, this might include a teacher, College nurse or Direct Contact Volunteer or Direct Contact Contractor failing to, for example, provide adequate medical attention to an injured student.

Neglect by College staff, Direct Contact Volunteers and Direct Contact Contractors may also constitute Reportable Conduct. Neglect as Reportable Conduct is defined as a significant failure, by an employee who has a child in their care, to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child.

Neglect in this context by College staff, Direct Contact Volunteers and Direct Contact Contractors must be reported to the NSW Children’s Guardian under the Children’s Guardian Act 2019 (NSW) (see Child Protection - Reportable Conduct of Staff, Volunteers and Others).

Possible physical indicators of neglect are:

- consistently dirty and unwashed
- consistently inappropriately dressed for weather conditions
- consistently without adequate supervision and at risk of injury or harm
- consistently hungry, tired and listless, falling asleep in class, or malnourished
- unattended health problems and lack of routine medical care
- inadequate shelter and unsafe or unsanitary conditions
- abandonment by parents/carers
- poor hygiene.

Possible behavioural indicators of neglect:

- scavenging, begging or stealing food

- gorging when food is available
- inability to eat when extremely hungry
- alienated from peers, withdrawn, listless, pale, and thin
- aggressive behaviour
- delinquent acts, for example, vandalism, drug or alcohol abuse
- little positive interaction with parent/carer
- appearing miserable or irritable
- poor socialising habits
- poor evidence of bonding, or little stranger anxiety
- indiscriminate with affection
- poor, irregular or non-attendance at school
- staying at school for long hours
- self-destructive
- dropping out of school
- taking on an adult role of caring for a parent/carer
- misusing alcohol or drugs
- academic issues.

Domestic or Family Violence

Domestic or family violence is behaviour towards a family member that may include:

- physical violence or threats of violence
- verbal abuse, including threats
- emotional or psychological abuse
- sexual abuse

- financial and social abuse.

A child or young person's exposure to family violence constitutes a risk of significant harm under the Children and Young Persons (Care and Protection) Act 1988 (NSW).

Examples of situations that may constitute a child or young person being exposed to family violence include the child or young person:

- overhearing threats of death or personal injury by a member of the child or young person's family towards another member of the child or young person's family; or
- seeing or hearing an assault of a member of the child or young person's family by another member of the child or young person's family.

As family violence can result in one or more forms of child abuse (being neglect, physical or sexual abuse or emotional or psychological harm) physical and behavioural indicators of these types of abuse may also be indicative of a family violence situation.

Possible behavioural indicators for older children and young people may include:

- moving away or running away from the family home
- entering a relationship early to escape the family home
- experiencing violence in their own dating relationship
- involvement in criminal activity
- alcohol and substance abuse.

Additional Vulnerabilities

All children and young people are vulnerable to abuse and other harm, because of their dependence on adults, because they are physically weaker than adults and because they lack social and legal power.

Some children and young people are more vulnerable to abuse and other harm.

Aboriginal and Torres Strait Islander children and young people, children and young people with disability and children and young people from culturally and linguistically diverse backgrounds face particular challenges, not because they are inherently more vulnerable but because they more often encounter circumstances that:

- place them in institutions with higher risk

- make it less likely they will be able to disclose abuse or other harm and/or
- make it more likely they will receive an inadequate response to abuse or other harm
- than other children and young people.

A variety of related factors may influence the vulnerability of a child or young person to abuse and other harm, including:

- the gender of the child or young person
- the age and developmental stage of the child or young person
- whether the child or young person has experienced maltreatment previously
- whether the child or young person has disability, and the nature of that disability
- the family characteristics and circumstances of the child or young person
- the nature of the child or young person's involvement with the institution
- other factors, including the child or young person's physical characteristics, social isolation, high achievement, lack of understanding of sexual behaviour (including sexual abuse) and personal safety, and sexual orientation.

Being vulnerable does not mean that a child or young person will be abused, although it does increase that risk. It is also important to remember that all children and young people can be vulnerable to all types of abuse and other harm.

Witnessing an Incident of Child Abuse or Harm

If you witness an incident where you believe a student has been subject to abuse or harm you must take immediate action to protect the safety of the student/s involved.

Where there is an immediate risk to the health and/or safety of a student:

- separate alleged victims and others involved
- administer first aid if needed
- call 000 for urgent medical assistance and/or Police assistance to address immediate health and safety concerns.

If the incident occurred at the College or a College event, you must preserve evidence of the incident:

- **Environment:** do not clean up the area and preserve the sites where the alleged incident occurred.
- **Clothing:** take steps to ensure that the person who has allegedly committed the abuse and the child or young person who has allegedly been abused remain in their clothing. If this is not possible, ensure the clothes are not washed, handled as little as possible and stored in a sealed bag.
- **Other physical items:** ensure that items such as weapons, bedding and condoms are untouched.
- **Potential witnesses:** reasonable precautions must be taken to prevent discussion of the incident between those involved in or witnesses of the alleged incident.

If you witness an incident of child abuse or harm, you should make written notes of your observations and actions, recording both dates and times. See the Record Keeping section of this policy below.

Managing a Student's Disclosure of Abuse or Harm

A student may disclose information about abuse or harm privately to a staff member. Alternatively, a child or young person may make a public disclosure such as making a disclosure in class or to a group of other students.

If you receive a disclosure of child abuse or other harm, you should make written notes of what you were told, recording both dates and times. See the Record Keeping section of this policy below.

Private Disclosure

If a student discloses a situation of abuse or harm directly to a staff member their role is to reassure the student and support the student in their decision to disclose. The staff member must assure the student that they have the right to feel safe and must listen actively to what the student is saying.

Disclosure of abuse can cause strong feelings in the person to whom the disclosure is being made. It is important for the staff member to be aware of, and control, their feelings.

Sometimes students may try and elicit a promise that a staff member not tell anyone about the disclosure. Do not make this promise.

The staff member, if a Mandatory Reporter, is responsible for reporting the matter externally (refer to Child Protection – Mandatory Reporting of Child Abuse or Harm to DCJ) and is not responsible for investigating the matter.

Public Disclosure

It is possible that a student may start to disclose in class or with a group of other students. In this circumstance, a teacher should use a strategy of 'protective interrupting' and:

- acknowledge that you have heard the student and stop further disclosure whilst maintaining support and encouraging the student to discuss the matter in a more private situation

- quietly arrange to see the student as soon as possible away from other students
- do not allow other students to ask questions and discourage them from making judgements.

Observing Indicators of Abuse or Harm

The process of identifying child abuse or harm purely through observation of the indicators described above can be complex and may occur over time. The complexity is magnified by the fact that many of the indicators described may also occur as a result of other factors, not related to child abuse or other harm.

If you observe indicators that raise a concern that a student may be experiencing abuse or harm, you should make written notes of your observations recording both dates and times. See the Record Keeping section of this policy below.

If you are not sure whether your concerns can or should be reported externally, you can discuss your concerns with the Principal or Deputy Principal, or call the Child Protection Helpline on 132 111 or 1800 212 936 (24 hours a day, 7 days a week) for advice.

Initial Action Following Abuse or Harm Incident, Disclosure, or Concern

Safety of students is paramount. The College's policies for reporting the abuse or harm externally should be followed after the immediate health and safety of the student/s involved is ensured.

If the alleged perpetrator of the abuse or harm is an adult engaged at the College in child-related work (whether paid or unpaid), you must also take any actions that are within your power to take by reason of your position and that may be required to protect the student, or other students, from child abuse and other harm. See our Child Protection - Duty to Protect Students from Child Abuse or Harm policy.

After witnessing an incident, receiving a disclosure or otherwise becoming concerned about abuse or harm of a student, staff members must also report the matter internally to the Principal or Deputy Principal.

The Principal, or appropriate person, may consult with the College counsellor, as the particular circumstances demand, and will determine a strategy to ensure the student's immediate safety. This process must be documented (refer to the 'Records' section below).

Mandatory Reporting of Child Abuse and Harm to DCJ

In NSW, some professionals are legally required to make a report to 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.

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.

Where a Mandatory Reporter has concerns that a child or young person has been or is at risk of being abused or 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 they do reach that threshold, the concerns must then be reported either to DCJ on the Child Protection Helpline (132 111) or the College's Head of Agency (HoA) under the Memorandum of Understanding.

At The McDonald College, the HoE is the Principal, however, should the allegation involve the Principal, the report is to be made to the Chair of the College Council.

For procedures about Mandatory Reporting to DCJ refer to our Child Protection – Mandatory Reporting of Child Abuse or Harm to DCJ policy.

