

# Xavier College

## Reportable Conduct Policy



### 1. BACKGROUND

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Xavier College Limited (the 'College') has established the following Reportable Conduct Policy (the 'Policy').

The Child Wellbeing and Safety Act 2005 (Vic) (the 'Act') requires the College to investigate and report to the Commission for Children and Young People (CCYP) allegations of reportable conduct.

The College has developed this Policy which sets out systems for enabling persons to report reportable conduct and for such reports to be investigated and responded to. This Policy is made available to all staff, volunteers, third party service providers, contractors, parents/carers and students via the College's public website.

This Policy is designed to be published on the College website, referenced in other mediums, as appropriate, and used in the induction of College Board members, all new staff, volunteers and third parties and educational service providers.

### 2. PURPOSE

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This Policy provides the framework for:

- Ensuring that reportable conduct is reported in a timely and efficient manner
- The creation of a positive and robust child safety culture
- The promotion and open discussion of child safety issues within the College; and
- Compliance with all laws, regulations and standards relevant to child safety and protection in Victoria, most especially Ministerial Order 1359 - Implementing the Child Safe Standards – Managing the risk of child abuse in schools and school boarding premises ('Ministerial Order 1359') and the National Principles for Child Safe Organisations.

### 3. STATEMENT OF COMMITMENT

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The College has **zero tolerance** for child abuse and is committed to acting in the best interests of all children and keeping them safe from harm. The College regards its child safety and wellbeing responsibilities with the utmost importance. It is committed to providing the necessary resources to ensure compliance with all relevant child safety and protection laws and regulations and to always uphold a child safe and wellbeing culture both in the physical and online environment.

The College is committed to the protection of all children from all forms of child abuse and demonstrates this commitment through the implementation of a comprehensive child safety and wellbeing framework designed to keep children safe. Further, students at the College, through our actions, processes and support, are empowered to have voice and to take action for their own care.

## 4. SCOPE

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This Policy applies to the school environment, which includes, any campus of the College, online and virtual environments and other locations provided by the College or through a third-party provider for a child or student. The Policy also applies to the school boarding environment.

This Policy applies to all College employees (partners in mission), Jesuits, directors, students, parents and guardians, third party service providers, volunteers and contractors involved in the school environment.

## 5. POLICY STATEMENT

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### 5.1 Reportable Conduct

Reportable conduct is defined in section 3 of the Act to mean:

- A *sexual offence* committed against, with or in the presence of, a child, whether or not a criminal proceeding in relation to the offence has been commenced or concluded
- *Sexual misconduct* committed against, with or in the presence of, a child
- *Physical violence* committed against, with or in the presence of, a child
- Any behaviour that causes *significant emotional or psychological harm* to a child; or
- *Significant neglect of a child.*

Key definitions are provided in Appendix A of this Policy.

*Ongoing support and care for the student is a priority and will be organised by the College in conjunction with the family of the student.*

### 5.2 What to Report to the CCYP?

Under the Act, the College must notify the CCYP of a reportable allegation against a Staff Member.

Reportable allegation is defined in section 3 of the Act to mean any information that leads a person to form a *reasonable belief* that a Staff Member has committed:

- Reportable conduct; or
- Misconduct that may involve reportable conduct

whether or not the conduct / misconduct is alleged to have occurred during the person's employment at the College.

Guidance from the CCYP states that reasonable belief is more than a suspicion. There must be some objective basis for the belief. However, it is not the same as proof and does not require certainty.

### **5.3 Who Must Report a Notification?**

Any person may disclose a reportable allegation to the CCYP by using an online form available from the CCYP's website, by phone or by letter.

While any person may disclose a reportable allegation, the "head" of an entity to which the reportable conduct scheme applies *must* notify the CCYP of a reportable allegation.

At the College, the "head" for the purposes of the Reportable Conduct Scheme is the College Principal.

The "head" of the College has distinct responsibilities under the Reportable Conduct Scheme.

