



<b>Policy Name</b>	<b>Child Protection Policy &amp; Procedures</b>
<b>Policy Document No</b>	<b>SAF-003.8</b>
<b>Head of Policy</b>	College Principal
<b>Management Responsibility</b>	College Vice Principal Head of High School Head of Primary School Nominated Supervisor in ELC
<b>Attention</b>	<ul style="list-style-type: none"><li>• College Employees (as defined in this Policy)</li><li>• Visitors to the College</li><li>• Persons on the College premises</li><li>• Members of the College community</li></ul>
<b>Policy revision at last Review date</b>	<input type="checkbox"/> No amendments <input checked="" type="checkbox"/> Minor amendments <input type="checkbox"/> Significant amendments <input type="checkbox"/> Full review

<b>Date of Introduction</b>	30 March 2016
<b>Last Date Board Endorsed</b>	29 July 2025
<b>Date for Next Review</b>	September 2027

<b>Related Legislation</b>	<ul style="list-style-type: none"><li>• <i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i></li><li>• <i>Children's Guardian Act 2019 (NSW)</i></li><li>• <i>Child Protection (Working With Children) Act 2012 (NSW)</i></li><li>• <i>Crimes Act 1900 (NSW)</i></li></ul>
<b>Related College Policies</b>	<ul style="list-style-type: none"><li>• Anti-Bullying Policies &amp; Procedures (Years K-2, 3-6 and 7-12)</li><li>• Behaviour Management Policy and Procedures</li><li>• Child Safety and Wellbeing Policy</li><li>• Complaints and Grievances Policy &amp; Procedures</li><li>• Code of Conduct – Parents and Students</li><li>• Code of Conduct – Staff</li><li>• Inclusion Policy</li><li>• Whistleblower Policy</li><li>• Work Health &amp; Safety Policy</li></ul>

<b>Endorsed By</b>	Board of Directors
<b>Access</b>	<input checked="" type="checkbox"/> College Intranet (Staff & Parents) <input type="checkbox"/> Staff Intranet only <input type="checkbox"/> Restricted - Board and/or College Executive <input checked="" type="checkbox"/> Restricted - Staff

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## 1.0 PURPOSE AND SCOPE

The impact of child abuse and neglect on children can result in a legacy of physical and/or psychological disabilities, which are carried into adult life. The impact is severe because of the vulnerability and dependency of children.

The College has a duty of care and must take action, where it becomes aware of harm or the potential of harm, to any student. The safety, protection and wellbeing of all students is of paramount importance to the College.

The safety, protection and welfare of all students is:

- of paramount importance to the College;
- the responsibility of all Employees (as defined in Section 2 below); and encompasses:
  - a duty of care to ensure that reasonable steps are taken to prevent harm to students which could reasonably have been foreseen;
  - obligations under child protection legislation

This policy sets out the responsibilities of Employees of the College (for child protection and processes that must be followed in relation to child protection matters).

The Child Protection Policy & Procedures (**Policy**) applies to all Employees (as defined in section 2 below).

All Employees must read this policy and sign the **acknowledgement (Appendix 1)** that they have understood and will comply with the policy. Employees who fail to adhere to this policy may be in breach of their terms of employment, or contracts of engagement.

## 2.0 DEFINITIONS

For the purpose of this Policy:

**'The Head of Agency'** is the College Principal.

**'College'** comprises the following entities:

- Moriah War Memorial College Association [ABN 98 077 604 961];
- The Moriah War Memorial Jewish College Association Limited [ABN 87 003 214 560];
- Kehillat Moriah Incorporated [ABN 16 284 221 251]
- Moriah College Parents' & Friends' Association [ABN 55 169 539 714]; and
- Moriah College Foundation Limited [ACN 162 505722];

**'child'** is a person under the age of 16 years

**'young person'** is a person aged 16 years or above but who is under the age of 18, for the purposes of the *Children and Young Persons (Care and Protection) Act 1998 (Care and Protection Act)*.

**'child related worker'** is a person who is required to hold a Clearance.

## **'Employee'**

Under the *Children's Guardian Act 2019 (CG Act)* and for the purpose of this Policy, is an employee of the College, including:

- an individual employed by, or in, the College;
- a volunteer engaged directly by the College (or by a third party) to provide services to children;
- a contractor engaged directly by the College (or by a third party) where the contractor holds, or is required to hold, a Clearance for the purposes of their work with the College; and
- a person engaged by a religious body where that person holds, or is required to hold, a Clearance for the purposes of their work with the religious body.

### **3.0 CLASSES OF HARMFUL OR POTENTIALLY HARMFUL CONDUCT**

#### **Classes of Conduct**

Conduct is identified in the Policy, by its seriousness, the different reporting obligations and the consequences.

The three classes of conduct are:

1. Child Protection Concerns in respect of parents/caregivers
2. Reportable Conduct of Employees
3. Mandatory Reporting of Employees

Each of these classes will be dealt with in Sections 4, 5 and 6 below.

This Policy also deals with Child Protection Legislation as it applies to the above 3 classes of conduct, including

- The Working with Children regime (Section 11); and
- The Office of Child Guardian (Section 6)

The Policy also deals with other important related matters, including

- Training (Section 12); and
- Criminal Offences (Section 13)

### **4.0 EMPLOYEE REPORTING RESPONSIBILITIES**

Employees must report any child protection or wellbeing concerns (being those that would not meet the mandatory reporting threshold) as follows:

- in the High School, to the Head of Year/Stage or;
- In the Primary School to the Deputy Head of Wellbeing; or
- In the ELCs to the Nominated Supervisor in ELC.