Voluntary Reporting to DCJ

Any person who believes, on reasonable grounds, that a child or young person is at risk of significant harm may voluntarily report to DCJ. This includes staff, Volunteers and Contractors at the College who are not Mandatory Reporters, Mandatory Reporters whose concerns arise outside the course of their work, parents/carers and students.

You do not have to prove that abuse has taken place.

If you need to report an offence that requires immediate Police attention, call the Police on 000.

If you suspect on reasonable grounds that a child or young person is suffering abuse or harm, call the Child Protection Helpline on 132 111 (24 hours a day, 7 days a week).

If you are not sure whether your concerns can or should be reported to DCJ, or if you wish to discuss your concerns about a child or young person, you can discuss your concerns with the Principal or Deputy Principal, or call the Child Protection Helpline on 132 111 or 1800 212 936 (24 hours a day, 7 days a week) for advice.

Allegations against a Staff Member/Volunteer/Others

The Reportable Conduct Scheme seeks to improve how organisations respond to allegations of child abuse or harm and child-related misconduct made against employees, volunteers and contractors.

NSW law requires the Head of Entity at The McDonald College to report to the NSW Children's Guardian any allegation that a College staff member, Volunteer or Contractor has committed child abuse or child-related misconduct (Reportable Conduct).

Reportable Conduct includes:

- any sexual offence or sexual misconduct, committed against, with or in the presence of a child (aged under 18) (including child pornography offences or an offence involving child abuse material) including grooming behaviours;
- any assault, ill-treatment or neglect of a child (aged under 18); or
- any behaviour that causes psychological harm to a child (aged under 18).

If you have any concern that a staff member, volunteer or contractor has engaged in Reportable Conduct, you must immediately report your concerns to the Principal (or the Chair of the College Council) should the allegation involve the Principal). You can also report directly to the NSW Children's Guardian.

The Principal will then report this to the NSW Children's Guardian.

For procedures about Reportable Conduct refer to our Child Protection – Reportable Conduct of Staff, Volunteers and Others policy.

Mandatory Reporting of Child Abuse Offences to Police

Section 316A of the Crimes Act requires that, in NSW, all adults must report to Police any information they may have that a child abuse offence has been committed, except in certain circumstances.

The information must be brought to the attention of a member of the NSW Police as soon as it is practicable to do so.

In emergencies, or if the child abuse offence is happening now or has just happened and the suspected offender may still be in the area: call 000

All other matters: call the Police Assistance Line on 131 444. This line operates 24 hours per day, 7 days per week.

For procedures about mandatory reporting to Police refer to our Child Protection – Mandatory Reporting of Child Abuse Offences to Police policy.

Ongoing Management Plan

Together with DCJ and/or the Police, if an external report has been made, the College will develop and implement a management plan designed to provide ongoing support to the student who has been the subject of abuse or harm.

Record Keeping

Where a staff member suspects child abuse or harm but does not have enough information, written and dated records of their observations and concerns should be kept until reasonable belief is formed.

All verbal and written communications regarding child protection matters (including notes of observations, meetings and telephone calls) must be properly documented. The documented records should include dates and times and enough detail to record key conversations, especially those relating to the student's disclosure.

The records of child protection matters including allegations, investigations and findings must be stored securely.

This documentation is maintained by the Principal and located in the Principal's Office.

Confidentiality

Staff who have access to information regarding suspected or disclosed child abuse or harm must keep such information confidential and secure and must not disclose this information unless required to do so as part of the ongoing investigation or by law.

Staff must not provide undertakings that are inconsistent with their reporting obligations under this policy. In particular, staff must not promise a student that they will not tell anyone about the student's disclosure.

Students and any other parties who become involved in the investigation (this may include other students) should be informed of the reporting process and be requested to maintain confidentiality.

Inappropriate disclosure will be subject to disciplinary action.

Staff Responsibilities

Staff must ensure that:

- internal reports of child abuse or harm are made as soon as practicable to the Principal
- they comply with their obligation for Mandatory Reporting of child abuse or harm to DCJ
- they comply with their Reportable Conduct obligations
- they comply with their obligation for reporting child abuse offences to Police

- they take any reasonable steps that are within their power to take to protect students from child abuse offences that maybe committed by another adult working (whether paid or unpaid) at the College
- confidentiality is maintained throughout the process
- immediate support is given to students making disclosures
- records of all verbal and written communication are maintained and stored securely
- no attempts to investigate the incident are made
- they participate in child protection training.

Signage

Posters of child abuse or harm indicators, Mandatory Reporting processes and DCJ contact details are displayed strategically in staff rooms at the College.

Implementation

This policy is implemented through a combination of:

- development of risk identification and reporting procedures
- the provision of counselling services
- staff training
- signage
- effective communication and incident notification procedures
- effective record keeping procedures
- initiation of corrective actions where necessary.

Discipline for Breach of Policy

Where a staff member breaches this policy, The McDonald College will take disciplinary action, including in the case of serious breaches, summary dismissal.

Child Protection - Duty to Protect Students from Child Abuse or Harm

Duty to Protect Students from Abuse or Harm

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 College activities. The College expects all staff, volunteers and contractors to act to protect students from reasonably foreseeable risks of harm.

Failure to do this is not only a breach of your duty of care, but may also be, in certain circumstances, a criminal offence.

The College also has a civil law duty to protect students from physical or sexual abuse perpetrated by an individual associated with the College.

Criminal Law Offence of Failure to Reduce or Remove Risk of Child becoming Victim of Child Abuse (Failure to Protect)

Under section 43B of the Crimes Act 1900 (NSW), an adult (aged 18 or over) who works (whether as an employee, Contractor, Volunteer or otherwise) at the College will commit a criminal offence if they:

- know that another adult who is engaged in child-related work at the College:
 - poses a serious risk of committing a child abuse offence
 - against a child (aged under 18) who is under the care, supervision or authority of the College, and
- have, by reason of their position, the power or responsibility to reduce or remove that risk, and
- negligently fail to do so.

This criminal offence is commonly known as 'Failure to Protect'.

The failure to protect offence applies to staff, volunteers and contractors where they have the power to act to reduce the risk of abuse to the child or young person. The offence covers failures to protect a child or young person from child abuse offences by any other staff, Direct Contact Volunteer, Direct Contact Contractor or External Education Provider.

Where any staff member, volunteer, or contractor becomes aware that another adult working (whether paid or unpaid) at College poses a serious risk of committing a child abuse offence against a student or students under their care, they should immediately:

- take any and all reasonable steps to remove or reduce the risk to the student or students, which may include immediately removing the person from contact with the student or students
- report the matter to the Principal (or the Chair of the College Council if the allegation is about the Principal), as soon as practicable
- document the actions taken - This documentation is maintained by the Principal and located in the Principal's Office.
- report to external authorities, if appropriate.

Know

Knowledge is not defined in the Crimes Act 1900 (NSW). It is likely to be more than holding a tentative belief or mere suspicion.

If a person with the power and responsibility to act, by reason of their position at College, has a suspicion or belief (rather than 'knowledge') that students are at risk of harm from an adult working at the College they should take steps to follow up on that suspicion or belief by investigating further and should raise the issue with the Principal.

Child-related work

Child-related work has the meaning given in the Child Protection (Working with Children) Act 2012 (NSW). Therefore, the workers from whom a student must be protected include:

- College Council Members
- members of the College Executive Team
- Principal
- All Staff (including teaching and non-teaching Staff)
- Direct Contact Volunteers (other than parents, except in certain circumstances)
- Direct Contract Contractors
- External Education Providers.

Serious Risk

A serious risk is not defined in the Crimes Act. It is likely that a serious risk would mean that a reasonable person would consider, on the balance of probabilities, that the risk of a child abuse offence being committed against the student to be probable.

Child Abuse Offence

The list of child abuse offences that are captured by the Failure to Protect offence is extensive and includes rape, sexual abuse, sexual touching, production of child abuse material and grooming offences as well as 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 a school (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 Child Protection – Child Abuse and Harm Definitions, Identification and Initial Responses.

Civil Law Duty to Prevent Abuse

Section 6F of the Civil Liability Act 2002 (NSW) imposes a duty of care on the College to take reasonable precautions to prevent an individual associated with the College from perpetrating physical or sexual abuse of a child in connection with the College's responsibility for the child. If the victim of physical or sexual abuse alleged to have occurred at the College or to have involved College Staff, Volunteers or Contractors, brings a negligence claim against the College, a court will presume that the College breached its duty of care unless the College can prove that it took reasonable precautions to prevent the abuse.

Whether or not the College took reasonable precautions will be assessed by a court in accordance with considerations set out in the Civil Liability Act and case law.

