MANDURAH BAPTIST COLLEGE
BE STRONG & COURAGEOUS

# Reportable Conduct Policy

## Contents

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# Reportable Conduct Policy

## 1. Policy Statement

Mandurah Baptist College is committed to protecting children from harm and regards their best interest as the paramount consideration by reporting, notifying and investigating reportable allegations and convictions; and taking appropriate action in response to findings of reportable conduct.

Any reportable conduct committed against, with or in the presence of a student or another child must be reported to the Principal.

## 2. Scope

This Policy applies to all persons over the age of 18, who are employed or otherwise engaged by the College to provide services to children, including but not limited to staff, board members, relief staff, practicum students, volunteers and contractors and irrespective of whether or not the reportable allegation or conviction related to work or in a personal capacity.

## 3. Rationale

The *Parliamentary Commissioner Amendment (Reportable Conduct) Act 2022* (the Act) requires the College to investigate and report to the Ombudsman reportable allegations made against staff and others engaged by the College.

The College has developed the following Policy which sets out our procedures for reporting reportable conduct or convictions, and for such reports to be investigated and responded to.

This Policy is made available to all staff and board members via our staff portal; and to relief staff, practicum students, volunteers, contractors, students and parents/guardians via our College website (to be developed).

The Ombudsman's website provides additional guidance and materials outlining obligations under the Act.

## Definitions

**Alleged conduct** can relate to historical issues and does not need to relate to the current, or indeed any, workplace.

**Child** means any person who is under 18 years of age.

**Conduct** includes an act or omission.

**Employee:** For the purpose of the Reportable Conduct Scheme, an employee of Mandurah Baptist College is an individual who has reached 18 years of age and is:

a. an officer or employee of the College, including teaching and non-teaching staff; or
b. engaged by the College to provide services to children, including as a volunteer or contractor (including their employees or sub-contractors).

**Investigator** means a person or organisation conducting the investigation on behalf of the Principal for the purposes of the Reportable Conduct Scheme.

**Ombudsman**: The Parliamentary Commissioner for Administrative Investigations (more commonly known as the Ombudsman) is an independent officer of the Western Australian Parliament. (Ombudsman WA Home)

**Physical assault** means the intentional or reckless application of physical force without lawful justification or excuse (such as hitting, striking, kicking, punching or dragging a child); or any act that intentionally or recklessly causes another person to apprehend immediate and unlawful use of physical force against them (such as threatening to physically harm a child through words and/or gestures and regardless of whether the person actually intends to apply any force).

**Reportable allegation:** A reportable allegation is any information that leads a person to form the *belief on reasonable grounds* that an employee has engaged in *reportable conduct*, whether or not the conduct is alleged to have occurred in the course of their employment or engagement. A reportable allegation *does not include* information relating to a reportable conviction.

**Reportable conduct** is the following conduct (whether or not a criminal proceeding in relation to the conduct has been commenced or concluded) –

a. a sexual offence
b. sexual misconduct
c. a physical assault
d. significant neglect of a child
e. any behaviour that causes significant emotional or psychological harm to a child

committed against, with or in the presence of a child, including those committed before starting their employment or engagement.

However, **reportable conduct** *does not include* conduct that is –

a. reasonable for the discipline, management or care of a child or of another person in the presence of a child, having regard to
    i. the characteristics of the child, including the age, health and developmental stage of the child; and
    ii. any relevant code of conduct or professional standard that at the time applied to the discipline, management or care of the child or the other person; or
b. trivial or negligible and that has been or will be investigated and recorded as part of another workplace procedure.

**Reportable Conduct Scheme**: The Reportable Conduct Scheme was established under the Parliamentary Commissioner Amendment (Reportable Conduct) Act 2022 and commenced operation on 1 January 2023. The Scheme operates to prevent harm to children by holding organisations accountable for the conduct of their employees.