Employees who are unsure as to whether a matter meets the threshold of '*risk of significant harm*' (see section 8.2 below), should report their concern to the relevant Head of School.

**Note:** Employees are required to deal with all reports regarding the safety, welfare or wellbeing of a student confidentially and only disclose them to the staff members listed above.

If an allegation involves the College Principal, a report should be made to the President of the Board of Directors who will then comply with the obligations under this policy that would otherwise fall upon the College Principal.

Further details above reporting are set out below in the sections dealing with Child Protection Concerns (Section 5); Reportable Conduct (Sections 6 & 7); and Mandatory Reporting (Sections 8 & 9).

## 5.0 CHILD PROTECTION

### Child Protection Concerns Defined

Child protection concerns encompass safety, welfare or wellbeing concerns for a child or young person, that do not meet the mandatory reporting threshold of '*risk of significant harm*' (which is a threshold for Mandatory Reporting dealt with in section 8 and 9 below).

### 5.1 Child protection concerns

Child Protection Concerns are those primarily arising from the conduct of **parents or caregivers**.

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

This can include a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or threatening behaviour.

#### 5.1.2 Child Protection Concerns - examples of Child Abuse

- '**neglect**' is the continued failure by a parent or caregiver to provide a child with the basic things needed for his or her proper growth and development, such as food, clothing, shelter, medical and dental care and adequate supervision.
- '**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 are bribed or threatened physically and psychologically to make them participate in the activity. Child sexual abuse is a crime.
- '**physical abuse**' is a non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or any other person. It includes but is not limited to injuries which are caused by excessive discipline, severe beatings or shakings, cigarette burns, attempted strangulation and female genital mutilation.  
  
*Injuries include bruising, lacerations or welts, burns, fractures or dislocation of joints.*  
  
**Note:** Hitting a child around the head or neck and/or using a stick, belt or other object to discipline or punishing a child (in a non-trivial way) is a crime.
- '**emotional abuse**' can result in serious psychological harm, where the behaviour of their parent or caregiver damages the confidence and self-esteem of the child or young person, resulting in serious emotional deprivation or trauma.

## 6.0 REPORTABLE CONDUCT

### 6.1 Reportable Conduct is required to be reported to Office of Children's Guardian (OCG) - Defined

6.1.1 '**reportable conduct**' is defined in the CG Act, whether or not a criminal proceeding in relation to the conduct has been commenced or concluded as:

- a sexual offence
- sexual misconduct
- ill-treatment of a child
- neglect of a child
- an assault against a child
- an offence under section 43B (failure to protect) or section 316A (failure to report) of the *Crimes Act 1900* (NSW); and
- behaviour that causes significant emotional or psychological harm to a child.

**Note:** Each of the above matters is dealt with in more detail in 6.1.3 below.

Reportable conduct **does not extend to:**

- conduct of an Employee that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards; or
- the use of physical force that, in all the circumstances, is trivial or negligible and the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures; or
- conduct of a class or kind exempted from being reportable conduct under section 30 of the CG Act.

**Note:** A finding of reportable conduct is a substantiated finding, which requires evidence that on the balance of probabilities the conduct occurred and that it constitutes reportable conduct (or a reportable conviction) refer also to section 7 below.

6.1.2 '**reportable allegation**' is an allegation that an **Employee** has engaged in conduct that may be reportable conduct whether or not the conduct is alleged to have occurred in the course of the Employee's employment with the College.

**Note:**

- The Reportable Conduct Scheme is an allegation-based scheme. The threshold for making a notification to the Office of Children's Guardian (**OCG**) is that a **reportable allegation** has been made – that is, there is an allegation that an Employee has engaged in conduct that may be reportable conduct or that they are the subject of a conviction that is considered a reportable conviction (see 6.1.4 below).
- The threshold for making a notification of a reportable allegation is lower than the threshold for making a finding of reportable conduct.

### 6.1.3 'Reportable Conduct' - Categories

#### **'sexual offence':**

is an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child, such as

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

**Note:** An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of sexual offence.

#### **'sexual misconduct':**

is conduct with, towards or in the presence of a child that is sexual in nature (but not a sexual offence), such as:

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

**Note:** Crossing professional boundaries comes within the scope of the scheme to the extent that the alleged conduct meets the definition of sexual misconduct. That is, the conduct with, towards or in the presence of a child that is sexual in nature (but is not a sexual offence).

#### **'ill-treatment':**

is defined as conduct towards a child that is unreasonable; and seriously inappropriate, improper, inhumane or cruel.

Ill-treatment can include a range of conduct such as:

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

#### **'neglect':**

is defined as a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for a child that causes or is likely to cause harm - by a person who has care and/or has responsibility towards a child.

Neglect can be an ongoing situation of repeated failure by a caregiver to meet a child's physical or psychological needs, or a single significant incident where a caregiver fails to fulfill a duty or obligation, resulting in actual harm to a child where there is the potential for significant harm to a child.

Examples of neglect include failing to protect a child from abuse and exposing a child to a harmful environment.