In determining whether the College took reasonable precautions to prevent child abuse, a court may take into account any of the following:

- the nature of the College
- the resources reasonably available to the College
- the relationship between the College and the child
- whether the College has delegated in whole or in part the exercise of care, supervision or authority over a child to another organisation
- the role in the College of the individual who perpetrated the child abuse
- the level of control the College had over the individual who perpetrated the child abuse
- whether the College complied with any applicable standards in respect of child safety
- any other matters the court considers relevant.

It is critical that the College maintains accurate and comprehensive records not only of child safety incidents and concerns involving College Staff, Volunteers and Contractors, but also of:

- actions taken in response (including systemic reviews and resulting improvements) and
- reviews of and improvements to our child protection policies, procedures, work systems and strategies

as these could be required as evidence in relation to possible future negligence claims against the College for damages in respect of child physical or sexual abuse.

These records must be kept for at least 50 years.

Child Protection - Mandatory Reporting of Child Abuse or Harm to DCJ

Source of Obligation

Under the Children and Young Persons (Care and Protection) Act 1998 (NSW), certain people are required by law to report child abuse and harm to the Department of Communities and Justice (DCJ), where they:

- have reasonable grounds to suspect that a child (under the age of 16) is at risk of significant harm and
- those grounds arose during the course of the person's work.

The Memorandum of Understanding (MOU) between DCJ, the Catholic Education Commission NSW (CECNSW) and the Association of Independent Schools of NSW (AISNSW) prescribes certain Mandatory Reporting procedures.

The MOU introduces centralised reporting procedures for non-government schools coordinated and represented by the CECNSW or AISNSW and those procedures are referenced in this policy.

The McDonald College's Policy

The McDonald College has developed a detailed policy, set out in Child Protection - Child Abuse and Harm Definitions, Identification and Initial Responses, which outlines definitions and indicators of abuse and harm, key requirements when managing incidents, concerns and disclosures of child abuse and harm, initial notification procedures, the development of a management plan, the provision of ongoing support, record keeping and confidentiality.

This policy is designed to set out in plain English, staff members' obligations in relation to Mandatory Reporting of child abuse and harm in NSW.

Who is a Mandatory Reporter at the College?

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 The McDonald College, the following persons are to be Mandatory Reporters:

- College Council Members
- the Principal
- the College Executive Team
- teachers, including casual or temporary teachers
- all other paid employees at the College who interact with students
- the College Child Psychologist
- any person in religious ministry (such as clergy) or other religious leadership roles (including voluntary roles)
- any Staff, Volunteers or Contractors who provide religion-based activities to children
- Direct Contact Contractors
- External Education Providers engaged by the College.

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.

The MRG can be accessed at <https://reporter.childstory.nsw.gov.au/s/mrg>.

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 Does 'Reasonable Grounds to Suspect' Mean?

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, but rather reporters should ensure their concerns are well

founded and based on information from a reliable source. There may be reasonable grounds to suspect that a child or young person is at risk of significant harm if:

- 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.

Refer to the Child Protection – Child Abuse and Harm Definitions, Identification and Initial Responses policy for more information on the indicators of child abuse and harm.

What is a 'Risk of Significant Harm'?

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.

Grooming behaviours are conduct which may place a child at risk of sexual abuse, and must be reported under the Children and Young Persons (Care and Protection) Act 1998 (NSW). Refer to our Child Protection - Detecting, Reporting and Addressing Grooming Behaviours policy.

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

Significant harm can result from a single act or omission or an accumulation of these.

Refer to the New South Wales Mandatory Reporter Guide (MRG) for guidance on making a decision on whether to report abuse and neglect. This guide includes 'decision trees'.

How to Make a Report

In accordance with the terms of the MOU, where a mandatory reporter forms a reasonable belief that a child is at risk of significant harm, they must either report directly to DCJ, or to the HOA, who will then make the necessary report to DCJ.

How to make a Mandatory Report Internally under the MOU

At The McDonald College, internal reports should be made to the HOA, who is the Principal. However should the allegation involve the Principal, the report is to be made to the Chair of the College Council.

The Principal, or the Chair of the College Council, must make the report of risk of significant harm to DCJ as soon as practicable and must provide feedback to the mandatory reporter that a report to DCJ has been made. Mandatory reporters are encouraged to follow up with the Principal or the Chair of the College Council if a reasonable time has passed and they haven't received such feedback.

Nothing in the MOU precludes any person at the College, including mandatory reporters, from making a report directly to DCJ.

How to make a Mandatory Report to DCJ

Concerns that require immediate attention should be reported by the Mandatory Reporter or the Principal, by calling the DCJ Child Protection Helpline on 132 111.

The McDonald College is registered to lodge eReports via the DCJ eReport Portal. Please contact the Principal should you wish to lodge an eReport.

When preparing to make a report, all circumstances that supported the decision to report the matter (including the specific circumstances used for the MRG and its responses) should be readily available to assist DCJ, as well as the following information:

- full name, date of birth (or approximate age), address and phone number of the child or young person, or children or young people, you are concerned about
- full name (including any known aliases), approximate age, address and phone number of the parents or carers
- a description of the child or young person and their current whereabouts
- why you suspect the child or young person is at risk of significant harm (what you have seen, heard or been told)
- whether a language or sign interpreter may be required
- cultural identity, including whether the child identifies as Aboriginal or Torres Strait Islander
- whether support is required for a person with a disability or an Aboriginal agency is involved
- your name and contact details.

Sometimes all of this information will not be known to the reporter. As a minimum, DCJ needs to be able to identify and locate the child.

Additionally, information about the child or young person's reaction to the report should also be provided to enable DCJ to take into account any view or wish expressed by the child or young person, including their opposition to the report being made.

Staff/Volunteer/Others Misconduct

Where a matter that is subject to Mandatory Reporting to DCJ involves an allegation against a staff member or any other person engaged by the College to provide services to children, including volunteers and contractors, it must also be reported to the NSW Children's Guardian.

For details refer to our Child Protection – Reportable Conduct of Staff, Volunteers and Others policy.

Staff members must also take any other action that is within their power to take to protect the student, or other students, from potential criminal child abuse offences by the staff member or other person engaged by the College.

For details refer to our Child Protection – Duty to Protect Students from Child Abuse or Harm policy.

Confidentiality of the Reporter's Identity

Reports made to DCJ are confidential and the reporter's identity is generally protected by law.

It is important to note however that NSW Police may be granted access to the identity of the reporter if this is needed in connection with the investigation of a serious offence against a child or young person. The request must come from a senior NSW Police officer and the reporter must be informed that their identity is to be released, unless informing them of the disclosure will prejudice the investigation.

What Happens After a Report is Made?

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 or young person is actually at risk of significant harm. DCJ may then do one of the following:

- screen out the report because it does not meet the threshold for risk of significant harm
- refer the family to an early intervention program designed to assist families and children at risk
- assess the report but not open it for ongoing services
- arrange ongoing services/further assessment to the child or young person, other individual family members, or to the family together

- arrange protective placement of the child or young person.

Mandatory Reporters will be informed in writing of the action that will be taken by DCJ, 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 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, reporters must continue to respond to the needs of the child or young person within the terms of their work role. This may include providing a report to the NSW Police and/or arranging for medical care.

Implementation

This policy is implemented through a combination of:

- staff training
- effective communication and incident notification procedures
- effective record keeping procedures
- initiation of corrective actions where necessary.

Record Keeping

The documentation relating to the making of a mandatory report to DCJ is maintained by the College Psychologist and located in the Psychologist's office.

Discipline for Breach of Policy

Where a staff member breaches this policy, The McDonald College may take disciplinary action, including in the case of serious breaches, summary dismissal.

Child Protection - Mandatory Reporting of Child Abuse Offences to Police

Source of Obligation

Under section 316A of the Crimes Act 1900 (NSW), any adult who:

1. knows, believes or reasonably ought to know that a child abuse offence has been committed against another person; and
2. knows, believes or reasonably ought to know that he or 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.

Failure to do this is a criminal offence colloquially known as “Failure to Report”.

We call this Mandatory Reporting to Police.

What do ‘know, believe or reasonably ought to know’ and ‘child abuse offence’ mean?

Child Abuse Offence

The list of child abuse offences that are captured by Mandatory Reporting to Police is extensive and 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 a school (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 Child Protection - Child Abuse and Harm Definitions, Identification and Initial Responses.

Knows, believes or reasonably ought to know

Knows, believes or reasonably ought to know is not defined in the Crimes Act. Under NSW common law, and under Commonwealth criminal law, a person has ‘knowledge of’ a circumstance if ‘he or she is aware that it exists or will exist in the ordinary course of events.’

It would likely be considered that you know, believe or reasonably ought to know that a child abuse offence has been committed if:

- a student tells you that they have been sexually abused or physically assaulted

- a student tells you that they know someone who has been sexually abused or physically assaulted (sometimes the student may be talking about themselves)
- someone who knows the student tells you that the student has been sexually abused or physically assaulted
- signs of sexual abuse or physical assault should or do lead to a belief that the student has been sexually abused or physically assaulted.