It is a criminal offence for the "head" of the College to fail to disclose a reportable allegation to the CCYP without a reasonable excuse. The Act does not define what a reasonable excuse may be, but section 16M(5) of the Act provides an exemption if they honestly and reasonably believed that another person had notified the CCYP.

The "head" of the College must notify the CCYP using an online form available from the CCYP's website or by calling the CCYP and making file notes of their conversation.

### **5.4 Fulfilling the Head of the College Obligations**

The "head" of the College is responsible for ensuring that the College complies with the reportable conduct obligations under the Act. However, the CCYP does not expect the "head" of the College to practically carry out their responsibilities alone. They may seek help from other people within the College. This may include creating and developing systems, sending approved notifications to the CCYP, or conducting investigations on the behalf of the "head" of the College.

The "head" of the College cannot delegate their responsibilities under the Act – they are still solely responsible for ensuring the College's compliance with the Reportable Conduct Scheme.

The College Principal has authorised the Director of People and Culture to carry out physical or practical tasks such as making notifications to the CCYP, or liaising with the CCYP, when the College Principal is unavailable.

### **5.5 Reportable Conduct and Other Reporting Obligations**

The reportable conduct obligation covered in this Policy is separate and distinct from the:

- Mandatory Reporting obligation under the Children, Youth and Families Act 2005 (Vic)

- Obligation to Report a Sexual Offence (Failure to Disclose) obligation under the Crimes Act 1958 (Vic); and
- Conduct that is Reportable to the Victorian Institute of Teaching under the Education and Training Reform Act 2006 (Vic).

The threshold for reporting allegations of reportable conduct is much lower than these other reporting obligations.

**Any allegations of criminal conduct, including physical violence, significant emotional or psychological abuse, sexual offences and significant neglect must be reported to the Police as the priority. A Police investigation will take priority over any investigation conducted by the College under this Policy.**

## 5.6 Internal Reporting of Reportable Obligations

As soon as a person, including a Staff Member, forms a reasonable belief that a Staff Member at the College has engaged in reportable conduct or misconduct that may involve reportable conduct (a reportable allegation), **the person must notify the College Principal or another member of the College Executive who will immediately notify the College Principal or the Director of People and Culture.**

Where the reportable allegation involves the College Principal, the Staff Member must notify the Director of People and Culture or the CCYP.

The internal report may be made verbally or in written form.

Where a verbal report is made by a Staff Member, it should be followed up with a written report provided to the College Principal within 48 hours of the verbal report.

## 5.7 Reporting to the CCYP

When the "head" of the College (or other authorised person under this Policy) receives a reportable allegation from any person, including a Staff Member, they must notify the CCYP within **three business days** of becoming aware of the reportable allegation.

Where the reportable allegation involved the Principal, the Director of People and Culture will undertake the responsibilities of the "head" of the College for the purposes of reporting the reportable allegation to the CCYP.

The College Principal must notify the CCYP in writing of:

- The reportable allegation as soon as possible, and in any event within three business days of becoming aware of the reportable allegation (**Three Day Notification**)
- Additional information (in effect, an update with respect to the College's response to the reportable allegation and the proposed course of action) as soon as practicable and in any event within 30 days of becoming aware of the reportable allegation (**30 Day Update**)
- The identity of the person who will investigate the reportable allegation as soon as practicable (**Investigator Update**)

- The outcome of the investigator's internal investigation into the matter as soon as practicable after the internal investigation has concluded (**Investigation Outcome Update**).

### **5.7.1 Three Day Notification**

This notification to the CCYP must be made as soon as possible, but not more than three business days, after the College Principal becomes aware of the reportable allegation. The notification must include the following information:

- That a reportable allegation has been made against an employee
- The name (including any former name and alias, if known) and date of birth, if known, of the employee
- Whether the Victoria Police has been contacted about the reportable allegation
- The name, address and telephone number of the College; and
- The name of the College Principal.