#### **'assault':**

an assault can occur when a person intentionally or recklessly (ie. knows the assault is possible but ignores the risk):

- applies physical force against a child without lawful justification or excuse – such as hitting, striking, kicking, punching or dragging a child (actual physical force) or
- causes a child to apprehend the immediate and unlawful use of physical force against them – such as threatening to physically harm a child through words

and/or gestures regardless of whether the person actually intends to apply any force (apprehension of physical force)

**Note:** The CG Act excludes from notification, physical force that is, in all the circumstances, trivial or negligible which has been investigated and the result of the investigation has been recorded in accordance with appropriate procedures.

Examples of physical force that may be trivial or negligible for the purpose of the CG Act include:

- touching a child in order to attract the child's attention;
- momentarily restraining a child to prevent the child from hurting themselves or others; and
- touching a child to guide or comfort the child.

***'emotional or psychological harm':***

Behaviour that causes significant emotional or psychological harm to a child is conduct that is:

- intentional or reckless (without reasonable excuse);
- obviously or very clearly unreasonable; and
- which results in significant emotional harm or trauma to a child.

For a reportable allegation (see 6.1.2 above) 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, and
- 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, and
- An alleged causal link between the Employee's conduct and the significant emotional or psychological harm to the child.

**6.1.4** ***'reportable conviction'*** is a conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.

## **7.0 REPORTABLE ALLEGATIONS AND REPORTABLE CONDUCT**

Under the CG Act, the College's Principal is required to notify the OCG of: convictions involving an Employee; any *'reportable allegation'* (as defined in section 6.1.2 above); and the outcome of the College's investigation of such allegation.

Under the CG Act allegations of child abuse only fall within the reportable conduct jurisdiction, if the individual allegedly involved, is an Employee of the College at the time when the allegation becomes known by the College Principal.

Under the CG Act, the College Principal must consider whether any reportable allegation relates to conduct that is in breach of established standards that apply to the subject Employee and, in doing so, must have regard to relevant Codes of Conduct (including professional or ethical codes), professional standards and accepted community standards.

## 7.1 Reporting and Investigation of Reportable Allegations, Convictions, or Reportable Conduct of Employees

### 7.1.1 Employees

Any concerns about any other Employee engaging in conduct that is considered inappropriate, or a reportable allegation of inappropriate or reportable conduct, made to the Employee, or about the Employee themselves, must be reported to the College Vice Principal. Even if an Employee is uncertain if the conduct constitutes a reportable allegation or is considered inappropriate behaviour, the conduct must be reported.

Employees must also report to the College Vice Principal as soon as they become aware that an Employee including themselves, has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction), involving reportable conduct.

If the allegation involves the College Principal, the Employee must report to the President of the Board of Directors.

### 7.1.2 Parents, Carers and Community Members

Parents, carers and other community members are encouraged to report any conduct that is, in their view, inappropriate, or constitutes a reportable allegation, or is reportable or criminal conduct, to the College Vice Principal or to the College Principal. All such reports will be dealt with in accordance with the College's complaint handling procedures.

### 7.1.3 College Responsibilities

The College Principal must ensure specified systems are in place for preventing, detecting and responding to reportable allegations or convictions.

Once the College Principal has been made aware of a reportable allegation against, or conviction of, an Employee, they must:

- notify the OCG within 7 business days and make other reports;
- investigate or have investigated, the reportable allegation; and
- make a finding about the reportable allegation (**Finding**).

## 7.2 Investigating a Reportable Allegation

The College Principal is responsible for ensuring that all required steps are taken prior to any investigation of a reportable allegation (6.1.2 above) (refer to **Appendix 2** below) and in the investigation of a reportable allegation (refer to **Appendix 3** below).

## 7.3 Risk management during an investigation of a reportable allegation

The College Principal is responsible for risk management throughout the investigation and will assess risk at the beginning, during and at the end of the investigation.

### 7.3.1 Initial risk assessment

Following a reportable allegation being made against an Employee, the College Principal will conduct an initial risk assessment to identify and minimise the risks to:

- the child(ren) who are the subject of the allegation;
- other children with whom the Employee may have contact;

- the Employee who is the Subject of the Allegation (**PSOA**);
- the College, and
- the proper investigation of the allegation.

The factors which will be considered during the risk assessment include:

- the nature and seriousness of the allegations;
- the vulnerability of the child(ren) the PSOA has contact with at work;
- the nature of the position occupied by the PSOA;
- the level of supervision of the PSOA; and
- the disciplinary history or safety of the PSOA and possible risks to the investigation.

The College Principal will take appropriate action to minimise risks. This may include the PSOA being:

- temporarily relieved of some duties;
- required not to have contact with certain students
- asked to take paid leave, or
- suspended from duty.

When taking action to address any risks identified, the College Principal will take into consideration both the needs of the child(ren) and the PSOA.

**Note:** A decision to take action on the basis of a risk assessment is not indicative of any Finding that may be made in respect of the reportable allegation. Until the investigation is completed and a Finding is made, any action, such as the PSOA being suspended, is not to be taken as an indication that the conduct alleged against the PSOA, did in fact occur.

### 7.3.2 Ongoing risk assessment

The College Principal will continually monitor risk during the investigation including in the light of any new relevant information that emerges.

### 7.3.3 Findings, reports and record keeping

At the completion of the investigation, the College Principal will make a Finding in relation to the reportable allegation and will decide what action, if any, is required in relation to the PSOA (refer to **Appendix 3** below).

The College Principal must also report to the OCG (refer to **Appendix 4** below).

The College Principal is responsible for maintaining the College's records in relation to this Policy (refer to **Appendix 5** below).