What must be reported to Police?

Any and all information that might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for a child abuse offence must be reported to Police.

Mandatory Reporting to Police under section 316A by a person in good faith does not constitute unprofessional conduct or a breach of professional ethics and does not make the person subject to any civil liability (including liability for defamation).

When and How to Report to Police

The information must be brought to the attention of a member of the NSW Police as soon as it is practicable to do so.

In emergencies, or if the child abuse offence is happening now or has just happened and the suspected offender may still be in the area: call 000

All other matters: call the Police Assistance Line on 131 444. This line operates 24 hours per day, 7 days per week.

When is a Report to Police Not Required?

A person will not need to report to Police if they have a reasonable excuse for not doing so. Under the Crimes Act, a reasonable excuse includes if:

- they believe, on reasonable grounds, that the Police already know the information
- they have made a mandatory report to DCJ under Mandatory Reporting laws or believe on reasonable grounds that another person has done so
- they have reported the information to the NSW Children's Guardian under Reportable Conduct laws or believes on reasonable grounds that another person has done so
- they have reasonable grounds to fear for their own safety or that of any other person (other than the offender) if the information were to be reported to the Police

- the information was obtained by the person (by the person receiving it or otherwise becoming aware of it) 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).

Implementation

This policy is implemented through a combination of:

- staff training
- effective communication and incident notification procedures
- effective record keeping procedures
- initiation of corrective actions where necessary.

Record Keeping

The documentation relating to the making of a mandatory report to Police is maintained by the Principal and located in the Principal's office.

Discipline for Breach of Policy

Where a staff member breaches this policy, The McDonald College may take disciplinary action, including in the case of serious breaches, summary dismissal.

Child Protection - Reportable Conduct of Staff, Volunteers and Others

Reportable Conduct – Source of Obligation

The Children’s Guardian Act 2019 (NSW) (the Children’s Guardian Act) requires The McDonald College to investigate and report to the NSW Office of the Children’s Guardian (Children’s Guardian) all allegations of Reportable Conduct that are made against "employees" at the College or any conviction of an “employee” for an offence involving Reportable Conduct as defined by the Children’s Guardian Act.

The McDonald College's policy

To enable the College to meet its obligations under the Children’s Guardian Act, all staff members are required to report any concerns about, allegations or knowledge of Reportable Conduct, or behaviour that may be Reportable Conduct, to the Head of Entity (HoE).

Staff members must also:

- cooperate in any internal investigation
- maintain confidentiality
- ensure that records of all verbal and written communications are maintained and stored securely.

It is The McDonald College's policy that if a reportable allegation or reportable conviction is made against the Principal, who is our HoE, then the Chair of the College Council will take on the role of the HoE.

Reference to the Principal’s responsibilities therefore include the Chair of the College Council if the allegation involves the Principal.

How to Report Internally

At The McDonald College our HoE is the Principal, however, should the allegation involve the Principal, the report is to be made to the Chair of the College Council.

An internal report may be made to the HoE verbally or in written form.

Where a verbal report is made by a staff member, it should be followed up with a written report within 48 hours of the verbal report.

Who is an Employee?

The Children’s Guardian Act defines an employee as:

- an individual employed by, or in, the College, or
- if an individual is engaged directly, or by a third party, as a volunteer to provide services to children – the volunteer, or
- if an individual is engaged directly, or by a third party, as a contractor and the contractor holds, or is required to hold, a working with children check clearance for the purpose of the engagement – the contractor.

All staff members at the College are employees under the Children’s Guardian Act. The following people at the College are also considered employees for the purposes of Reportable Conduct:

- College Council Members
- the Principal
- Direct Contact Volunteers
- Direct Contact Contractors
- external education providers.

What is Reportable Conduct?

Section 20 of the Children’s Guardian Act defines what type of conduct is Reportable Conduct.

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

- a sexual offence
- sexual misconduct
- ill-treatment of a child
- neglect of a child
- an assault against a child
- an offence under 43B or 316A of the Crimes Act 1900 (NSW) (failing to prevent child abuse or concealing child abuse)
- behaviour that causes significant emotional or psychological harm to a child.

For more information see the Office of the Children's Guardian Fact Sheet: Identifying Reportable Allegations.

For the purposes of Reportable Conduct, a child is defined as a person under the age of 18 years.

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

The child does not have to be a student at the College.

For more information, see the Key Definitions section of this policy.

What Conduct is Not Reportable Conduct?

Section 41 of the Children's Guardian Act defines what conduct 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 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 have been investigated and the result of the investigation has been recorded under workplace employment procedures.

Some examples of conduct that would not be Reportable Conduct include touching a child to get their attention, to guide them or comfort them, momentarily restraining a child to prevent the child hurting themselves or others or a teacher raising their voice in order to attract attention or restore order in the classroom.

What to do if unsure whether Employee Behaviour is Reportable Conduct?

In some cases, an investigation by the College may still be needed to determine whether the alleged conduct is Reportable Conduct or not, for example to determine if the conduct was reasonable or – in the case of the use of physical force – trivial or negligible.

Staff members who are unsure whether employee behaviour constitutes Reportable Conduct, or whether an investigation may be necessary to determine whether it constitutes Reportable Conduct, should discuss this with the Principal, who can assist in clarifying concerns and reporting obligations under this policy.

Reportable Conduct and Other Reporting Obligations

In some cases, conduct that is Reportable Conduct which must be reported internally and/or to the Children's Guardian under this policy would also be conduct that meets the threshold for

reporting to the Department of Communities and Justice (DCJ) in accordance with our Child Protection – Mandatory Reporting of Child Abuse or Harm to DCJ and/or to Police in accordance with our Child Protection – Mandatory Reporting of Child Abuse Offences to Police procedures.

It is important to understand that the Reportable Conduct reporting obligations covered in this policy are separate and distinct from these other Mandatory Reporting obligations.

The threshold for reporting allegations of Reportable Conduct is much lower than the thresholds for Mandatory Reporting to DCJ and Mandatory Reporting to Police. Therefore, if a child safety incident or concern involving conduct by an employee requires Mandatory Reporting to DCJ or Mandatory Reporting to Police, it must also be reported internally and to the Children’s Guardian by the College under this policy.

A failure to make a report in accordance with this policy may amount to an offence under the Crimes Act 1900 (NSW).

Key Definitions

The Children’s Guardian Act provides definitions and examples of some of the key terms used in the definition of Reportable Conduct. The below are all Reportable Conduct:

- sexual offence
- sexual misconduct
- assault
- ill-treatment
- neglect
- an offence under 43B or 316A of the Crimes Act 1900 (NSW) (failing to prevent child abuse or concealing child abuse)
- behaviour that causes emotional or psychological harm.

The definitions and examples of these terms set out below are from the Children’s Guardian Act and are relevant for the purposes of the Reportable Conduct scheme only. They may or may not be similar to definitions provided in our Child Protection – Child Abuse and Harm Definitions, Identification and Initial Responses and Child Protection – Mandatory Reporting of Child Abuse or Harm to DCJ policies.

Reportable Allegations and Reportable Convictions

Reportable allegation means an allegation of Reportable Conduct against an employee, regardless of whether or not the conduct is alleged to have occurred during the course of employment.

Reportable conviction means a conviction of an employee for an offence involving Reportable Conduct, regardless of whether the offence occurred in NSW or elsewhere. It includes a finding of guilt without the court proceeding to record a conviction.

Sexual Offence

A sexual offence is an offence of a sexual nature, as set out under NSW law or the law of another State, Territory or the Commonwealth, and that is committed against, with or in the presence of a child. Examples of sexual offences set out in the Children's Guardian Act include:

- sexual touching of a child
- a child grooming offence
- production, dissemination or possession of child abuse material.

For more information, refer to the descriptions of criminal offences relevant to child abuse and harm, including grooming, in Child Protection – Child Abuse and Harm Definitions, Identification and Initial Responses and to the description of child grooming offences in Child Protection – Detecting, Reporting and Addressing Grooming Behaviours.

Sexual Misconduct

Sexual misconduct means conduct with, towards or in the presence of a child that is sexual in nature but not a sexual offence.

Examples of sexual misconduct set out in the Children's Guardian Act include:

- describing sexual acts to a child, without a legitimate reason to provide the descriptions
- sexual comments, conversations or communications with or in the presence of a child
- comments to a child that express a desire to act in a sexual manner towards the child or another child.

Sexual misconduct may also include:

- sexualised behaviour, including exhibitionism
- exposing children to pornography

- watching children undress in circumstances where supervision is not required and clearly inappropriate.

