



Reportable Conduct Policy

Policy Number:	ML 1.23	Date:	23 rd October 2018
		Approved by:	Chief Executive Officer
Version:	1/2018	Scheduled review date:	1 st November 2019

1. Statement of Context and Purpose

- 1.1 Melbourne Legacy (ML) is committed to the safety of its beneficiaries and children in receipt of its services, particularly where they may be vulnerable or lacking capacity to advocate for themselves.
- 1.2 Under the *Child Wellbeing and Safety Act 2005 (Vic)*, ML must investigate and report to the Commission for Children and Young People, allegations of ‘employee’ reportable conduct or misconduct that may involve reportable conduct.
- 1.3 The purpose of this policy is to:
 - (a) Set out ML’s approach to complying with the reportable conduct scheme;
 - (b) Enable ML to eliminate or minimise risks of harm to children in our care or who is in receipt of our services; and
 - (c) Provide employees, volunteers, contractors and other authorised personnel with an understanding of their lawful obligations and ML’s expectations.

2. Scope

- 2.1 This policy applies to all employees, volunteers, contractors and other authorised personnel required to perform functions on behalf of Melbourne Legacy or on its premises.
- 2.2 This policy is not intended to override or form part of the terms of any award, enterprise agreement or contract that applies to an employee, but should be considered a reasonable direction to staff. As such all employees, volunteers, contractors and other authorised personnel are expected to abide by this policy and report any suspected or known breaches of this policy.

3. Related Documents

- 3.1 External Documents
 - (a) Child Wellbeing and Safety Act 2005 (Vic)
 - (b) Children, Youth and Families Act 2005 (Vic)
 - (c) Crimes Act 1958 (Vic)
 - (d) Sentencing Act 1991 (Vic)

- (e) Crimes Amendment (Protection of Children) Act 2014 (Vic)
- (f) Crimes Amendment (Grooming) Act 2014 (Vic)
- (g) Education and Training Reform Act 2006 (Vic)
- (h) Education and Training Reform Regulations 2017(Vic)
- (i) Children’s Services Act 1996 (Vic)
- (j) Children’s Services Regulations 2009 (Vic)
- (k) Charter of Human Rights and Responsibilities Act 2006 (Vic)
- (l) Working with Children Act 2005 (Vic)
- (m) Working with Children Regulations 2016 (Vic)
- (n) Fair Work Act 2009 (Cth)
- (o) Privacy Act 1988 (Cth)
- (p) Child Safe Standards, Victorian Government (DHS) 2015
- (q) Work Experience Guidelines for Employers, Victorian Department of Education and Early Childhood Development (DEECD) 2014
- (r) 'National Framework for Protecting Australia’s Children'
- (s) 'Protecting the Safety and Wellbeing of Children and Young People'

3.2 Internal Documents

Policies and Procedures:

- (a) Workplace Behaviours Policy
- (b) Child Safety Policy
- (c) Mandatory Reporting Policy

4. Definitions

- 4.1 **Act** for the purposes of this policy is to mean the *Child Wellbeing and Safety Act 2005* (Vic).
- 4.2 **Child Safety Officer** means the Child Safety Officer as set out in the Child Safety Policy.
- 4.3 **Commission** means the Commission for Children and Young People.
- 4.4 **Immediately** means as soon as reasonably practicable, within a period of 24 hours (or if after hours, the next business day).
- 4.5 **Reportable Allegation** means any information that leads a person to form a reasonable belief that an Employee has committed Reportable Conduct, or misconduct that may involve Reportable Conduct, whether or not the conduct is alleged to have occurred in the course of the Employee's employment at Ivanhoe Grammar.
- 4.6 **Reportable Conduct** means:
 - (a) a sexual offence committed against, with, or in the presence of a child, whether or not a criminal proceeding has commenced or concluded in relation to the offence; or
 - (b) sexual misconduct committed against, with, or in the presence of a child; or
 - (c) physical violence committed against, with, or in the presence of a child; or
 - (d) any behaviour that causes Significant emotional or psychological harm to a child; or
 - (e) significant neglect of a child.
- 4.7 **Reportable Conduct Scheme** means the scheme to report reportable conduct established under Part5A of the *Child Wellbeing and Safety Act 2005* (Vic).