### 7.3.4 Information for the PSOA

The PSOA will be advised at the appropriate time in the investigation process:

- that a reportable allegation has been made against them;
- of the substance of the reportable allegation; and
- of any Finding.

The PSOA does not automatically have the right to:

- know or have confirmed, the identity of the person who made the reportable allegation; or
- be shown the content of the OCG notification form or other investigation material that reveals information provided by other Employees or witnesses. (refer to **Appendix 3** below)

The WWC Act, enables a person who has been the subject of a Finding by a reporting body or by the College, that the person engaged in the following conduct--

- a sexual offence committed against, with or in the presence of a child;
- sexual misconduct committed against, with or in the presence of a child, including grooming of a child; or
- any serious physical assault of a child,

to apply for access to any information about the Finding held by the College under section 46 of the WWC Act.

### **7.3.5 Disciplinary action**

As a result of the Finding, the College may take disciplinary action against the PSOA (including termination of employment).

In relation to any disciplinary action the College will give the PSOA:

- details of the proposed disciplinary action; and
- a reasonable opportunity to respond before a final decision on disciplinary action is made.

### **7.3.6 Confidentiality**

It is important when dealing with reportable allegations that the matter be dealt with as confidentially as possible.

The College requires that all parties maintain confidentiality during the investigation including in relation to the handling and storing of documents and records.

Records about reportable allegations against Employees will be kept in the Principal's office and will be accessible only by the Principal and College Vice Principal.

No Employee may comment to the media about an allegation of reportable conduct unless expressly authorised by the Principal to do so.

Employees who become aware of a breach of confidentiality in relation to a reportable allegation must advise the Principal.

### **7.3.7 Allegations involving the College Principal**

In any case where an allegation involves the College Principal pursuant to section 7.1.1 above, then the above procedures will be undertaken by the College President or his/her nominee with the necessary changes being made.

## **8.0 MANDATORY REPORTING - Reported to Department of Communities and Justice (DCJ)**

### **8.1 Mandatory Reporter Defined**

a '*mandatory reporter*' is a Teacher or another Employee:

- a person who holds a management position in the College whose duties include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, or residential services, wholly or partly, to children; or
- a person in religious ministry, or a person providing religion-based activities to children, or
- a registered psychologist providing a professional service as a psychologist.

The College Principal is responsible for annually informing each mandatory reporter of their obligations and the processes that the College has in relation to mandatory reporting (refer to section 9 below).

A mandatory reporter must report where they have reasonable grounds to suspect that a child (under 16 years of age) is at risk of significant harm, i.e. if current concerns exist for the safety, welfare or well-being of the child or young person (see 8.2 below for a list of circumstances that would qualify as an identified risk of significant harm).

The *risk of significant harm* may arise from the conduct of a parent/caregiver, employee or another person.

## 8.2 Mandatory Reporting – meaning of ‘*risk of significant harm*’ (ROSH)

A child or young person is ‘*at risk of significant harm*’ if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent (see Note below), of any one or more of the following circumstances:

- the child’s or young person’s basic physical or psychological needs are not being met or are at risk of not being met;
- the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care;
- in the case of a child or young person who is required to attend school in accordance with the Education Act 1990 —the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act;
- 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 or other caregiver 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; or
- the child was the subject of a pre-natal report under section 25 of the Care and Protection Act and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

### Note:

- ‘*significant*’ in the phrase ‘*to a significant extent*’ means that which is sufficiently serious to warrant a response by a statutory authority irrespective of a family’s consent.
- ‘*significant*’, 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 well-being.

- The significance can result from a single act or omission or an accumulation of these.

## 9.0 MANDATORY REPORTING OF CHILDREN AT RISK OF SIGNIFICANT HARM

*The Children and Young Persons (Care and Protection) Act (Care and Protection Act)* provides for mandatory reporting of children at risk of significant harm (ROSH) (refer to section 8.2 above).

All teachers are mandatory reporters. Other Employees may also be mandatory reporters. Any queries about whether other Employees are mandatory reporters should be directed to the College Principal or if he/she is not available, the College Vice Principal.

A mandatory reporter will meet their obligation in 9.1 below, if they report to the relevant Head of School, who will liaise with the College Principal or if he/she is not available, the College Vice Principal.

This centralised reporting model ensures that a person has all of the information that may be relevant to the circumstances of the child at risk of significant harm and addresses the risk of the College not being aware of individual incidents that amount to cumulative harm.

### 9.1 Mandatory Reports to the Department of Communities and Justice (DCJ)

A mandatory reporter must, where they have reasonable grounds to suspect that a child (under 16 years of age) is at risk of significant harm (see section 8.2 above), report to the relevant Head of School, or the College Principal or if he is not available, the College Vice Principal, for reporting to the DCJ), as soon as practicable. The report must include the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

In addition, the College may choose to make a report to the DCJ where there are reasonable grounds to suspect that a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety, welfare and well-being of the young person.

#### 9.1.1 Reasonable grounds

**'reasonable grounds'** refers to the need to have an objective basis for suspecting that a child or young person may be at risk of significant harm, based on:

- first-hand observations of the child, young person or family
- what the child, young person, parent or another person has disclosed
- what can reasonably be inferred based on professional training and / or experience.

**'reasonable grounds'** does not mean a person is required to confirm their suspicions or have clear proof before making a report.