If the employee is a registered teacher and the misconduct involves a charge, conviction or finding of guilt of a sexual offence, the College must also immediately notify the Victorian Institute of Teaching (VIT). The timing of making a Three-Day Notification to the Commission under this Policy will coincide with the timing of a report made to the VIT.

### **5.7.2 30 Day Update**

This notification to the CCYP must be made as soon as practicable, but not more than 30 calendar days, after the College Principal or the Director of People and Culture becomes aware of a reportable allegation. The notification must include the following information:

- Detailed information about the reportable allegation
- Details of the College's response, to date, to the reportable allegation
- Whether or not the College proposes to take any disciplinary or other action in relation to the employee and the reasons why it intends to take, or not to take, that action; and
- Copies of any written submissions made by the employee about the reportable allegation that the employee wished to have considered when the College Principal is determining what, if any, disciplinary or other action should be taken.

### **5.7.3 Investigator Update**

As soon as practicable after the College Principal becomes aware of a reportable allegation, the College Principal must investigate, or permit a regulator or an independent investigator to investigate the reportable allegation.

The College Principal must also notify the CCYP of the name and contact details of the Investigator.

The Investigator is the person who:

- Collects and documents evidence
- Establishes the facts based on evidence; and
- Prepares an Investigation Report that details the outcomes of the investigation and (if requested by the College Principal) makes findings or recommendations about the findings that could be made based on the evidence.

#### **5.7.4 Investigation Outcome Update**

As soon as practicable after the investigation has concluded, the College Principal must give the CCYP:

- A copy of the findings of the investigation and the reasons for those findings
- Details of any disciplinary or other action that the College proposes to take in relation to the employee and the reasons for that action; and
- If the College does not propose to take any disciplinary or other action in relation to the employee, the reasons why no action is to be taken.

Under the Act, a Staff Member may seek a review by the CCYP of a finding made at the conclusion of an investigation.

**Also, the reportable conduct allegation should be investigated in accordance with the principles of confidentiality and privacy.**

A Police investigation into any matter takes priority over an investigation by the College. On becoming aware that the Police are investigating a reportable allegation:

- The College should consult with the Police before commencing an investigation to find out if the Police are, or will be, conducting an investigation; and
- The College's investigation should be put on hold until the Police investigation is complete.

### **5.8 Record Keeping Obligations**

For the College's record keeping obligations relating to child protection incidents, please refer to Child Protection Record Keeping.

## 6. RELATED POLICES, PROCEDURES AND DOCUMENTS

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- Child Safety & Wellbeing Policy
- Jesuit Province's Code of Conduct
- Responding to and Reporting Allegations of Child Abuse and Student Sexual Offending Policy
- Mandatory Reporting Policy
- Creating and Maintaining a Child Safety Environment Policy
- Participation and Empowerment of Children Policy
- Staff and Student Professional Boundaries Policy

## 7. BREACHES OF THIS POLICY

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If you believe that the College has breached its obligations, please contact the Principal in writing or telephone. The College will investigate your notification and will inform you of the outcome as soon as is practicable after a decision has been made.

The College Principal can be contacted on:

- Telephone: (03) 9854 5411
- In Writing: The Principal, Xavier College, 135 Barkers Road KEW, VIC 3101
- Email: [principal@xavier.vic.edu.au](mailto:principal@xavier.vic.edu.au)

Alternatively, the Director of Culture, Risk & Standards at the Australian Province at the Society of Jesus (Jesuits) can be contacted on:

- Telephone: (03) 9810 7300
- In Writing: Director of Culture, Risk & Standards, PO Box 6071, HAWTHORN, VIC 3122
- Email: [professionalstandards@sjasl.org.au](mailto:professionalstandards@sjasl.org.au)

Certain incidents might be covered by the College's Whistleblower Policy which can be found [here](#).

The Principal is responsible for ensuring that all breaches of this Policy and underlying policies, guidelines and procedures are escalated to the Child Safety & Risk Committee as soon as possible.