**Reportable conviction:** A reportable conviction is, in summary, a conviction for an offence of a sexual nature committed against, with, or in the presence of a child, including those committed before starting their employment or engagement. A conviction for an offence committed by a person includes:

a. a court making a finding of guilt in relation to the offence;
b. if there has been no formal finding of guilt before conviction, a court convicting the person of the offence;

c. a court accepting a plea of guilty from the person in relation to the offence;
d. a court acquitting the person following a finding under The Criminal Code section 27 that the person is not guilty on account of unsoundness of mind or an acquittal following an equivalent finding under a law of another State, a Territory or the Commonwealth; or
e. a conviction that is a spent conviction (but does not include a conviction that is subsequently quashed or set aside by a court).

**Sexual misconduct** includes misconduct against, with or in the presence of, a child that is sexual in nature; but does not include a sexual offence. Sexual misconduct may include (but is not limited to) behaviours such as:

- inappropriate touching
- sharing pornographic images
- speaking of sexual acts without a legitimate reason to do so
- comments to a child that express a desire to act in a sexual manner towards the child, or another child
- grooming behaviour.

**Sexual offence** means an offence of a sexual nature under the Criminal Code, committed against, with or in the presence of a child, such as:

- sexual abuse
- indecent dealings with a child
- procuring, inciting or encouraging a child to engage in sexual behaviour or do an indecent act
- production, distribution or possession of child exploitation material.

## 4. What is a belief on reasonable grounds?

A belief on reasonable grounds is more than suspicion. There must be some objective basis for the belief. However, it is not the same as having proof.

For example, a person is likely to form the belief on reasonable grounds if they:

- Observed the conduct themselves;
- Heard directly from a child that the conduct occurred; or
- Received information from another credible source (including another witness).

The Principal is required to notify the Ombudsman of reportable allegations even if they do not agree with or share the belief that the alleged conduct has occurred.

## 5. Responsibilities of the Principal

The Principal is responsible for ensuring compliance by the College with its obligations under the Reportable Conduct Scheme. In particular, the Principal must ensure that the College has systems in place to:

a. prevent reportable conduct by employees (as defined) in the course of their employment or engagement;
b. enable any person, including an employee, to report reportable allegations and convictions involving an employee to the Principal;

c. enable any person, including an employee, to report reportable allegations and convictions involving the Principal to the Ombudsman;
d. notify the Ombudsman of reports received by the Principal;
e. investigate reportable allegations and convictions relating to employees, and take appropriate action in response to a finding of reportable conduct; and
f. receive, handle and disclose investigation information.

## 6. Preventing Reportable Conduct from Occurring

This Policy supports other College policies, practices and systems designed to prevent, respond to and report student safety and wellbeing concerns, including child abuse, such as:

- the Student Safety and Wellbeing Policy;
- implementation of the National Principles for Child Safe Organisation;
- the Codes of Conduct;
- the Child Protection Policies and Procedures, including responding to complaints and allegations against staff and reporting obligations;
- the Complaints Handling Policies and Procedures, including managing child safety complaints or allegations;
- the Critical and Emergency Incident Policies and Procedures;
- the Incident Management Policies and Procedures and an Incident Notification Systems; and
- the Risk Management Systems, Policies and Procedures.

## 7. Reportable Conduct and Other Reporting Obligations

The Reportable Conduct obligation covered in this Policy is separate and distinct from the:

- Mandatory Reporting obligations (Refer to the *Mandatory Reporting Policy* under Child Protection on the staff portal.)

  Reportable Conduct is different to Mandatory Reporting legislation, which requires separate reporting of sexual abuse to the *Department of Communities, Child Protection and Family Support (CPFS)*. One of the key differences is that Reportable Conduct is conduct by an employee, volunteer or contractor against any child, while Mandatory Reporting is conduct by anyone against a College student under the age of 18.

- Critical and Emergency Incidents Notification to the Board Chair (Refer to the *Critical and Emergency Incidents Notification Policy* under Critical and Emergency Incidents on the staff portal.)

- Reportable Incidents Notification to the Director General of the Department of Education (Refer to the *Critical and Emergency Incidents Notification Policy* under Critical and Emergency Incidents on the staff portal.)

- Notifications to the Teachers Registration Board of WA (Refer to the *Teacher Registration Board Policy* under Human Resources on the staff portal.)