#### 9.1.2 Significant Harm

A child or young person is *'at risk of significant harm'* if current concerns exist for the safety, welfare or well-being of the child or young person (see section 8.2 above for a listing of circumstances that would qualify as an identified risk of significant harm)

## 9.2 Process for mandatory reporting of risk of significant harm

### 9.2.1 Employee's Responsibilities

**Employees must raise concerns** about a child or young person who may be at risk of significant harm with the relevant Head of School as soon as possible, to discuss whether the matter meets the threshold of *'risk of significant harm'* and the steps required to report the matter.

However, if there is an immediate danger to the child or young person and the relevant Head of School or the College Vice Principal or Principal is not able to be contacted, Employees should contact the Police and/or the Child Protection Helpline (13 21 11) directly and then advise the relevant Head of School, College Vice Principal and the Principal as soon as possible.

**Employees are not required to, and must not, undertake any investigation of the matter.** Employees are not permitted to inform the parents or caregivers that a report to the DCJ has been made.

**Employees are required to deal with the matter confidentially** and only disclose it to the persons referred to above or as required to comply with mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this policy but could potentially result in civil proceedings for defamation.

### 9.2.2 The College's Responsibilities

In general, the relevant Head of School will report matters of risk of significant harm to the DCJ and, where necessary, the Police.

## 10.0 COMPLIANCE and RECORDS

The College Principal monitors compliance with this policy and ensures the secure maintenance of school records relevant to this policy, which records include:

- a register of Employees who have read and acknowledged that they have understood this policy, maintained by the People and Culture Team (**P&CT**);
- working with children check (**WWCC**) clearance verification (**Clearance**) (refer to section 11 below), maintained by the P&CT;
- mandatory reports to the Department of Communities and Justice (**DCJ**), previously known as Family and Community Services (refer to section 8.1 below), maintained by the College Principal; and
- reports of reportable conduct allegations, the outcome of reportable conduct investigations, and/or criminal convictions (refer to section 4 below), maintained by the College Principal.

## 11.0 WORKING WITH CHILDREN

### 11.1 General

The *Child Protection (Working With Children) Act 2012 (NSW) (WWC Act)* protects children by requiring a worker to have a Clearance or current application for a WWCC, in order to engage in child related work (refer to section 11.2 below). Failure to do so may result in a fine or imprisonment.

A Clearance is authorisation under the WWC Act for a person to engage in child-related work (as defined in section 11.2 below).

The Office of the Children’s Guardian (**OCG**) is responsible for determining applications for a Clearance, which involves a national criminal history check and review of reported workplace misconduct findings. The result is either to:

- grant a Clearance (generally valid for 5 years); or
- refuse a Clearance (further applications cannot be made for 5 years).

In addition, the OGC may impose an interim bar on engaging in child related work for applicants or Clearance holders.

Clearance holders are subject to ongoing monitoring by the OGC.

### 11.2 Child-related work

“*child-related work*” involves direct contact by the worker with a child or children and that contact is a usual part of and more than incidental to, the work. Child related work includes, but is not limited to, work in the following sectors:

- early education and child-care including education and care service, child-care centres and other child care;
- Schools and other educational institutions and private coaching or tuition of children;
- religious services;
- residential services including boarding schools, homestays more than three weeks, residential services and overnight camps;
- transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings; and
- counselling, mentoring or distance education not involving direct contact.

Any queries about whether roles or duties involve child-related work should be directed to the College Vice Principal.

### 11.3 Responsibilities Relating to Clearances

#### 11.3.1 Employees

Employees who engage in child-related work and eligible volunteers (including those volunteers working at overnight camps), are required to:

- hold and maintain a valid Clearance;
- not engage in child-related work at any time that they are subjected to a bar (interim or otherwise);
- report to the College Vice Principal if they are no longer eligible for a Clearance, or the status of their Clearance changes, or they are notified by the OCG that they are subjected to a risk assessment; and

- notify the OCG of any change to their personal details within 3 months of the change occurring. Failure to do so may result in a fine.

It is an offence for an Employee to engage in child-related work when they do not hold a Clearance or if they are subject to a bar.

### 11.3.2 Volunteers

All eligible volunteers are required to:

- be aware of and follow the expectations of the Volunteering Protocols for Moriah College;
- be aware of and follow the expectations of conduct expressed in the Staff Code of Conduct; and
- acknowledge that they have read, understood and signed the Statement of Understanding relating to the Volunteer Protocols.

### 11.3.3 The College

Through the **P&CT**, the College, is required to:

- verify online and record the status of each child-related worker's Clearance;
- only employ or engage child-related workers or eligible volunteers who have a valid Clearance; and
- advise the OCG of the findings they have made after completing a reportable conduct investigation, including whether they have made a finding of reportable conduct. A finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault must be referred to the OCG's Working with Children Check Directorate (**WWCC Directorate**). It is an offence for an employer to knowingly engage a child-related worker who does not hold a WWCC clearance or who has a bar.
- monitor the validity of each child-related worker's WWCC and advise when expiry is approaching (**Appendix 5**).

### 11.3.4 Clearance Application or Renewal

An application for a Clearance or a renewal, can be made through Service NSW. If the OCG grants or renews a Clearance, the Clearance holder will be issued with a number which is to be provided to the **P&CT** ([hr@moriah.nsw.edu.au](mailto:hr@moriah.nsw.edu.au)) to verify the WWCC status of a child-related worker.

