

## Reportable Conduct of Staff, Volunteers and Others

<b>Source of Obligation</b>	The Ombudsman Act 1974 (NSW) (the Ombudsman Act) requires the School to investigate and report to the NSW Ombudsman all allegations of reportable conduct that are made against employees at the School or any conviction of an offence involving reportable conduct as defined by the Ombudsman Act.
<b>Definition of Employee</b>	<p>For the purposes of the Ombudsman Act, "employee" is defined as:</p> <ul style="list-style-type: none"><li>any employee of the School, whether or not employed in connection with any work or activities of the School that relates to children, and</li><li>any individual engaged by the School to provide services to children (including in the capacity of a volunteer).</li></ul> <p>Child is defined in the Ombudsman Act as a person under the age of 18 years.</p> <p>For the purposes of this policy only, "staff" or "staff member" is to include:</p> <ul style="list-style-type: none"><li>the Principal</li><li>staff members</li><li>Direct Contact Volunteers</li><li>Indirect Contact Volunteers</li><li>Third Party Contractors</li><li>External Education Providers.</li></ul> <p>The NSW Ombudsman provides the following examples of persons who would be an employee at the School:</p> <ul style="list-style-type: none"><li>contractors</li><li>students on placement at the School</li><li>instructors of religion</li><li>volunteers.</li></ul>
<b>What is Reportable Conduct?</b>	<p>Section 25A of the Ombudsman Act defines reportable conduct as:</p> <ul style="list-style-type: none"><li>any sexual offence or sexual misconduct, committed against, with or in the presence of a child (including child pornography offences or an offence involving child abuse material) including <b>grooming behaviours</b></li><li>any assault, ill-treatment or neglect of a child</li><li>any behaviour that causes psychological harm to a child (whether or not, in any case, with the consent of the child).</li></ul>
<b>What is Not Reportable Conduct?</b>	<p>The Ombudsman Act makes it clear that <b>reportable conduct does not extend to:</b></p> <ul style="list-style-type: none"><li>conduct that is reasonable for the purpose of discipline, management or care of children, having regard to age, maturity, health or other characteristics of the children and any relevant codes of conduct or professional standards, or</li><li>the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures.</li></ul> <p>Some examples of conduct that would not constitute reportable conduct include touching a child to get their attention, guide them or comfort them, a teacher raising their voice to attract attention or restore order in a classroom, and conduct that is established to be accidental.</p>
<b>Reportable Conduct and Mandatory Reporting</b>	<p>In some cases, conduct that is reportable conduct which must be reported to the NSW Ombudsman must <b>also</b> be reported to the Department of Family and Community Services (FACS) and/or the Police in accordance with Mandatory Reporting procedures under the Children and Young Persons (Care and Protection) Act 1998 (NSW).</p> <p>However, it is important to understand that the reportable conduct obligation covered in this policy is separate and distinct from the Mandatory Reporting obligation under the Children and Young Persons (Care and Protection) Act 1998 (NSW) (refer to <b>Mandatory Reporting</b>).</p> <p>The reportable conduct threshold is much lower than the Mandatory Reporting threshold, so any matter involving a staff member that requires Mandatory Reporting must also be reported to the NSW Ombudsman under this policy.</p> <p>A failure to make a report in accordance with this policy may amount to an offence under the Crimes Act 1900 (NSW).</p>
<b>Key Definitions</b>	<p>The NSW Ombudsman has provided guidance on the meaning of key terms used in the definition of reportable conduct. Those terms are:</p> <ul style="list-style-type: none"><li>sexual offence</li><li>sexual misconduct</li><li>assault</li><li>ill-treatment</li><li>neglect</li><li>behaviour that causes psychological harm.</li></ul> <p>The definitions are provided by the NSW Ombudsman for the purposes of the reportable conduct scheme and they should not affect similar</p>

definitions provided in **Child Abuse – Definitions and Key Risk Indicators** or **Mandatory Reporting**.

### **Sexual Offence**

A sexual offence is any criminal offence involving a sexual element that is committed against, with or in the presence of a child. Such offences include, but are not limited to:

- indecent assault
- sexual assault
- aggravated sexual assault
- sexual intercourse and attempted sexual intercourse
- possession/dissemination/production of child pornography or child abuse material
- using children to produce pornography
- grooming or procuring children under the age of 16 years for unlawful sexual activity
- deemed non-consensual sexual activity on the basis of special care relationships (special care relationships as defined by the Crimes Act 1900 (NSW) including student/teacher relationships).

### **Sexual Misconduct**

For sexual misconduct to constitute reportable conduct, the alleged conduct must have been committed against, with or in the presence of a child. The NSW Ombudsman identifies common forms of sexual misconduct as including, but not limited to:

- crossing professional boundaries
- sexually explicit comments and other overtly sexual behaviour
- grooming behaviour.

#### *Crossing Professional Boundaries:*

For more information about professional boundaries and expected appropriate behaviours of employees at the School, refer to our **Staff and Students Professional Boundaries Policy** which applies to a broad range of people as required by the definition of employee in the Ombudsman Act.

#### *Sexually Explicit Comments and Overtly Sexual Behaviour:*

This may include, for example:

- sexualised behaviour including sexual exhibitionism
- inappropriate conversations of a sexual nature
- unwarranted and inappropriate physical contact with a child
- sexualised, romantic or otherwise personal correspondence and communications including via emails, social media, web forums and 'sexting'
- exposure of children to sexual behaviour including the display of pornography
- watching children undress in circumstances where supervision is not required and clearly inappropriate.