For more information refer to our Staff and Student Professional Boundaries policy and Child Protection – Detecting, Reporting and Addressing Grooming Behaviours.

Assault

Assaults that amount to Reportable Conduct are defined as:

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

Examples of assault set out in the Children's Guardian Act include:

- hitting, striking, kicking, punching or dragging a child
- threatening to physically harm a child.

Injury is not an essential element of assault, and, alternatively, the existence of an injury does not necessarily mean that there was an assault.

Ill-Treatment

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

Examples of ill-treatment set out in the Children's Guardian Act include:

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

Neglect

Neglect of a child means a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child, that causes or is likely to cause harm to a child, by:

- a person with parental responsibility for the child, or

- an authorised carer of the child, or
- an employee, if the child is in the employee's care.

Examples of neglect set out in the Children's Guardian Act include:

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

Behaviour that Causes Emotional or Psychological Harm

Behaviour that causes significant emotional or psychological harm is not defined in the Children's Guardian Act.

However, the Children's Guardian Act does provide the following examples of indicators (in a child) of significant emotional or psychological harm:

- displaying behaviour patterns that are out of character
- regressive behaviour
- anxiety or self-harm.

It would appear that any behaviour by an employee that has caused significant emotional or psychological harm to a child is Reportable Conduct.

Head of Entity Responsibilities

Our Head of Entity (HoE) is the Principal. However, if a reportable allegation or reportable conviction is made against the Principal, then the Chair of the College Council will take on the role of the HoE.

References in this policy to the Principal therefore include the Chair of the College Council when undertaking the Principal's functions under the Children's Guardian Act.

The Principal has distinct responsibilities under the Reportable Conduct Scheme:

- The Principal must set up systems at the College to prevent Reportable Conduct by an employee and to ensure that they are advised of any reportable allegations or convictions against their employees.

- The Principal must notify the Children’s Guardian of all reportable allegations and reportable convictions against College employees.
- After the Principal becomes aware of a reportable allegation or conviction against an employee (which does not also require reporting to DCJ under Child Protection – Mandatory Reporting of Child Abuse or Harm to DCJ or to the Police under Child Protection – Mandatory Reporting of Child Abuse Offences to Police), they must ensure that an appropriate investigation of the reportable allegation or conviction is conducted and completed within a reasonable time.
- The Principal must notify the Children’s Guardian of the findings of the College’s internal investigation into the matter.
- The Principal must inform the affected child and their parents/carers about any Reportable Conduct investigation unless it is “not in the public interest” to inform them.

It is a criminal offence under the Children’s Guardian Act for the Principal to fail to disclose a reportable allegation or reportable conviction to the Children’s Guardian without lawful excuse.

A failure to make a report to the Children's Guardian in accordance with this policy may also amount to an offence under the Crimes Act 1900 (NSW).

For more information see the Office of the Children's Guardian Fact Sheet: Heads of entities and reportable conduct responsibilities.

Initial Response to Internal Report of Reportable Conduct

Once the Principal becomes aware of or receives information about an allegation or conviction that may involve Reportable Conduct, they must:

- clarify the allegation, including the identity of the person making the allegation and the relevant employee, and the acts and/or omissions which form the basis of the allegation
- conduct a risk assessment to identify and avoid or minimise risks (see the Risk Management: Risk Assessments section of this policy)
- consider whether a child or young person is ‘at risk of significant harm’, and if so, follow the procedures for Child Protection – Mandatory Reporting of Child Abuse or Harm to DCJ
- consider whether the allegation may constitute a criminal offence and if so, follow the procedures for Child Protection – Mandatory Reporting of Child Abuse Offences to Police before taking any further action

- assess any possible risks posed by the relevant employee to all children and young people in the College's care and take any necessary interim action to ensure their safety and wellbeing (see Child Protection – Duty to Protect Students from Child Abuse or Harm)
- assess whether or not the allegation/conviction relates to Reportable Conduct and if so, notify the Children's Guardian as soon as practicable (see the Notifying the NSW Children's Guardian section of this policy)
- consider other requirements for communicating details of the allegation/conviction within or outside the College
- address any support needs of both the student and the employee who is the subject of the allegation/conviction.

Prior to making the report to the Children's Guardian, The McDonald College may contact the Children's Guardian on (02) 8219 3800 or at reportableconduct@kidsguardian.nsw.gov.au for guidance on how to manage the reporting process.

Notifying the Children's Guardian

Where the Principal receives a reportable allegation from any person, including a staff member, or becomes aware of a reportable conviction, they must notify the Children's Guardian at several stages of the matter:

- the Principal must provide a written notice within seven business days after the Principal is made aware of the reportable allegation or reportable conviction, unless the Principal has a reasonable excuse (use the 7-day notification form), and
- the Principal must, within 30 days, provide:
 - an interim report about the actions taken since the initial notification, any further actions proposed to be taken and an estimated time frame for providing the final report (use the 30-day interim report form) or
 - a final report about the outcome of the investigation or determination (use the Entity Report Form).

Disclosure to Children's Guardian of Information About Reportable Conduct

The Principal, or other employee of the College, may disclose to the Children's Guardian, or an officer of the Children's Guardian, any information that gives the Principal, or other employee, reason to believe that Reportable Conduct by an employee of the College has occurred.

Risk Management: Risk Assessments

The Principal is responsible for assessing the risk that the employee poses to students at three separate stages:

- after a reportable allegation is made
- during the investigation
- at the end of the investigation.

Stage One: After becoming aware of a reportable allegation or conviction

Immediately after becoming aware of a reportable allegation or conviction, the Principal will conduct a risk assessment 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 of contact and 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
- other possible risks to the investigation.

These factors will assist the Principal to make an initial decision about whether to move the employee into indirect 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. As part of managing the investigation, Principal should ensure that appropriate support is provided for:

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

Stage Three: At the end of the investigation

Refer to the Making a Finding of Reportable Conduct section of this policy.

Investigating Reportable Conduct

After the Principal becomes aware of a reportable allegation or a reportable conviction and the Children’s Guardian has been notified, they must ensure that an appropriate internal investigation of the reportable allegation or convictions is conducted.

Internal investigations of reportable allegations can be conducted by the Principal, or another person on behalf of the Principal, such as the Chair of the College Council or an independent investigator appointed by the Principal, in such a manner as the particular circumstances demand.

The investigation must be conducted in accordance with the rules of procedural fairness and natural justice. For example, the investigation should be conducted without bias and the person against whom the allegation is made should be given the right to respond.

Internal investigations have the potential to create conflicts of interest. Conflicts may arise between an investigator's official duties and their private interests, which could influence the performance of the official duties. Investigators should be objective and impartial, and be seen as such. The College manages actual or reasonably perceived conflicts of interest through our Conflicts of Interest Policy.

The Children’s Guardian can ask for further information during the course of the internal investigation and can monitor the internal investigation.

For more information see the Office of the Children's Guardian Fact Sheet: Risk management following an allegation.

Internal Investigations and Investigations by External Agencies

Criminal investigations

Where allegations of Reportable Conduct by an employee involve, or an investigation into alleged Reportable Conduct has led to findings against the employee that involve, Offences under the Crimes Act 1900 (NSW), the Principal must notify the Police as a priority over the College’s own internal investigation.

If the Police or the Director of Public Prosecutions advise the Principal that the College’s internal investigation of a reportable allegation is likely to prejudice their own investigation or a court proceeding, the Principal may – in consultation with the Police or the Director of Public Prosecutions – suspend the internal investigation until otherwise advised.

If the Principal decides to suspend the internal investigation, the Children’s Guardian must be notified that the investigation is suspended and of steps taken to manage any risks.

If the Principal decides not to suspend the investigation, the Children's Guardian must ensure that the internal investigation is conducted in a way that does not prejudice the Police investigation or court proceeding.

Investigations by other agencies

The Children's Guardian may require that the Principal defer or cease an internal investigation, so that the Children's Guardian can itself investigate the matter.

The Children's Guardian may also exempt the Principal from commencing or continuing an internal investigation, or from making a determination, if another relevant entity is investigating the matter. This may occur, for example, if the matter has been reported to and is being investigated by the Department of Communities and Justice.

Internal Investigation Processes Outline

When conducting the investigation, the following key steps must be taken.

The person who is the subject of the reportable allegation will be advised of these steps, to ensure that they know what to expect during the College's investigation processes.

The affected child or young person and/or their parent/carer must be advised of these steps and of the progress of the investigation, unless to do so would not be in the public interest. If appropriate, the child or young person and/or their parents/carers may be asked for permission to interview the child or young person. See the Disclosing Information about Reportable Conduct to Affected Children, Parents and Carers section of this policy.