### 11.3.5 Clearance Refusal or Cancellation

The OCG can refuse to grant, or cancel, a Clearance, in which case the former Clearance holder cannot engage in child-related work and is not able to apply for another Clearance for five years. Once notified by the OGC, the College must remove such persons from child-related work.

### 11.3.6 Interim bar

The OCG may issue an interim bar, for up to 12 months, to high risk individuals to prevent them from engaging in child-related work while a risk assessment is conducted. If an interim bar remains in place for six months or longer, it may be appealed to the Administrative Decisions Tribunal.

Not everyone who is subject to a risk assessment will receive an interim bar; only those representing a serious and immediate risk to children.

### 11.3.7 Disqualified person

A disqualified person is a person who has been convicted, or against whom proceedings have been commenced, for a disqualifying offence outlined in Schedule 2 of the WWCC Act. A disqualified person cannot be granted a Clearance and is therefore unable to engage in child related work.

## 12.0 TRAINING

- 12.1 All Employees must participate in annual child protection training and additional training, as directed by the Principal (**Appendix 7**)
- 12.2 The College through the College Vice Principal will maintain procedures to inform Employees annually of their legal responsibilities relating to child protection and other relevant College expectations including:
- mandatory reporting;
  - reportable conduct;
  - working with children checks; and
  - professional boundaries.

## 13.0 CRIMINAL OFFENCES

In 2018 the Crimes Act was amended to adopt recommendations of the *Royal Commission into Institutional Responses to Child Sexual Abuse*. The new offences have been enacted to prevent child abuse and to bring abuse that has already occurred, to the attention of the Police.

### 13.1 Failure to protect offence

An adult working in a school, commits an offence if they know another adult working there poses a serious risk of committing a child abuse offence and they have the power to reduce or remove the risk, but they negligently fail to do so either by act and/or omission.

This offence is targeted at those in positions of authority and responsibility working with children, who turn a blind eye to a known and serious risk, rather than using their power to protect children.

### 13.2 Failure to report offence

Any adult, commits an offence if they know, believe or reasonably ought to know, that a child abuse offence has been committed and fail to report that information to Police, without a reasonable excuse. A reasonable excuse includes where the adult has reported the matter to the Principal and is aware that the Principal has reported the matter to the Police.

If the matter involves a reportable allegation, there is no discretion not to notify. When reportable allegations are identified and addressed immediately, an appropriate response may be to provide training and support to the Employee, which will assist to ensure the conduct does not reoccur. Left unreported, however, the conduct involved in the reportable allegation may escalate and the potential consequences for the Employee can be more severe. This may also place children at risk.

### 13.3 Immunity from liability ('Whistleblower' provisions)

The CG Act provides protection to any person who, acting in good faith, gives or proposes to give a report, complaint, or notification to the College Principal or the OCG. The person is protected from retribution from the College and has immunity from liability for having made the report, complaint or notification.

Where a person provides information or documents to the College or as part of any investigation the information or documents will not be admissible against the person who provided them in any proceeding to the extent that they tend to incriminate or expose the individual to penalty excluding any proceeding about or relating to the false or misleading nature of the information.

# APPENDIX 1

## PROCEDURES PRIOR TO INVESTIGATING A REPORTABLE ALLEGATION

(Refer to section 7.2 above)

### A1 Notifying the OCG:

**A1.1** Within 7 business days of becoming aware of a reportable allegation or reportable conviction against an Employee of the entity, the College Principal, as the Head of Entity under the CG Act, must, (unless the College Principal has a reasonable excuse), submit a 7-day notification form to the OCG.

**A1.2** The notification should include the following information:

- (a) that a report has been received in relation to an Employee of the College;
- (b) the type of conduct referred to in the reportable allegation;
- (c) the name of the Employee;
- (d) the name and contact details of the College and the College Principal;
- (e) for a reportable allegation, whether it has been reported to Police;
- (f) if a report has been made to the Child Protection Helpline or the ChildStory

Reporter website, that a report has been made; and

- (g) the nature of the College's initial risk assessment and risk management action (e.g. whether the Employee has been moved); and
- (h) any other information prescribed by the regulations.

The notice must also include the following, if known:

- (i) details of the reportable allegation, or conviction considered to be a reportable conviction;
- (j) the date of birth and working with children number, if any, of the Employee the subject of the report;
- (k) the police report reference number (if Police were notified);
- (l) the report reference number if reported to the Child Protection Helpline; and
- (m) the names of other relevant entities that employ or engage the Employee, whether or not directly, to provide a service to children, including as a volunteer or contractor.

### A2 Obligations to disclose relevant information to children, parents and carer

**A2.1** Unless it can be demonstrated that it is not in the public interest to do so, the College Principal is required by legislation to disclose 'relevant information' to the child to whom the information relates, the parent of the child or an authorised carer who provides out of home care to the child.

'*relevant information*' is defined under the CG Act to mean information about:

- the progress of the investigation
  - the findings of the investigation
  - action taken in response to the findings
- but the amount of information to be shared is not specified in legislation.

The public interest consideration applies to decisions:

- whether to disclose information at all;
- when to disclose information;
- how much information to disclose; and
- how to disclose information.

A best practice model will involve a case-by-case and dynamic approach that considers all the relevant factors known to the entity at regular points in time.

A point-in-time decision not to disclose information under section 57 of the CG Act, will be revisited as circumstances change.