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

## 8. Reportable Conduct Process

Reportable conduct or convictions must be notified to the Ombudsman within **seven (7)** working days of first being reported.

| Stage of the Process | | Person Responsible |
|---|---|---|
| 1 | Reportable Allegations - Mandatory Reporting | Employee<br>Volunteer / Contractor (engaged to provide services to children.) |
| 2 | Risk Assessment of Allegation<br>**(The Principal nominates staff to assist with the identification and response to any risk)** | Principal |
| 3 | Immediate Action<br>**(The Principal and nominated staff must implement any mitigation strategies identified in the risk assessment that are immediately necessary to reduce risk)** | Principal |
| 4 | Preliminary Notification to the Ombudsman<br>**(This must occur within seven (7) working days of Stage 1 occurring)** | Principal |
| 5 | Investigation | Principal |
| 6 | Outcome of the Investigation | Principal |
| 7 | Reporting the Outcome of the Investigation | Principal |

### Communication

Effective communication at the outset is critical:

| Party involved | Action required |
|---|---|
| Reporter / Child | • Acknowledge the report, and confirm the allegation<br>• Outline the process to be followed<br>• Offer support<br>• Assure confidentiality and protection from victimisation |
| Employee (subject of allegation) | • Confirm the allegation, investigation, interim measures, potential outcomes<br>• Outline how procedural fairness will be afforded<br>• Warn about confidentiality and victimisation<br>• Offer support |
| Investigator | • Confirm allegation to be investigated<br>• Confirm process to be followed<br>• Confirm scope of findings to be made – findings of fact, or conclusions<br>• Confirm report structure |
| Witnesses | • Confirm an investigation is taking place<br>• Confirm may be required to attend an interview<br>• Warn about confidentiality and victimisation<br>• Offer support |

## Stage 1: Reportable Allegations - Mandatory Reporting

If an employee, including any relief staff, practicum student, volunteer or contractor becomes aware of information that leads them to form the belief on reasonable grounds that another employee (as defined) has engaged in reportable conduct, they must, as soon as practicable report the matter to the Principal.

This is the case even if that person does not have direct contact with children and/or the conduct occurred outside their employment or engagement with the College.

Where a verbal report is made, it should be followed up with a written report provided to the Principal within 24 hours of the verbal report.

If the person has information of a reportable allegation involving the Principal, the person must report the matter to the Board Chair in writing, addressed to "The Board Chair, Mandurah Baptist College, PO Box 4116, Mandurah North WA 6210" in a sealed envelope marked Private and Confidential.

They may report the matter to the Ombudsman if they are not satisfied with the response of the Principal to the report. They may disclose any information to the Ombudsman that they believe on reasonable grounds reveals reportable conduct or is otherwise relevant to a reportable allegation.

For more information, please refer to *Where to get help* and *The Ombudsman's Information Sheets* below.

## Stages 2 and 3: Risk Assessment of Allegation and Immediate Action

Any allegations of criminal conduct, including physical violence and sexual offences, must be reported to the Police as the first priority.

The Act requires that an allegation of reportable conduct must be assessed for the risks associated with the alleged conduct. The risk assessment must be documented and details provided to the Ombudsman as part of Stage 4 Notification.

The Principal and nominated staff must complete the risk assessment and identify actions to mitigate risks to an acceptable or manageable level. Refer to the *Risk Management Policy* and the *Risk Matrix* to complete the *Risk Management Plan – Working Document Template* provided under School Governance on our staff portal.

The Ombudsman's Guide will assist the risk assessment process: Reportable Conduct Scheme Information Sheet 6 - Risk Management (ombudsman.wa.gov.au)

Risks to be identified that might be assessed include:

- Risks relating to the child:
    i. Does the child and other family members require specific protection and support?
    ii. Is the welfare of the child threatened?
    iii. Is the child or employee (subject of allegation) able to interact with parties involved in the allegation in the normal course of school activities?
    iv. Does the allegation constitute a criminal offence?

v. Is there risk of self-harm?