- 4.8 **Sexual misconduct** includes behaviour, physical contact or speech or other communication of a sexual nature, inappropriate touching, grooming behaviour and voyeurism.
- 4.9 **Sexual offence** means a sexual offence referred to in the *Sentencing Act 1991* (Vic), which includes but is not limited to rape, attempted rape, sexual assault, incest, grooming, and distribution and possession of child abuse material.
- 4.10 **Significant** means, in relation to emotional or psychological harm or neglect, that the harm or neglect is more than trivial or insignificant but need not be as high as serious and need not have a lasting permanent effect.
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5. Mandatory Reporting – Reporting Allegations

- 5.1 All staff employees, volunteers, contractors and other authorised personnel must immediately after becoming aware of conduct that might amount to a Reportable Allegation, report the matter to the Child Safety Officer or Chief Executive Officer (CEO). If the incident is report to the Child Safety Officer, they must also report it to the CEO.
- 5.2 Reportable allegations may also be made by persons external to ML, in the manner described above.
- 5.3 Any person may also disclose a reportable allegation directly to the Commission. However, report the reportable allegation to the Commission does not displace the requirement to notify the Child Safety Officer or CEO of the matter.
- 5.4 If a child is at immediate risk of abuse or danger, the Victoria Police should be contacted without delay on 000; with subsequent notification to the Child Safety Officer or CEO.
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6. Obligations on the Chief Executive Officer

- 6.1 Following receipt of a Reportable Allegation, or the CEO otherwise becoming aware of a Reportable Allegation against an Employee, the CEO must:
- (a) **Manage Immediate Risks:** Manage any immediate risks to children, which for allegations of suspected Reportable Conduct, will involve reporting to the Victoria Police;
 - (b) **Notify:** Ensure the Commission is notified in writing within 3 business days of becoming aware of the Reportable Allegation of the following:
 - i. that a Reportable Allegation has been made against an Employee;
 - ii. the name and date of birth of the Employee concerned;
 - iii. whether Victoria Police has been contacted about the Reportable Allegation;
 - iv. the address and telephone number of Melbourne Legacy; and
 - v. the CEO's name.
 - (c) **Investigate:** As soon as practicable, investigate the Reportable Allegation or permit an independent investigator to do so (subject to police clearance on criminal matters).
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The CEO must inform the Commission of the person conducting the investigation. The investigator must provide information or documents obtained in the investigation to the Commission if the Commission makes such a request.

- (d) **Update:** Notify the Commission in writing within 30 business days of becoming aware of the Reportable Allegation of the following:
- i. detailed information about the Reportable Allegation;
 - ii. whether or not Melbourne Legacy proposes to take disciplinary or other action in relation to the Employee concerned and the reasons for this decision; and
 - iii. any written submission made by the Employee concerned regarding whether disciplinary or other action should be taken.

7. Who is an Employee

- 7.1 For the purposes of the Act, 'employee' is defined as a person aged 18 years or over who is:
- (a) Employed by ML whether or not that person is employed in connection with any work or activities of ML that relate to children; or
 - (b) Engaged by ML to provide services, including as a volunteer, contractor, office holder or officer, whether or not the person provides services to children; or
 - (c) A minister or religion or religious leader is also an employee.
- 7.2 For the purposes of this policy, all of the above are also referred to collectively as "staff", "staff members" or "members of the ML community".

8. What is Reportable Conduct

- 8.1 Reportable conduct is defined in the Act to include:
- (a) A sexual offence committed against, with or in the presence of, a child;
 - (b) Sexual misconduct committed against, with or in the presence of, a child;
 - (c) Physical violence committed against, with or in the presence of, a child;
 - (d) Any behaviour that causes significant emotional or psychological harm to a child; and/or
 - (e) Significant neglect of a child.
- 8.2 Sexual Misconduct includes:
- (a) Behaviour, physical contact or speech or other communication of a sexual nature, for example, 'sexting';
 - (b) Inappropriate touching or physical contact;
 - (c) Grooming behaviour;
 - (d) Voyeurism.
- 8.3 The Commission has provided guidance on how to identify physical violence, behaviour that causes emotional or psychological harm to a child and neglect. Physical violence includes an act that causes physical injury or pain. Example of physical violence can include:
- (a) Hitting/kicking/punching;
 - (b) Pushing/shoving/grabbing/throwing/shaking;
 - (c) Using an object to hit or strike;

(d) Using inappropriate restraint/excessive force

8.4 Importantly, physical violence does not include:

- (a) 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;
- (b) Medical treatment given in good faith by an appropriately qualified person, such as a First Aid Officer administering first aid.