Information Gathering:

The first step in an investigation is to gather all relevant information. This can be obtained from a range of sources:

- direct evidence or information can be obtained by speaking with those involved in the alleged incident (e.g. the child, witnesses or the employee)
- physical evidence can be obtained by collecting documents (e.g. rosters, emails), securing and inspecting objects (e.g. mobile phones, computers) and inspecting locations to check the relevant positions of parties and witnesses to the alleged incident (e.g. playgrounds, classrooms). This process may include taking photographs and making drawings or diagrams of the location
- expert evidence can be obtained from people who have specialised knowledge in a specific field that the general public do not have, for example a medical practitioner may be relevant if they had examined a child or young person

- where the Police or DCJ have been involved, requests for information from, and the provision of information to these agencies can be made in accordance with Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 (NSW). See Child Protection – Information Sharing About Students' Safety and Wellbeing.

Employee Response:

The point at which an employee is told about the allegation and given an opportunity to respond can be critical to the success of an investigation and can affect the degree and duration of stress experienced by the employee.

If the Police and/or DCJ wish to interview the employee, the College must consult with the relevant agency about what should be disclosed to the employee during the internal investigation.

When all relevant information has been obtained, the allegation will be formally put to the employee and the employee will be given an opportunity to respond, either at an interview or in writing. At an interview, the employee may wish to have a support person there, who may observe only and must not interrupt. The interview will be recorded verbatim where possible and all records will be verified as a true record of the interview by being signed and dated by all involved.

It may be necessary to re-interview the employee if new information or allegations come to light during the investigation.

Key Considerations:

To ensure that an investigation is properly conducted:

- systems must be implemented to uphold confidentiality and deal with any breaches of confidentiality
- everyone involved in the investigation should be reminded of the importance of confidentiality
- the parents/carers of any child involved should be advised and asked for permission to interview their child, if appropriate
- all interviews should be recorded verbatim where possible, and records should be verified, signed and dated by all involved
- any other allegations that emerge during the investigation process should be documented, together with details of any action taken by the College

- all decisions, advice and discussions made in relation to the investigation must be documented
- all relevant parties should be advised of the outcome of the investigation.

For more information see the Office of the Children's Guardian Fact Sheet: Planning and conducting an investigation.

Matters for Consideration When Making a Finding After Investigation

Once the investigation has concluded, the Principal, as the decision-maker, should assess the evidence regarding the reportable allegations against the employee, as well as any conclusions or recommendations made by others involved in the investigation.

A finding of Reportable Conduct can only be made if the Principal is satisfied that the case has been proved on the balance of probabilities.

The Principal must consider whether the reportable allegation relates to conduct that is in breach of established standards applying to the employee, having regard to:

- professional standards
- codes of conduct, including professional or ethical codes
- accepted community standards.

Without limiting other matters that the Principal may take into account when determining whether the case has been proved on the balance of probabilities, they may take into account:

- the nature of the reportable allegation and any defence, and
- the gravity of the matters alleged.

Caution should be exercised when reaching a finding of Reportable Conduct where the matter involves a criminal allegation, such as an allegation of sexual assault. The Principal must take care to base their decision on clear and cogent evidence, rather than guesswork, suspicion or rumour. The more serious the alleged wrongdoing, the more care the Principal should exercise in making their decision as to whether they are satisfied the alleged conduct has occurred.

If the Principal is satisfied that the reportable allegation has been proved on the balance of probabilities, the Principal must make a finding of Reportable Conduct.

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

For more information see the Office of the Children's Guardian Fact Sheet: Making a finding of reportable conduct.

Post-Investigation Actions

Once the investigation has concluded, the Principal must take the following actions:

- review the investigation and ensure that all relevant risk issues have been considered, including environmental factors and work practices
- send the final report and results of the investigation to the Children's Guardian (see the Notifying the Children's Guardian section of this policy)
- decide on what measures should be put in place to minimise any further risk of harm to children in the College's care, including possible disciplinary action in relation to the employee who is the subject of the allegation, amendments to policy and procedures, and any strategies to minimise future risk of Reportable Conduct by the relevant employee or other employees
- if the allegation was found to be false and vexatious, decide on what action, if any, should be taken against the person/s who made the vexatious allegation. However, it is a criminal offence to take or threaten to take detrimental action against a person who has made a reportable allegation against an employee in good faith, even if the conduct is found – after investigation – to not constitute Reportable Conduct.
- store all information relating to the investigation in a secure location, in accordance with the

Record Keeping section of this policy.

Where the investigation has led to a finding of Reportable Conduct against the employee that involve offences under the Crimes Act 1900 (NSW), the Principal will need to notify the Police, if they are not already involved. See Child Protection – Mandatory Reporting of Child Abuse Offences to Police.

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

Section 57 of the Children's Guardian Act imposes disclosure obligations and prohibitions on the Principal.

The disclosure obligations apply to information about a Reportable Conduct investigation. This includes information about the progress of an investigation, the findings and any action taken in response to the findings.

The Principal Must Inform the Affected Child and Their Parents/Carers About the Reportable Conduct Investigation

The Principal or an investigator working for the Principal must inform the affected child and their parents/carers about the Reportable Conduct investigation unless it is “not in the public interest” to inform them.

The Children’s Guardian Act does not give any guidance as to when it may not be in the public interest to inform the affected child or their parents/carers. The Children’s Guardian will publish guidelines setting out what the Principal must have regard to when deciding whether or not to disclose information.

The Principal Must Not Disclose Reportable Conduct Information to Anyone Else (Unless an Exception Applies)

This is the basic rule: the Principal or an investigator working for the Principal must not disclose information about a Reportable Conduct investigation to anyone other than the affected child and their parents/carers.

However, there are exceptions to this rule.

The Principal or an investigator working for the Principal is allowed to disclose Reportable Conduct information if:

- the disclosure is made to promote the safety or wellbeing of a child or children and
- the disclosure is made to one of these people/entities:
 - the Children’s Guardian
 - a person who needs to be told for the for purpose of investigating the Reportable Conduct
 - the head of the company that employs the person who is being investigated (if the person is a contractor and not employed by the College)
 - the Secretary or Minister (if the affected child is under the care of the Secretary or Minister)
 - a person who has “daily care and control” of the affected child (if the child is in care)
 - anyone else who, under the Regulations, is allowed to receive this information (although there are not yet any Regulations setting out who else may be told Reportable Conduct information).

These provisions permit the employee who is the subject of a reportable allegation, as well as any witnesses who are to be interviewed, to be told Reportable Conduct information, for the purposes of the internal investigation.

Under section 36 of the Children's Guardian Act, the employee may also be given a copy of the final report that was provided to the Children's Guardian.

The Children's Guardian will publish guidelines setting out what the Principal must have regard to when deciding whether or not to disclose information.

The Children's Guardian Must Not Disclose Reportable Conduct Information (Unless an Exception Applies)

Although the general rule is that the Children's Guardian must not disclose any information obtained in the course of an investigation or a determination (whether the information was obtained by itself or as a result of the College's investigation and notifications), the Children's Guardian has a wider list of exceptions that enable disclosure to a wider category of people.

In particular, the Children's Guardian can disclose information relating to the safety, welfare or wellbeing of a child or a class of children to the Police, the Department of Communities and Justice or any other government agency that they consider appropriate.

In addition, under section 51 of the Children's Guardian Act, if the Children's Guardian has itself conducted an investigation and made a finding of Reportable Conduct, and has recommended dismissal, removal or punishment of the employee, it must advise the Principal of the recommendation and the reasons. It must also advise the employee of the recommendation and the reasons, unless it believes that doing so would:

- put a person's health or safety seriously at risk
- put a person who made the report, complaint or notification – or another person – at risk of being harassed or intimidated
- prejudice any other investigation or inquiry.

For more information see the Office of the Children's Guardian Fact Sheet: Disclosing information to children, parents and carers.

Staff Responsibilities

Staff must:

- report concerns about, allegations or knowledge of Reportable Conduct, or behaviour that may be Reportable Conduct, as soon as possible to the Principal
- ensure the Principal is notified of any Reportable Convictions

- cooperation in any internal investigation
- maintain confidentiality
- ensure records of all verbal and written communications are maintained and stored securely.

All staff members are protected from retribution when they act in good faith to make an internal report of, or to themselves notify the Children's Guardian of, a reportable allegation or a reportable conviction. It is a criminal offence for the College to:

- dismiss or otherwise prejudice an employee for assisting the Children's Guardian
- take or threaten to take detrimental action against a person who has made a reportable allegation against an employee in good faith, even if the conduct is found – after investigation – to not constitute Reportable Conduct.

For more information see the Office of the Children's Guardian Fact Sheet: FAQ for employees.