- Risks relating to the employee:
  i. What personal support is required for the employee?
  ii. Should the employee remain in their current position? This will depend on:
    - the nature and seriousness of the allegation;
    - the requirements of the child/ren;
    - reactions of the employee to the allegation with specific consideration to their current welfare;
    - the community reaction to the allegation (if known) and the viability of the employee remaining in the current position whilst the matter is investigated;
    - the nature and type of work done by the employee;
    - supervision controls that are in place or could be put in place;
    - support mechanisms that could be put in place to support the employee in their current role; and
    - the employee's workplace misconduct history and any current performance management issues or employment sanctions.

- Risks relating to others:

  What changes need to be actioned to ensure:
  i. safety;
  ii. wellbeing such as other students and staff who have witnessed or are aware of the allegation; and
  iii. the ability to continue their role and responsibilities.

If CPFS and the Police is involved, the actions of those agencies should be included in the assessment as these may affect the actions taken to manage and mitigate risks.

Risk should be managed on an ongoing basis. If new risks are identified or risk ratings change, new strategies to manage the risks should be identified, implemented and recorded. If no new risks emerge, the fact of the assessment and no new risks should be noted in records.

Any identified actions that are immediately required to mitigate risk must be implemented, before moving on to further stages.

### Stage 4: Preliminary Notification to the Ombudsman

Where the Principal becomes aware of a reportable allegation or a conviction involving a person who is an employee (as defined), the Principal must give written notice to the Ombudsman of the following information within **seven (7)** working days after becoming aware of the reportable allegation or conviction:

a. details of the reportable allegation or conviction
b. the name (including any former names or alias) of the employee
c. the date of birth of the employee
d. the employee's Working With Children Card number or application number for a Working With Children Check
e. whether the Police have been contacted about the reportable allegation or conviction

f. the risk assessment made and the risk management action taken, or proposed to be taken, by the College (Refer Stages 2 and 3 above.)
g. the name, address and telephone number of the College
h. the name of the Principal
i. how the Principal intends to proceed with the matter
j. any information prescribed by the Regulations.

The Principal is only required to provide information for a, b, c, d, e and j of which the Principal is aware.

The Principal may disclose any information to the Ombudsman that they believe on reasonable grounds:

a. reveals reportable conduct involving an employee; or
b. is otherwise relevant to a reportable allegations involving an employee.

The Principal is required to notify the Ombudsman of reportable allegations even if they do not agree with or share the belief that the alleged conduct has occurred.

**Online Reportable Conduct Notification Form**

The Principal must use the online Reportable Conduct Notification Form to submit a mandatory notification of a reportable allegations or conviction: Reportable Conduct Notification Form - Ombudsman Western Australia

The Ombudsman's Guide will assist the Principal to complete the Form: Reportable Conduct Scheme Guide for Notification Form (ombudsman.wa.gov.au)

It is an offence for the Principal to fail to comply, without reasonable excuse, e.g. where the Principal honestly and reasonably believed that another person had notified the Ombudsman of the reportable allegation or conviction.

The Principal may request in writing an extension of time for giving notice from the Ombudsman.

## Stage 5: Investigation

As soon as practicable after the Principal becomes aware of a reportable allegation or conviction involving an employee, the Principal must:

a. investigate the reportable allegation or conviction; or
b. arrange for an investigation; and
c. inform the Ombudsman of the name and contact details of the investigator.

The Principal must take all reasonable steps to ensure that an investigation is carried out in a timely way.

The Investigator will, as soon as practicable:

- conduct an investigation into the allegation;
- conduct interviews of relevant persons and seek any further information they deem necessary;
- provide the Principal a confidential report of their findings in relation to the allegation against the employee; and

- if requested, make recommendations about what disciplinary or other action should be taken (if any).

**What the Investigation Process looks like**

Investigations are undertaken in a confidential, fair, and prompt manner with findings supported by available evidence.

Investigations are conducted with integrity and the process undertaken should be able to withstand external scrutiny.

Key steps include:
- Identifying the allegations
- Work out and comply with reporting obligations
- Decide whether to stand down the employee
- Choose an investigator and decisionmaker
- Conduct relevant interviews
- Review relevant documents
- Make reasonable findings
- Decide appropriate outcomes (including disciplinary action)
- Communicate as appropriate or required.