The kinds of public interest factors that may weigh against disclosure of information – or the disclosure of information at a particular point in time – include that disclosure may:

- not be in the interests of the child’s safety, welfare or wellbeing;
- jeopardise a current or future police investigation or other proceedings (such as a coronial inquiry, Children’s Court proceedings, a statutory child protection response, the reportable conduct investigation);
- endanger a person’s health or safety;
- result in a waiver of legal privilege;
- result in unfairness to the Employee to an extent that is not outweighed by the interest of the relevant party; and
- enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained.

**Note:** this is not an exhaustive list.

If the relevant child is of an age to object to their parent or carer being informed of the matter, there would need to be compelling reasons to act against their wishes.

Depending on the child’s age and whether or not they are the source of the reportable allegation, it may appropriate to raise with the child the intention to disclose to the child’s parent or carer in the first instance.

It is envisaged that both initial and final information would be presented in person with adequate supports in place when doing so.

The NSW Reportable Conduct Scheme - Fact Sheet 7 *Disclosing information to children, parents and carers* provides up to date guidance regarding this process.

## APPENDIX 2

### A3.1 PROCESS FOR INVESTIGATING A REPORTABLE ALLEGATION

(Refer to sections 7.2, 7.3.3 & 7.3.4 above)

**A3.1.1** The College Principal is responsible for ensuring that the following steps are taken to investigate a reportable allegation:

**A3.1.2** Once a reportable allegation against an Employee is received, the College Principal is required to:

- a) as soon as practicable, determine whether the allegation involves reportable conduct;
- b) assess whether the DCJ or the Police need to be notified (ie, if reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence). If the DCJ or the Police have been notified, seek clearance from these statutory agencies prior to the College proceeding with any investigation of the reportable allegation;
- c) notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by the DCJ or Police);
- d) notify the OCG within 7 business days of receiving the reportable allegation;
- e) carry out a risk assessment and take action to reduce/remove risk, where appropriate;
- f) provide an initial letter to the PSOA advising them that a reportable allegation has been made against them and the College's responsibility to investigate the matter under section 34 of the CG Act; and
- g) as soon as practicable, investigate, or appoint someone (**Investigator**) to investigate the reportable allegation.

**Note:** The NSW Reportable Conduct Scheme Fact Sheet 4 *Planning and conducting an investigation* provides additional advice for schools needing to conduct such investigations.

### A3.2 Investigation principles, steps and findings

During the investigation of a reportable allegation the College or the Investigator will:

- a) follow the principles of procedural fairness;
- b) inform the PSOA in writing of the substance of any allegations made against them, at the appropriate times in the investigation;
- c) provide the PSOA with a reasonable opportunity to respond to the allegations either in writing or at interview;
- d) interview relevant witnesses and gather relevant documentation;
- e) consider any response provided by the PSOA;
- f) make reasonable enquiries or investigations before making a decision;
- g) avoid conflicts of interest;
- h) conduct the investigation without unjustifiable delay;
- i) handle the matter as confidentially as possible;
- j) provide appropriate support for all parties including the child/children, witnesses and the PSOA; and
- k) inform the PSOA of any preliminary finding in writing and provide them with a further opportunity to respond or make a further written submission prior to making a Finding in accordance with the OCG guidelines.

**Note:** The steps outlined above may need to be varied on occasion to meet particular circumstances. For example, it may be necessary to take different steps where the matter is also being investigated by the DCJ or Police.

If the reportable allegation involves an allegation of a criminal offence, it will generally require a report to Police and any police investigation will usually have priority over other investigations. Where police are involved, any investigation by the College Principal or the CG may need to be suspended until the police advise it may proceed. However, the College Principal still needs to notify the OCG about the allegation and take action (in consultation with the policy) to manage any risks to children.

A PSOA may have an appropriate support person with them during the interview process. Such a person is there for support only and as a witness to the proceedings and not as an advocate or to take an active role.

**A3.3** Following the completion of the investigation, the College Principal will decide on the disciplinary action if any, to be taken against the PSOA.

## APPENDIX 3

(Refer to section 7.3.3 above)

### A4 REPORTING

**A4.1** The College Principal must within 30 days of receiving a reportable allegation:

- make a report (Entity Report) to the OCG to be found on this link [website](#); or
- if no Finding has yet been made, provide an interim report to the OCG.

**A4.2** The Entity Report must be accompanied by any copies of documents in possession that are relevant to the report, including transcripts of interviews and copies of evidence and must include the following-:

- (a) in relation to a reportable allegation -
  - (i) information about the facts and circumstances of the reportable allegation, and
  - (ii) the findings the Principal has made about the reportable allegation after completing the investigation, including whether the Principal has made a finding of reportable conduct, and
  - (iii) an analysis of the evidence and the rationale for the Finding,
- (b) in relation to a conviction considered to be a reportable conviction -
  - (i) information about the conviction and
  - (ii) the determination the Principal has made about the conviction, including whether the Principal has determined the conviction is a reportable conviction,
- (c) a copy of any written submission made by the Employee,
- (d) information about what action has been, or will be, taken in relation to the reportable allegation or conviction considered to be a reportable conviction, including the following:
  - (i) remedial or disciplinary action in relation to the Employee,
  - (ii) whether information about the matter has been referred to a different entity,
  - (iii) changes to systems or policies,
  - (iv) if no further action is to be taken, that no further action is to be taken,
- (e) the reasons for the action taken, including taking no further action, and
- (f) any other information prescribed by the regulations.

