

Reportable Conduct of Staff, Volunteers and Others

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MIT'S Purpose: Supporting Indigenous students to achieve their educational aspirations in Melbourne

MIT'S Vision: Empowered Indigenous students inspiring strong communities

MIT'S Values: Respect Courage Culture Care

1 Source of Obligation

The Child Wellbeing and Safety Act 2005 (Vic) (the Act) requires School to investigate and report to the Commission for Children and Young People (Commission) allegations of 'employee' reportable conduct or misconduct that may involve reportable conduct.

MIT'S has developed the following Reportable Conduct of Staff, Board members, Volunteers and Others Policy which sets out our systems for enabling persons to report reportable conduct and for such reports to be investigated and responded to. This policy is made available to all staff, Volunteers, Contractors, members of the Board, families and students via our public website and staff intranet.

The Commission's website provides additional guidance and materials which assist MIT'S to understand and meet their obligations under the Act.

2 Who is an Employee?

For the purposes of the Act, 'employee' is defined as a person aged 18 years or over who is:

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

Of relevance to MIT'S, the following people are considered to be employees:

- Board of Directors;
- The Executive Director;
- Staff members;
- Volunteers;
- Third Party Contractors; and
- External Education Providers.

For the purposes of this policy, all of the above are referred to collectively as "staff" or "staff members".

3 What is Reportable Conduct?

Reportable conduct is defined in the Act to mean:

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

“Sexual misconduct” includes:

- behaviour, physical contact or speech or other communication of a sexual nature, for example 'sexting';
- inappropriate touching or physical contact;
- grooming behaviour; and
- voyeurism.

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

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

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

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

- hitting/kicking/punching;
- pushing/shoving/grabbing/throwing/shaking;
- using an object to hit or strike; and
- using inappropriate restraint/excessive force.

Physical violence does not include:

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

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

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

- patterns of out-of-character behaviour;
- regression in behaviour;
- distress and anxious behaviours; and
- other physical symptoms, such as self-harm.

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

Examples of emotional or psychological harm may include:

- exposure to violence or threats of violence;
- self-destructive behaviour;
- antisocial behaviour;
- persistent hostility/rejection;
- humiliation/belittling; and
- scapegoating.

It will not be reportable conduct if:

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

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

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

Examples of different types of neglect include:

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

Refer to Child Abuse - Definitions and Key Risk Indicators for more information about sexual offences, grooming, physical violence, emotional or psychological harm and neglect.

Our Child Safety Code of Conduct outlines expected standards of behaviour of staff members at MITS when interacting with children and young people. The commission of conduct which breaches the Child Safety Code of Conduct will constitute reportable conduct under this policy.

4 Who Must be Notified?

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

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

- reportable conduct; or
- misconduct that may involve reportable conduct

whether or not the conduct/misconduct is alleged to have occurred in the course of the person's employment at MITS.

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

5 Who Must Notify?

Under the Act, any person may disclose a reportable allegation to the Commission (section 16L). A disclosure can be made using an online form available from the Commission's website, by phone or by letter.

At MITS, the "head" of MITS must notify the Commission (section 16M). It is a criminal offence if the head fails, without reasonable excuse, to comply with this obligation. The Act does not define what would be a "reasonable excuse" however section 16M(5) provides an exemption if the head honestly and reasonably believed that another person had notified the Commission.

The "head" is defined in the Act to include the chief executive officer or principal officer of the entity.

The definition of an "entity" in the Act requires MITS to consider its governance structure and operations to determine who the "head" will be.

The head of MITS must make a report using an online form available from the Commission's website.

In practice, the head is the person who is primarily responsible for MITS's compliance with the reportable conduct obligations under the Act. Guidance from the DHHS states that a school principal may be a head.

At Melbourne Indigenous Transition School, the head is the **Executive Director**.

6 Executive Director and Delegation

The Executive Director is responsible for ensuring MITS complies with the reportable conduct obligations under the Act, however the Executive Director may delegate parts of their responsibility to facilitate the implementation of this policy. Guidance from the Commission supports the introduction of systems to assist the Executive Director to fulfil their obligations under the Act.

It is important to note that while Child Safety Officers do not have a formal role under the Act (unless they are the 'head' of the school), the Executive Director may seek their assistance in the administration of the procedures in this policy. For example, a Child Safety Officer may assist the Executive Director to compile the information required to report to the Commission.

The Executive Director must ensure that delegation procedures are in place if the Executive Director knows they will be absent or is unexpectedly absent from MITS. If a person has information supporting a reportable allegation while the Executive Director is away, MITS must be able to notify the Executive Director to ensure that the Executive Director is made aware of the reportable allegation so that they can respond as soon as practicable.

Despite any delegation which may occur, the Executive Director will remain responsible and accountable for their responsibilities under the Act.

7 Reportable Conduct and Other Reporting Obligations

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

- Mandatory Reporting obligation under the Children, Youth and Families Act 2005 (Vic);
- Obligation to Report a Sexual Offence obligation under the Crimes Act 1958 (Vic); and

- Conduct that is Reportable to the Victorian Institute of Teaching under the Education and Training Reform Act 2006 (Vic).

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

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

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8 Internal Reporting of Reportable Allegations

As soon as a person, including a staff member, forms a reasonable belief that a staff member at MITS has engaged in reportable conduct or misconduct that may involve reportable conduct (the reportable allegation), the person must notify Executive Director. The report may be made verbally or in written form using MITS's Child Safety Reporting Template.