Also refer to the Ombudsman's Information Sheets:
- *Undertaking inclusive investigations*: Information Sheet 9 - Inclusive Investigations Guidance (ombudsman.wa.gov.au)
- *Reportable Conduct Scheme Investigations:* Information Sheet 8 Reportable Conduct Investigations (ombudsman.wa.gov.au)

**Ombudsman must be Notified of Matters affecting the Investigation**

The Principal must as soon as practicable, notify the Ombudsman if, in relation to a matter being investigated, the Principal:

a. forms the view on reasonable grounds that
   i. the matter does not constitute reportable conduct; or
   ii. the report of the matter is frivolous or vexatious or not made in good faith; or
b. becomes aware that another appropriate person or body is dealing with or investigating the matter; or
c. is required by law to comply with the directions of another person or body in relation to the investigation of the matter; or
d. is requested or directed by another appropriate person or body to cease, or discontinue for a period, the investigation of the matter.

The notice must:

a. be given in writing and be in the form approved by the Ombudsman; and
b. contain the information required by the Ombudsman.

The Principal may, in the notice, request the Commission to exempt them from the requirement to continue the investigation.

### Obligations to Employee under Investigation

The Reportable Conduct Scheme provides for procedural fairness to be afforded to an employee who is the subject of an allegation by providing them with the opportunity to make submissions at **three (3)** critical stages of an investigation by the Principal.

- Before making any adverse findings as a result of an investigation, the Principal must:
  a. inform the employee that they are the subject of an investigation; and
  b. inform the employee of the reportable allegation or conviction being investigated; and
  c. give the employee an opportunity to make submissions to the Principal setting out their response in relation to the reportable allegation or conviction being investigated.
- The Principal must then, after considering any submissions made by the employee:
  a. inform the employee of the proposed adverse finding; and
  b. give the employee an opportunity to make further submissions to the Principal, setting out their responses in relation to the proposed adverse finding.
- Before any disciplinary or other action is taken in relation to the employee as a result of the findings of the investigation, the Principal must:
  a. inform the employee of the action that is proposed to be taken; and
  b. give the employee an opportunity to make submissions to the Principal setting out the employee's response in relation to the action that is proposed to be taken.

These employee submissions must be included in the written report on the outcome of the investigation provided to the Ombudsman.

The Principal must, as soon as practicable after the end of an investigation report the outcome to the employee. The employee must be given a written notice stating that the investigation has ended and a written report setting out the findings of the investigation and the reasons for those findings.

### Stage 6: Outcome of the Investigation

As soon as practicable after conducting an investigation, the Principal must either:

a. make a finding of reportable conduct in relation to the employee if the Principal has formed the view, on reasonable grounds, that reportable conduct involving the employee has occurred; or
b. make a finding that there are no grounds, or no reasonable grounds, for the Principal to form the view that reportable conduct involving the employee has occurred.

As soon as practicable after making a finding of reportable conduct in relation to an employee, the Principal must ensure that:

a. appropriate action is taken in relation to the employee in response to the finding; and
b. if the Principal has formed the view that it is needed, appropriate action is taken to **improve** the identification or prevention of reportable conduct or the reporting, notification or investigation of reportable allegations and convictions involving employees.

The Ombudsman's Guide will assist with the self-assessment to identify any **improvement actions** that may be required: Information Sheet 5 - Self Assessment Guidance (ombudsman.wa.gov.au)

### Stage 7: Reporting the Outcome of the Investigation

The Principal must, as soon as practicable after the end of an investigation, give the Ombudsman:

a. a written report setting out:
   i. the findings of the investigation and the reasons for those findings; and
   ii. any submissions made by the employee; and
   iii. any disciplinary or other action taken, or proposed to be taken, in relation to the employee as a result of the findings of the investigation; and
   iv. if the College does not propose to take any disciplinary or other action, the reasons why no action is to be taken; and
   v. any action taken, or proposed to be taken, as a result of the findings, to improve the identification or prevention of reportable allegations and convictions, involving employees (**Improvement actions** identified per Stage 6 above); and
b. any other information that the Principal considers relevant to the report.