Record Keeping

When a reportable allegation is made the following information must be documented:

- the allegation
- the College's initial response to the person making the allegation, the alleged victim(s) and the employee who is the subject of the allegation
- any communication with the Police or other authorities
- a plan detailing how the investigation is to be carried out including any notifications to Police or other authorities
- the Stage One risk assessments conducted by the Principal (or the Chair of the College Council, where appropriate) and outlined above
- all interviews including details of questions and responses. Details should also include the location of the interview, who was present and start and finish times
- any decision made, either during or at the conclusion of the investigation, including the rationale, the position and name of the person making the decision and the date the decision was made

- any personal contact, discussions or emails with anyone about the matter (including dates, details of discussions, questions, advice, outcomes, the name and position of the person making the contact, and, where appropriate, the reason for the contact)
- a final report that details the allegation, the investigation process, the findings in relation to each allegation (including the rationale for the finding), the final risk assessment (which includes any final decision about the employee and the factors that have been considered) and any subsequent action that is to be or has been taken.

Where possible, records should be verbatim and verified, signed and dated by all involved. Records should be kept separate, but linked by reference, to the employee's personnel file.

All records created in accordance with this policy, including all allegations, outcomes of internal investigations and decisions to make or not make a Reportable Conduct report to the Children's Guardian are maintained by the Principal and located in the Principal's Office.

For more information see the Office of the Children's Guardian Fact Sheet: Keeping records.

Implementation

This policy is implemented through a combination of:

- staff training
- effective communication and incident notification procedures
- effective record keeping procedures
- initiation of corrective actions where necessary.

Discipline for Breach of Policy

Where a staff member breaches this policy, The McDonald College may take disciplinary action, including in the case of serious breaches, summary dismissal (where appropriate).

Child Protection - Detecting, Reporting and Addressing Grooming Behaviours

Grooming Behaviour

All children and young people have the right to be protected from abuse, maltreatment and harm.

Grooming behaviours can precede or can be an indicator of ongoing sexual abuse in many, but not all, cases.

The College expects a staff member, or any person engaged by the College to provide services to children, including volunteers, to observe the highest standards of ethical behaviour and integrity in their conduct.

The McDonald College's Staff Code of Conduct sets out our key values and how they should be applied within our workplace and in our dealings with those outside of our College.

Source of Obligation

The College has a duty of care which entails protecting all students from foreseeable risks while at school or engaging in College-related activities.

In addition, the procurement or grooming of a child for the purpose of engaging in sexual conduct is a criminal offence in all jurisdictions in Australia, or at a Federal level where the conduct in question may not be prohibited under the state or territory law.

In NSW:

- section 66EB Crimes Act 1900 (NSW) 'Procuring or grooming a child under 16 for unlawful sexual activity', and
- section 66EC Crimes Act 1900 (NSW) 'Grooming a person for unlawful sexual activity with a child under the person's authority',

apply.

'Under the Authority of the person' means that the child is under the care, or under the supervision or authority, of an adult person. In the context of the College, this would include parents/carers as well as all College Executive Team members, the Principal, teachers, all non-teaching staff who have students under their care or authority (such as counsellors, nurses, religious leaders or officials, sports coaches, music, dance or acting tutors, learning assistance staff and youth workers), Direct Contact Volunteers and Direct Contact Contractors.

Therefore, this is a criminal offence in which an adult associated with the College could be either the victim or the perpetrator.

The McDonald College's Policy

The McDonald College is committed to providing a safe environment for all our students.

It is our policy that:

- all staff are trained with respect to the identification of grooming behaviours and relevant procedures
- all suspected cases of grooming are reported to the Principal, or Deputy Principal as soon as practicable
- we maintain effective procedures to assist staff in identifying and reporting grooming behaviours
- we work collaboratively with relevant external agencies that are involved in child protection
- the College remains well-informed of relevant government inquiries that can provide further guidance on identifying and reporting grooming behaviours
- we act immediately to ensure the safety of students believed or suspected to be at risk of abuse
- we provide ongoing support and assistance to the students identified as having been exposed to grooming behaviours or abuse
- we provide students with age-appropriate training of what constitutes inappropriate behaviour
- we create an environment at the College conducive to staff members making reports about the behaviour of other staff members.

What is Grooming?

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 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 behaviour often involves a graduation from attention giving and non-sexual touching to increasingly more intimate and intrusive behaviours. Grooming usually involves a perpetrator establishing a trusting relationship with a child or young person and those associated with the child or young person's care and wellbeing, to create an environment in which sexual abuse can occur

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.

This policy provides a general overview of what grooming behaviour typically involves.

The Criminal Offences of Grooming and Online Grooming

Grooming is, in certain circumstances, an offence under sections 66EB and 66EC of the Crimes Act 1900 (NSW) and an offence under sections 474.26 and 474.27 of the Criminal Code Act 1995 (Cth).

For the purposes of the NSW offences, grooming is defined as:

- with respect to grooming a child, engaging in any conduct that exposes a child to indecent material or provides a child with an intoxicating substance or a financial or material benefit, or
- with respect to grooming an adult, providing any financial or other material benefit,
- with the intention of procuring the child or a child under the authority of the adult for unlawful sexual activity.

These offences only apply to children under the age of 16.

Under section 66EB of the Crimes Act 1900 (NSW), the conduct by an adult that constitutes the criminal offence of grooming a child includes:

- communicating in person or by telephone, the internet or other means
- providing any computer image, video or publication.

It is not necessary that the communication or image, video or publication itself be explicitly sexual.

It is a separate offence for an adult, who has groomed a child online, to then:

- intentionally meet the child, or travel with the intention of meeting the child, whom the adult has groomed for sexual purposes
- do so with the intention of procuring the child for unlawful sexual activity with that adult person or any other person.

Under the Criminal Code (Cth), 'Using a carriage service to procure persons under 16 years of age', and 'Using a carriage service to groom persons under 16 years of age' are criminal offences.

- Carriage services include services for carrying communications, such as telephone services, internet access services and 'voice over internet' services.
- For both of these offences, it is a crime for an adult (the sender) to use a carriage services to transmit communications to a person aged (or who the sender believes to be aged) under 16 (the recipient) with the intention of procuring the recipient to engage in sexual activity with or in the presence of either the sender or another person (the participant).

Identifying Grooming Behaviour

Grooming can be very difficult to identify. Grooming includes a range of techniques, many of which are not explicitly sexual or directly abusive in themselves. Most techniques do not appear unusual or remarkable in isolation, but instead involve many discrete acts that, on their own, are not necessarily criminal or abusive.

Grooming is not a single act of unprofessional or inappropriate conduct, but rather a pattern of behaviour where the trust of a child, or the adult with authority for the child, is gained.

Indicators of grooming behaviours by adults include:

- persuading a student or group of students that they have a special relationship
- asking a student to keep the relationship to themselves

- inappropriately allowing a student to overstep the rules
- testing boundaries, for example by undressing in front of a student
- manoeuvring to get or insisting on uninterrupted time alone with a student
- buying a student gifts
- insisting on physical affection such as hugging, wrestling or tickling even when the student clearly does not want it
- being overly interested in the sexual development of a student
- taking or having a lot of photos of an unrelated child or young person
- engaging in inappropriate or excessive physical contact with a student
- sharing alcohol or drugs with a student
- making inappropriate comments about a student's appearance or excessive flattery
- using inappropriate pet names for a student
- making jokes or innuendo of a sexual nature with a student
- making obscene gestures or using obscene language with a student
- sending correspondence of a personal nature to a student via any medium
- inviting, allowing, or encouraging students to attend a staff member's home without parental/carer permission
- entering change rooms or toilets occupied by students when supervision is not required or appropriate
- communicating with a student's parent/step parent/carer, teacher, religious official or spiritual leader with the intention of facilitating the student's involvement in sexual conduct
- inappropriately extending a relationship with a student outside of work
- photographing, audio recording, or filming students via any medium without authorisation or having parental consent to do so.

Indicators That a Child or Young Person May Be Subject to Grooming:

- developing an unusually close relationship with an adult
- displaying significant mood changes, including hyperactive, sensitive, hostile, aggressive, impatient, resentful, anxious, withdrawn or depressed behaviour
- using 'street' or different language they learned from a new or older 'friend'
- having new jewellery, clothing, expensive items or large amounts of money that were gifts from a new or older 'friend'
- using a new mobile phone excessively to make calls, videos or send text messages to a new or older 'friend'
- being excessively secretive about their use of social media or online communications
- frequently staying out late or overnight with a new or older 'friend'
- being dishonest about where they have been or who they were with
- drug and alcohol use
- being picked up in a car by a new or older 'friend' from home or school or 'down the street'.