#### *Grooming Behaviour:*

For more information about the indicators of grooming behaviours refer to **Child Abuse – Definitions and Key Risk Indicators**.

### **Assault**

The following types of conduct may, depending on the circumstances, amount to assault which constitutes reportable conduct:

- actual physical force – the intentional or reckless application of physical force against another person without their consent. For example: hitting, pushing or shoving, or
- apprehension of physical force – intentional or reckless conduct that causes another person to apprehend imminent physical force without their consent. For example, using words or gestures that lead the child to apprehend physical force.

The context in which actual physical force and apprehension of physical force occurs is crucial for determining whether in fact these types of conduct amount to assault. Injury is not an essential element of assault, and, alternatively, the existence of an injury does not necessarily mean that there was an assault.

For more information about the elements of assault, refer to the NSW Ombudsman's fact sheet **Defining assault for the purposes of the reportable conduct scheme**.

### **Ill-Treatment**

Ill-treatment is a term used to describe the circumstances where a person treats a child in an unreasonable and seriously inappropriate, improper, inhuman or cruel manner.

Examples of ill-treatment include:

- disciplining or correcting a child in an unreasonable and seriously inappropriate or improper manner
- making excessive and/or degrading demands of a child
- hostile use of force towards a child
- a pattern or hostile or unreasonable and seriously inappropriate, degrading comments or behaviour towards a child.

### **Neglect**

Neglect includes either action or inaction by a person who has care responsibilities towards a child. In the School context, when considering whether a child has been neglected for the purposes of reportable conduct reporting, you must consider the person's responsibilities for the child and assess

their action, or inaction, against their responsibilities.

The NSW Ombudsman identifies four categories of neglect:

- Supervisory Neglect
- Carer Neglect
- Failure to Protect a Child from Abuse
- Reckless Acts (or a Failure to Act).

*Supervisory Neglect:*

- an intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or
- an intentional or reckless failure to adequately supervise a child, or a significantly careless act or failure to act that:
  - involves a gross breach of professional standards, and
  - has the potential to result in the death of, or significant harm to, a child.

*Carer Neglect:* grossly inadequate care that involves depriving a child of the basic necessities of life, for example food and drink, clothing, shelter and medical care/treatment.

*Failure to Protect a Child from Abuse:* an obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.

*Reckless Acts (or a Failure to Act):* a reckless act, or failure to act, that:

- involves a gross breach of professional standards, and
- has the potential to result in the death of, or significant harm to, a child.

#### **Behaviour that Causes Psychological Harm**

Behaviour that causes psychological harm is conduct that is obviously or very clearly unreasonable and results in significant emotional harm or trauma to the child. Psychological harm can include the exacerbation or aggravation of an existing psychological condition, such as anxiety or depression.

For reportable conduct involving psychological harm, the following elements must be present:

- an obviously or very clearly unreasonable or serious act or series of acts that the employee knew or ought to have known was unacceptable
- evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self-harm
- an alleged causal link between the employee's conduct and the psychological harm to the child.

#### **When and How Are Reportable Conduct Matters Reported to the Ombudsman?**

The NSW Ombudsman must be notified of all reportable allegations and reportable convictions against School employees.

- *Reportable allegation* means an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.
- *Reportable conviction* means a conviction (including a finding of guilt without the court proceeding to a conviction) in NSW or elsewhere, for an offence involving reportable conduct.

Any allegation of staff misconduct must be immediately reported to the Head of Agency (HOA). At The John Berne School the HOA is the Principal, however should the allegation involve the Principal, the report is to be made to the Regional Director of MSA.

Prior to making a report, The John Berne School may call the NSW Ombudsman on the **Employment-Related Child Protection line on 02 9286 1021** for guidance on how to manage the reporting process.

There are two stages of reporting.

The NSW Ombudsman must be notified:

- as soon as practicable after becoming aware of the allegation or conviction by lodging **Notification Form Part A**
- of the findings of the investigation (see below), as soon as possible once the internal investigation has been finalised by lodging **Notification Form Part B**.

To maintain confidentiality, the forms must only be sent by registered mail, hand delivery, or courier to:

Attention – Employment Related Child Protection Division  
NSW Ombudsman  
Level 24  
580 George Street  
Sydney NSW 2000

#### **Disclosure to the NSW Ombudsman of Information About Reportable Conduct**

The Principal or other employee of the School may also disclose to the NSW Ombudsman, or an officer of the NSW Ombudsman, any information that gives the Principal or other employee reason to believe that reportable conduct by an employee of the School has occurred.

#### **Internal Investigation of Allegations of Misconduct or Convictions**

Once a reportable allegation or conviction has been made (which does not require reporting to the Department of Family and Community Services under the **Mandatory Reporting obligations**) has been brought to the Principal's attention and the NSW Ombudsman has been notified, an internal investigation, led by the Principal will be conducted in such a manner as the particular circumstances demand. The Principal will conduct a risk assessment. Refer to **Risk Management: Risk Assessments** below.

It is important to note that an internal investigation must not be conducted in relation to an allegation that is the subject of Mandatory Reporting until clearance to do so is given by the Department of Family and Community Services or the Police, as this may compromise their investigations.

When conducting an internal investigation principles of procedural fairness must be followed.