The Principal provides further information to the Ombudsman about a notification or investigation by using the Ombudsman's secure dropzone: SendSafely Dropzone. The Ombudsman's case number must be included if previously provided.

The Ombudsman may, in writing, request the Principal to provide further information.

It is an offence for the Principal to fail to comply with this section, without reasonable excuse.

## 9. Information Sharing: Children and Parents/Guardians

The Ombudsman or the Principal may disclose information about the progress or findings of the investigation; or any action taken as a result of the investigation to:

a. a child who is the subject of reportable conduct that is being, or has been, investigated by the Ombudsman or the Principal; or
b. a parent or guardian.

The Ombudsman or the Principal must not disclose information if:

a. it would put the safety or wellbeing of the child at risk; or
b. compromise any investigations undertaken by other authorities; or
c. the child does not consent to the disclosure to their parents/guardians.

## 10. Publication of Information

The College must not publish information that would enable the identification of:

- the person who has made the report; and
- the child in relation to whom a reportable allegation was made or a finding of reportable conduct was made.

## 11. Powers of the Ombudsman

The Ombudsman has broad powers under the Act (sections 19ZB – 19ZE) and may conduct their own investigation. The Ombudsman may visit the College, inspect documents and interview employees or children involved in the reportable allegations.

The College must assist the Ombudsman in all reasonable aspects of its investigation.

## 12. Record Keeping

The College maintains records of these reportable allegations, written reports and reportable conduct investigation findings indefinitely. Records relating to a child protection incident are only disposed of in accordance with our records management procedures.

## 13. Where to get help

You can contact the Ombudsman for clarification and guidance, and to talk through any issues of concern.

Telephone: (08) 9220 7471

Email: reportableconduct@ombudsman.wa.gov.au

Website at Ombudsman Western Australia

## 14. The Ombudsman's Information Sheets

- **Information for Employees**

Information Sheet 7 - Information for Employees (ombudsman.wa.gov.au)

Information about the Reportable Conduct Scheme for employees of organisations covered by the Scheme.

- **Risk Management following a Reportable Allegation**

Reportable Conduct Scheme Information Sheet 6 - Risk Management (ombudsman.wa.gov.au)

The Reportable Conduct Scheme requires that information regarding the risk assessment made and the risk management action taken, or proposed to be taken, be provided with the notification to the Ombudsman. This information sheet is provided to assist organisations identify, monitor and manage risk concerning a reportable allegation.

- **Reportable Conduct Investigations**

Information Sheet 8 Reportable Conduct Investigations (ombudsman.wa.gov.au)

This information sheet sets out the investigation requirements of the Reportable Conduct Scheme.

- **Undertaking Inclusive Investigations**

Information Sheet 9 - Inclusive Investigations Guidance (ombudsman.wa.gov.au)

Information about how to ensure children are able to make disclosures freely in relation to Reportable Conduct, to give them an opportunity to be heard during the investigation and ensure that their best interests are always the paramount consideration.

- **Self-Assessment Guide**

Information Sheet 5 - Self Assessment Guidance (ombudsman.wa.gov.au)

This self-assessment is designed to assist organisations to consider and improve their systems in order to comply with the requirements of the Reportable Conduct Scheme and to support the protection of children within their organisation.

System One – Preventing Reportable Conduct
System Two – Reporting to the organisation and to the Ombudsman
System Three – Notifying the Ombudsman
System Four – Investigating Reportable Conduct
System Five – Receipt, handling and disclosure of information

## 15. Support Services

Reportable conduct reports and investigations can be stressful and demanding on all involved. The College is committed to the wellbeing and support of staff and volunteers, with particular focus on any children involved. Access to support services will be made available, as required.

## 16. Related Policies

Child Protection – Mandatory Reporting Policy

Responding to Complaints and allegations against Staff

Complaints Handling Policy – Child Safety Complaints or Allegations

Codes of Conduct

Critical and Emergency Incidents

Risk Management Policy

Student Safety and Wellbeing Policy

| Document Control | | | |
|---|---|---|---|
| **Adopted by:** | The Principal, Mr Matt Dusci | **Date adopted:** | 01/01/2024 |
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