While this Template was created for reporting abuse, rather than reportable conduct, it is an excellent way to record as much information about the incident/s as is available.

Where the reportable allegation involves the Executive Director, the staff member must notify the Chair of the Board or the Commission using an online form available from the Commission's website, by phone or by letter.

Where a verbal report is made by a staff member, it should be followed up with a written report provided to the Executive Director within 48 hours of the verbal report.

Where a staff member has a reasonable belief that the Executive Director has engaged in reportable conduct, verbal and written reports should be given to the Chair of the Board of Directors or the Commission using an online form available on the Commission's website, by phone or by letter.

9 Reporting to the Commission

9.1 The Executive Director or Chair of the Board

Where the Executive Director receives a reportable allegation from any person, including a staff member, they must notify the Commission within three business days.

Where the reportable allegation involves the Executive Director, the person must notify the Chair of the Board who will become the 'head of MITS' for the purposes of reporting the reportable allegation.

There are two stages of reporting.

The Commission must be notified by the Executive Director in writing of:

- the reportable allegation as soon as possible, and in any event within three business days of the Executive Director being notified of the reportable allegation (Stage One Report); and
- the proposed next course of action (see below), as soon as practicable, and within 30 days of becoming aware of the reportable allegation (Stage Two Report).

9.2 Stage One Report

The report to the Commission must state:

- that a reportable allegation has been made against a staff member;

- the name (including any former name and alias, if known) and date of birth, if known, of the staff member;
- whether the Victoria Police has been contacted about the reportable allegation;
- the name, address and telephone number of MITS; and
- the name of the Executive Director.

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

If the staff member is a registered teacher and the misconduct involves a charge, conviction or finding of guilt of a sexual offence, MITS must notify the Victorian Institute of Teaching (VIT) immediately under Conduct that is Reportable to the Victorian Institute of Teaching. The timing of making a Stage One Report to the Commission under this policy will coincide with the timing of a report made to the VIT.

9.3 Stage Two Report

The report to the Commission must state:

- detailed information about the reportable allegation;
- whether or not MITS proposes to take any disciplinary or other action in relation to the staff member and the reasons why it intends to take, or not to take, that action; and
- any written submissions made to the Executive Director concerning the reportable allegation that an employee wished to have considered in determining what, if any disciplinary or other action should be taken in relation to the staff member.

Any allegation of child abuse, including physical violence, significant emotional or psychological abuse, sexual offences or significant neglect, must be reported to the Victorian Police. A Police investigation will take priority over any investigation conducted by MITS under this policy.

9.4 What Happens After a Report to the Commission is Made?

After the Executive Director or the Chair of the Board has made a report to the Commission, they must ensure that an appropriate investigation of the reportable allegation is conducted.

The investigation can be conducted by the Executive Director or the Chair of the Board (if the allegation involves the Executive Director) or MITS can appoint a regulator (for example the Victorian Institute of Teaching) or an independent investigator. A regulator engaged by MITS for the purposes of an investigation may also appoint an independent investigator.

The Executive Director must notify the Commission of who will be conducting the investigation.

The investigation must be conducted in accordance with the rules of procedural fairness and natural justice. For example, the investigation should be conducted without bias and the person against whom the allegation is made should be given the right to respond. Refer to the Commission's Information Sheet 4 Investigation overview for more information on what to consider when conducting an investigation.

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

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

The Executive Director or Chair must give the Commission:

- a copy of the findings of the investigation and the reasons for those findings;
- details of any disciplinary or other action that the Executive Director (or Chair) proposes to take in relation to the staff member and the reasons for that action; and

- if the Executive Director (or Chair) does not propose to take any disciplinary or other action in relation to the staff member, the reasons why no action is to be taken.

Under the Act, a staff member may seek a review by the Commission of a finding made at the conclusion of an investigation.

10 Information Sharing

10.1 Children and Parents/Carers

Under the Act, the Executive Director may disclose:

- information about the progress of the investigation;
- the findings, reasons for the findings and the recommendations made at the conclusion of the investigation;
- an action taken in response to those findings;

to:

- the child who is the subject of the reporting allegation;
- a parent
- a carer; or
- the DHHS if the child is under its care.

10.2 Schools, the Commission and Others

Under the Act, the Executive Director may disclose information in relation to:

- a reportable allegation;
- a concern that reportable conduct has been committed;
- the investigation of a reportable allegation or concern about reportable conduct;
- the findings of an investigation and the reasons or recommendations made at the conclusion of the investigation; or
- any action taken in response to those findings;

to:

- the Commission;
- the head of another entity governed by the Act, such as another school;
- a regulator;
- the Chief Commissioner of Police;
- if necessary for the purposes of an investigation, an independent investigator;
- if necessary for the purposes of a Working with Children Check, the Secretary to the Department of Justice and Regulation; and
- a relevant Minister.

11 Publication of Information

MITS must not publish information that would enable the identification of:

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

The Act provides more information on the meaning of 'publish', which includes making the information publicly available in writing or email.

12 Powers of the Commission

The Commission has broad powers under the Act in relation to investigating a reportable allegation at MITS. The Commission may visit MITS, inspect documents and interview staff members or children involved in the reportable allegation.

MITS must assist the Commission in all reasonable aspects of its investigation.

13 Record Keeping

MITS 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 Policy.