A breach of this Policy may lead to disciplinary action including possible termination of employment or appointment and/or referral to the appropriate authorities.

## 8. FURTHER INFORMATION

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If you would like further information about the way the College manages its Child Safety commitments, the first point of contact is to the relevant Director of Campus or Child Safety Lead.

### **POLICY RATIFICATION AND REVIEW:**

The College's policies are ratified by the Xavier College Limited Board.

This Policy will be reviewed on an annual basis or earlier if required.

## 9. APPENDIX A - DEFINITIONS

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“**Behaviour that causes emotional or psychological harm**” to a child requires a clear link between the alleged conduct and the significant harm suffered (significant is defined above).

Signs that a child may have been emotionally or psychologically harmed may include:

- Patterns of out-of-character behaviour
- Regression in behaviour
- Distress and anxious behaviours; and
- Other physical symptoms, such as self-harm.

The exacerbation or aggravation of an existing mental health disorder may also cause emotional or psychological harm.

Examples of emotional or psychological harm may include:

- Exposure to violence or threats of violence
- Self-destructive behaviour
- Anti-social behaviour
- Persistent hostility / rejection
- Humiliation / belittling; and
- Scapegoating.

It will not be reportable conduct if:

- A person takes reasonable steps to protect a child from immediate harm
- A person with responsibility for discipline takes lawful and reasonable disciplinary action, such as sending a child to sit in 'time out' for a period of time; or
- An appropriately qualified person gives medical treatment in good faith such as a first aid officer administering first aid.

**Child Abuse:** The College takes child abuse to have the same meaning as it has in the Child Wellbeing and Safety Act 2005.

### **Employee**

Section 3 of the Act defines “employee” as a person aged 18 years or over who is:



- Employed by the College whether or not that person is employed in connection with any work or activities of the College that relate to children; or
- Engaged by the College to provide services, including as a volunteer, contractor, office holder or officer, whether or not the person provides services to children.

A minister of religion or a religious leader is also an employee.

Of relevance to the College, the following people are considered to be employees:

- The Principal
- Staff members
- Volunteers
- Third Party Contractors; and
- External Education Providers.

For the purposes of this Policy, all of the above are referred to collectively as "**Staff**" or "**Staff Members**".

**"Neglect"** occurs when a person does not meet their obligations and responsibilities to keep a child safe and well. The neglect:

- Must be more than minor and insignificant
- Does not need to have a lasting or permanent effect; or
- May be an ongoing situation or a one-off incident, as long as it is not minor in nature.

**"Physical violence"** includes an act that causes physical injury or pain. Examples of physical violence can include:

- Hitting / kicking / punching
- Pushing / shoving / grabbing / throwing / shaking
- Using an object to hit or strike; or
- Using inappropriate restraint / excessive force.

Physical violence does not include:

- Reasonable steps taken to protect a child from immediate harm, such as taking a child's arm to stop them from going into oncoming traffic; and
- Medical treatment given in good faith by an appropriately qualified person, such as a first aid officer administering first aid.

**"Sexual offence"** for the purposes of the Reportable Conduct Scheme means a serious sexual offence as set out in clause 1 of Schedule 1 of the Sentencing Act 1991 (Vic), which includes rape, attempted rape, sexual assault, incest, indecent act with a child, persistent sexual abuse of a child, grooming and the production or possession of child pornography.

**"Sexual misconduct"** includes:

- Behaviour, physical contact or speech or other communication of a sexual nature, for example 'sexting'
- Inappropriate touching or physical contact
- Grooming behaviour; and
- Voyeurism.

**"Significant"** means in relation to emotional or psychological harm or neglect, that the harm is more than trivial or insignificant, but need not be as high as serious and need not have a lasting permanent effect.

The CCYP has provided guidance on how to identify physical violence, behaviour that causes emotional or psychological harm to a child and neglect.