**A4.3** Submission of an interim report must be accompanied by copies of documents in the College's possession, including transcripts of interviews and copies of evidence and include:

- a) a reason for not providing the final report within 30 days and an estimated time frame for completion of the report.
- b) specific information, including (if known):

- the facts and circumstances of the reportable allegation;
- any known information about a reportable conviction;
- action taken since the OCG received the web-based 7- day notification form about the reportable allegation or reportable conviction;  
<https://ocg.nsw.gov.au/organisations/reportable-conduct-scheme/reportable-conduct-notification-forms>
- further action the College Principal proposes to take in relation to the reportable allegation or reportable conviction, including if the College Principal proposes to take no further action;
- the reasons for the action taken and the action proposed to be taken or the reasons for the decision to take no further action; and
- other information prescribed by the regulations.

## APPENDIX 4

### A5 RECORD KEEPING ADVICE FROM THE OCG

(Refer to section 7.3.3 above)

**A5.1** When an allegation is made, it is important to document the following information:

- a) the allegation (an accurate and as close to verbatim account as possible of what has been said and by whom)
- b) the entity's initial response to the person making the allegation; the alleged victim(s); and the Employee who is the subject of the allegation
- c) notifications considered or made to Police of a suspected criminal offence or to a Child Wellbeing Unit of risk of harm or the Department of Communities and Justice of a child who may be at risk of significant harm
- d) the outcome of any reports made to other agencies
- e) a plan detailing how the investigation is to be carried out
- f) the initial risk assessment, including what the identified risks are and the arrangements to manage those risks
- g) decisions made about the Employee and the action taken in relation to the child or Employee (eg change in duties, support or counselling)
- h) all interviews, including details of the questions and responses, the location of the interview, who was present, the start and finish times of the interview.  
*Where possible, records should be verbatim, verified, signed and dated by all involved.*
- i) any decisions made, both during and at the end of the investigation, including their rationale, the position and name of the person making the decision and the date the decision was made
- j) any personal contact, discussions or emails with anyone about the matter including the date, details of the discussions, questions, advice and outcome, the name of the person making the contact, details of their position and agency and the reason for the contact
- k) a summary report that details the allegation, the investigation process – including how the investigation had regard to the principles of procedural fairness – the findings in relation to each allegation (including the rationale for the finding) and
- l) 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.

**Notes:**

- Records relating to the allegation will be kept on the Employee's personnel file.
- Some information that may be pertinent to the care of the alleged victim or management of the Employee, may need to be copied to their respective files.
- All records will be kept confidentially and securely with access granted only to those who have a need to know about the situation.

## APPENDIX 5

### WORKING WITH CHILDREN CHECKING PROCEDURES

All Working With Children Checks are verified through the People & Culture Team by the HR Officer via the Office of The Children's Guardian's website.

#### PROCESS

P&CT will receive notification that any of the following are commencing:

- New staff member
- Casual staff member
- Volunteer
- Contractor

Once P&CT receives this information, they will request the following details:

- Full legal name
- Date of birth
- Working With Children Number

The P&CT will then:

- Log into the Office of The Children's Guardian's website to verify the details.
- The details are stored on Synergetic, school's database and Logged in Register.
- The details include – name, date of birth, date of expiry, date of verification and Working With Children number.
- These details are kept for 7 years after the person has left the College.

Every term the P&CT will run a report that is linked in Synergetic to know who's Working With Children's checks will be expiring and the P&CT will then notify the direct staff member or the staff member's line manager if it is a casual.

## APPENDIX 6

### Procedures for Child Protection Training/Record Keeping

#### Annual Staff Training

As part of the Annual January Staff Development days, staff are sent the following mandatory requirements (with relevant links and attachments) to be completed in the first few weeks of Term 1 -

- AIS online 'Identifying and Responding to Children and Young People at Risk' course.
- Acknowledging that they have read and understood the Moriah College Child Protection Policy and Procedures and have signed the Acknowledgement.

#### Records

All records are entered onto a spreadsheet (Master lists for each campus) by the Accreditation & Professional Practice Administrator; signed acknowledgements and certificates are kept in a locked filing cabinet in the individual staff member's file.

The Accreditation & Professional Practice Administrator keeps track of all requirements that must be fulfilled by all staff.

#### New Staff who are commencing during the year

As part of our induction process all new staff receive a 'Welcome letter' upon commencement of their employment (by our P&CT) outlining the mandatory requirements, which include:

- AIS online 'Identifying and Responding to Children and Young People at Risk' course.
- Acknowledging that they have read and understood the Moriah College Child Protection Policy and Procedures and have signed the Acknowledgement.

#### Records

All records are entered onto a spreadsheet (Master lists for each campus) by the Accreditation & Professional Practice Administrator; signed acknowledgements and certificates are kept in a locked filing cabinet in the individual staff member's file.

The Accreditation & Professional Practice Administrator keeps track of all requirements that must be fulfilled by all staff.

## APPENDIX 7

### Child Protection Policy and Procedures For Employees of Moriah College

#### Child Protection Acknowledgement

I, \_\_\_\_\_ (insert Full Name) being employed or engaged by the College in the following role \_\_\_\_\_ (insert position) hereby ACKNOWLEDGE that:

- I have accessed the above College Child Protection Policy and Procedures (Policy) on eLY;
- I have read and understood the Policy and;
- I am obliged to and will comply with the Policy, including any amendments made by the College from time to time.

Signed \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

This page is to be completed and returned to

**P&CT** ([hr@moriah.nsw.edu.au](mailto:hr@moriah.nsw.edu.au))