8.5 Behaviour that causes emotional or psychological harm to a child requires a clear link between the alleged conduct and the significant harm suffered. Signs that a child may have been emotionally or psychologically harmed may include:

- (a) Patterns of out of character behaviour
- (b) Regression in behaviour
- (c) Distress or anxious behaviours
- (d) Other physical symptoms, such as self-harm.

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

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

8.7 Examples of neglect may include:

- (a) Supervisory neglect, which is the absence or inattention of a person which places the child at risk of physical harm or injury, sexual abuse or allows other criminal behaviours towards the child;
- (b) Physical neglect, which is the failure to provide basic physical necessities for a child, such as adequate food, clothing and housing;
- (c) Medical neglect, which is the failure to provide for appropriate medical care for a child, including a failure to acknowledge the seriousness of an illness or condition, or deliberately withholding appropriate care.

8.8 It will not be reportable conduct if:

- (a) a person takes reasonable steps to protect a child from immediate harm;
- (b) 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 (refer to the Student Conduct Management Policy); or where
- (c) an appropriately qualified person gives medical treatment in good faith such as the School Nurse or a First Aid Officer administering first aid.

9. What must be Notified

9.1 Under the Act, ML must notify the Commission of a reportable allegation against a staff member.

9.2 Reportable allegation is defined in the Act to mean any information that leads a person to form a reasonable belief that an employee of ML has committed:

- (a) Reportable conduct;
- (b) Misconduct that may involve reportable conduct – whether or not the conduct/misconduct is alleged to have occurred in the course of the person's employment at ML.

- 9.3 Guidance from the Commission states that reasonable belief is more than suspicion. There must be some objective basis for the belief. However, it is not the same as proof and does not require certainty.
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10. Who must Notify

- 10.1 Under the Act, any person may disclose a reportable allegation to the Commission. A disclosure can be made using an online form available from the Commission's [website](#), by phone or by letter.
- 10.2 In all circumstances however, the CEO will notify the Commission of any reportable conduct or misconduct that may involve reportable conduct.
- 10.3 Where the reportable allegation involves the CEO, the person must notify a Child Protection Officer, who must then notify the Chair of the Board who will become obligated for the purposes of reporting, to report the reportable allegation to the Commission.
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11. Reportable Conduct Allegations Investigations

- 11.1 Allegations of suspected Reportable Conduct will be reported to Victoria Police as the first priority, who will maintain the primacy of an investigation.
- 11.2 Melbourne Legacy will work with Victoria Police and the Commission to ensure:
- (a) allegations of criminal conduct are dealt with appropriately; and
 - (b) any internal investigation, aimed at gathering and examining information to establish and make findings in relation to allegations of child abuse against an Employee, does not interfere with police investigations.
- 11.3 Any investigation initiated by Melbourne Legacy, may include recommendations about what disciplinary or other action should be taken (if any).
- 11.4 In circumstances where Melbourne Legacy is unable to investigate or otherwise engage an independent person or body to investigate a Reportable Allegation, ML will work with the Commission, to the greatest extent possible, to support the Commission's independent oversight and investigation into the matter.
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12. Procedural Fairness

- 12.1 Determinations made with respect to Reportable Allegation are required to be made on the balance of probabilities, following principles of procedural fairness.
- 12.2 In response to a Reportable Allegation, ML must:
- (a) obtain clearance from Victoria Police, if the allegation is criminal in nature, before initiating a workplace investigation; and
 - (b) before any findings are made or disciplinary action taken:
 - i. notify the Employee the subject of the allegation of details of any adverse information that is credible, relevant and significant. This need not be at the

time the Commission is notified so as to ensure an investigation is not compromised; or at all, in circumstances the allegations is fictitious.

- ii. provide the Employee the subject of the Reportable Allegation a reasonable opportunity to respond to that information.

- 12.3 Any person that is the subject of a Reportable Allegation may choose (but is not obliged) during the course of an investigation, to give information or documents that support their version of events; or prove/disprove any fact or issue being investigated.
- 12.4 In circumstances where other allegations or concerns are identified the additional information will be considered by the investigator and may add or change the nature and/or scope of the Reportable Allegation.
- 12.5 Interviews with witnesses, management, other staff, the Employee and/or victim of the allegation may be undertaken by: the Victoria Police; ML; an independent investigator engaged by ML; the Commission or other regulator; with expert opinion or advice (such as from a specialist medical practitioner or legal counsel) obtained during a workplace investigation as deemed required.
- 12.6 Under the Act, a staff member may seek a review by the Commission of a finding made at the conclusion of an investigation.
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13. Communication