Indicators That a Child of Young Person May Be Subject to Online Grooming:

- discovery of pornography on their computer or device
- receiving or making calls to unrecognised numbers
- increasing or excessive amount of time spent online
- increased secrecy in what they are doing online and efforts to try and hide what they are doing online
- evidence of people on their 'friends' list that are unknown and they have never met them offline.

What is Not Grooming Behaviour?

Some of the adult behaviours listed above may not constitute grooming behaviour as a one-off incident but, when repeated or escalated over a period of time, may indicate grooming behaviour.

However, one-off incidents may be a violation of the College's Staff Code of Conduct or constitute professional misconduct and if so should be reported to the Principal, or Deputy Principal.

For example, a young music tutor or volunteer sports coach using obscene language with a student may not necessarily be grooming, but may be a violation of the Staff Code of Conduct.

Similarly, not all physical contact between a student and a staff member or any person engaged by the College to provide services to children, including a volunteer, will be inappropriate and/or an indicator of possible grooming behaviour.

The following physical contact with students is not grooming behaviour:

- administration of first aid
- supporting students who have hurt themselves
- non-intrusive gestures to comfort a student who is experiencing grief, loss or distress, such as a hand on the upper arm or upper back
- non-intrusive touching i.e. shaking a student's hand or a pat on the back to congratulate a student.

Managing a Student's Disclosure of Grooming

Where a student discloses information about grooming behaviour, or behaviour that is indicative of grooming, to a staff member, the staff member should follow the same management of disclosure guidelines as in the College's Child Protection – Child Abuse and Harm Definitions, Identification and Initial Responses policy.

Where the student discloses grooming behaviour by showing or directing the staff member to electronic communications such as email, internet chat rooms, SMS messages or real time audio/video between the student and the adult who is the subject of the allegation, the staff member should also take appropriate steps to preserve the electronic evidence of the grooming behaviour.

Internal Reporting of Grooming Behaviours

The McDonald College treats the commission of grooming behaviour on its premises, online, using College equipment, during its extra-curricular activities or in other related settings (e.g. the home of a teacher) as conduct which threatens the safety of students and action must be taken under our child protection policies.

All staff should be aware that grooming behaviour committed by a staff member will constitute a breach of the College's Staff and Student Professional Boundaries policy and may amount to professional misconduct.

If you have a reasonable suspicion or belief that grooming of a student is occurring, or have witnessed repeated indicators of grooming of a student, a report should be made to the Principal.

If the matter involves the Principal, staff should report suspicions or beliefs to the Chair of College Council.

External Reporting of Grooming Behaviours

Grooming of a child or young person is conduct which may place a child or young person at risk of significant harm, which must be reported under the Children and Young Persons (Care and Protection) Act 1998 (NSW) (see Child Protection – Mandatory Reporting of Child Abuse or Harm to DCJ).

The grooming offences under the Crimes Act 1900 (see the Grooming as a Criminal Offence section of this policy) are considered ‘child abuse offences’ for the purposes of the criminal offences of Failure to Protect and Failure to Report. Failure to report grooming behaviours to the Police and/or to take action to prevent grooming of a student by an adult at the College from escalating into sexual abuse may also be a criminal offence. For more information on how to report to police or on what actions to take, see Child Protection – Duty to Protect Students from Child Abuse or Harm and Child Protection – Mandatory Reporting of Child Abuse Offences to Police.

The grooming of a young person (aged 16-17), while not a crime under either NSW or Commonwealth law and while not subject to Mandatory Reporting of Child Abuse or Harm to DCJ or Mandatory Reporting of Child Abuse Offences to Police, must still be reported internally.

Where the grooming behaviour is alleged to be perpetrated by a staff member, Direct Contact Volunteer or Direct Contact Contractor, the College must report this to the NSW Children’s Guardian. Reports to the Children’s Guardian must be made if an allegation involving a sexual offence (including grooming offences) or sexual misconduct (which may involve grooming behaviour) is made against a staff member or any person engaged by the College to provide services to children. For more information about how to make a report of Reportable Conduct, refer to Child Protection - Reportable Conduct of Staff, Volunteers and Others.

What Will Happen if I Make a Report Against a Fellow Staff Member?

Reports that are made honestly and without recklessness to the College will not constitute a breach of confidence, professional ethics or a rule of professional conduct.

The College is committed to encouraging and facilitating reports of suspicions or beliefs of child abuse, neglect or grooming behaviours and providing an environment that is conducive to staff members making reports about the behaviour of other staff members.

Staff should feel safe to report all concerns including those that involve a fellow staff member.

The identity of the reporter can be protected if necessary however it may be disclosed in the event of a future criminal or civil investigation.

The reporting staff member will not be civilly or criminally liable for providing information when the report is made honestly and without recklessness.

Where allegations or suspicions of grooming behaviour are reported, the College will first act to ensure the safety of the student who is the alleged victim of the grooming behaviour.

The College will then notify the staff member who is the subject of the report and provide an opportunity for them to respond to the allegations, in accordance with the principles of natural justice. If the allegation involves the Principal the report should be made to the Chair of the College Council.

The College will conduct an internal investigation. If the allegations are of a serious nature and require further investigation, the College may refer the matter to the Police and relevant child protection agencies.

Any relevant evidence should be preserved.

The College may suspend the staff member while the allegation is being investigated.

For more information, refer to Child Protection – Reportable Conduct of Staff, Volunteers and Others.

Record Keeping

Where a staff member suspects grooming behaviour but does not have enough information to make a report, they should keep written and dated records of their observations and concerns until they are prepared to make a report. It should be noted that allegations of grooming are taken very seriously by the College and dishonest reports will result in disciplinary action.

All verbal and written communications regarding child protection matters (including notes of observations, meetings and telephone calls) must be properly documented.

The documented records should include dates, times and enough detail to record key conversations, especially those relating to a student's disclosure.

The records of child protection matters must be stored securely.

For the purposes of any current or future internal or external investigations into grooming allegations, the College maintains records of any and all evidence or notes relating to the allegations made. This may include:

- notes taken during a meeting with a staff member who is the subject of a grooming allegation

- reports made by a staff member about the behaviour of a colleague
- notes taken during a disclosure by a student of grooming behaviour
- copies of any reports made to police or regulatory bodies about the matter
- digital copies of correspondence between the student and the staff member who is the subject of the allegation, if the allegation includes claims of inappropriate online activity.

Staff/Student Interaction Declaration Policy

To enable the College to be aware of appropriate and inappropriate interactions between staff and students, it is The McDonald College's policy that all staff are encouraged to declare any interactions with students outside school hours. These interactions may include instances where the staff member is:

- related to the student,
- friends with the student's parents or family, or
- has parental consent to interact with the student for academic purposes outside of school hours and has notified the College.

Declarations by staff about a relationship with students and their families outside of the College context or about interactions that occur with the consent of the parent/carer must be verified by the parent/carer of the student.

The McDonald College maintains records of all declarations made by staff members related to their interactions with students, or relationships with students, that exist outside of school hours or College premises.

This documentation is maintained by the Principal and located in the Principal's office. These records are made available to the parents/carers of a student upon request.

Confidentiality

Staff who have access to information regarding suspected or disclosed child abuse, including grooming behaviour, must keep such information confidential and secure and must not disclose this information unless required to do so as part of an ongoing investigation, by law, or when it is necessary to disclose the reasons for removing a child or young person from a class or activity where the grooming behaviour occurred. This should only be done where absolutely necessary.

Staff must not provide undertakings that are inconsistent with their reporting obligations under this policy. For example, as with other forms of abuse, students who disclose that they have been

subject to grooming behaviours may attempt to elicit a promise that a staff member not tell anyone about the disclosure. Staff members must not make this promise.

Students and any other parties who become involved in the investigation (this may include other students) should be informed of the reporting process and be requested to maintain confidentiality.

Inappropriate disclosure of confidential information will be subject to disciplinary action.

Staff Responsibilities

Staff must ensure that:

- reports of grooming behaviour or repeated incidents of indicators of grooming behaviour are made as soon as practicable
- confidentiality is maintained throughout the process
- immediate support is given to students making disclosures
- records of all verbal and written communication are maintained and stored securely
- all staff participate in training.

Signage

Posters of grooming behaviour indicators, Mandatory Reporting processes that may apply, and the NSW Office of the Children's Guardian contact details are displayed strategically in staff rooms at the College.

Implementation

This policy is implemented through a combination of:

- risk identification and reporting procedures
- the provision of counselling services
- staff training
- signage
- effective communication and incident notification procedures
- effective record keeping procedures

- initiation of corrective actions where necessary.

Discipline for Breach of Policy

Where a staff member breaches this policy, The McDonald College will take disciplinary action, including in the case of serious breaches, summary dismissal.