- 13.1 Under the Act, the CEO may disclose to the children and parents and/or carer:
- (a) Information about the progress of the investigation;
 - (b) The findings, reasons for the findings and the recommendations at the conclusion of the investigation; and
 - (c) What actions have been or will be taken in response to those findings.
- 13.2 ML must not disclose any information that would enable the identification of a person or who notified the Commission, or a child in relation to whom a report allegation was made.
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14. Reporting to the Commission

- 14.1 There are two stages of reporting. The Commission must be notified by the CEO in writing of:
- (a) The reportable allegation as soon as possible, and in any event within three business days of being notified (Stage One Report); and
 - (b) The proposed next course of action (see below), as soon as practicable, and within 30 days of becoming aware of the reportable allegation (Stage Two Report).
- 14.2 Stage One Report
- 14.2.1 The Report to the Commission must state:
- (a) That a reportable allegation has been made against a staff member;

- (b) The name (including any former name and alias, if known) and date of birth, if known, of the staff member;
- (c) Whether the Victoria Police has been contacted about the reportable allegation;
- (d) The name, address and telephone number of the School;
- (e) The name of the Principal.

14.2.2 An online form available on the Commission's website must be used for the Stage One Report.

14.3 Stage Two Report

14.3.1 The Report to the Commission must state:

- (a) Detailed information about the reportable allegation;
- (b) Whether or not ML proposes to take any disciplinary or other action in relation to the staff member and the reasons why it intends to take, or not to take, that action;
- (c) Any written submissions made to the CEO concerning the reportable allegation that an employee wished to have considered in determining, what if any, disciplinary action or other action should be taken in relation to the staff member.

14.4 What happens after a report is made?

14.4.1 After the CEO has made a report to the Commission, they must ensure that an appropriate investigation of the reportable allegation is conducted.

14.4.2 The investigation can be conducted by the CEO or ML can appoint an independent investigator. Where appropriate, an independent investigator will be the preferred.

14.4.3 The CEO must notify the Commission of who will be conducting the investigation.

14.4.4 The investigation must be conducted in accordance with the rules of procedural fairness and natural justice.

14.4.5 A Victoria Police investigation into any matter takes priority over an investigation by ML. On becoming aware of a Police investigation:

- (a) The CEO should consult with the Police before commencing an investigation to find out if the Police are, or will be, conducting an investigation;
- (b) ML's investigation should be put on hold until the Police investigation is complete however appropriate action should be taken to minimise and prevent any risk of harm to the children. This may include suspending the employee pending the outcome of the investigation.

14.4.6 Upon the conclusion of the investigation, the CEO must give the Commission:

- (a) A copy of the findings of the investigation and the reasons for those findings;
- (b) Details of any disciplinary or other action that the CEO proposes to take in relation to the staff member and the reasons for that action; and
- (c) If the CEO does not propose to take any disciplinary or other action in relation to the staff member, the reasons why no action is to be taken.

15. Interaction with Mandatory Reporting Policy and Child Safety Policy

- 15.1 This Policy operates in conjunction with the Mandatory Reporting Policy and the Child Safety Policy. The obligations under the Reportable Conduct Scheme are in addition to the obligations set out in the Mandatory Reporting Policy and the Child Safety Policy.
- 15.2 For the avoidance of doubt, conduct that is reportable under the Mandatory Reporting Policy and the Child Safety Policy also constitutes Reportable Conduct under this Policy.
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16. Consequences of a Breach of this Policy

- 16.1 ML emphasises the need to comply with the requirements of this policy. Breaches of this policy and its procedures may result in suspension of access to ML's information resources.
- 16.2 Any employee found to be in breach of the requirements of this policy may be subject to disciplinary action, up to and including termination of employment. Employees should refer to the Performance Management, Misconduct and Disciplinary Action Policy and Procedure.
- 16.3 Similarly, a Legatee or volunteer found to be in breach of the requirements of this policy may be subject to disciplinary action in accordance with ML's Legatee Code of Conduct.
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17. Policy Review

- 17.1 ML may make changes to this Policy at any time and will inform Legatees, volunteers and staff accordingly.
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18. Authorisation

Approved by Melbourne Legacy Chief Executive Officer:

Justin Elwin

Date: 23 / 10 / 2018

Ratified by:

Melbourne Legacy Board of Management

Date: 23 / 10 / 2018
