

בס"ד



# CONDUCTING AN INTERNAL INVESTIGATION & REPORTABLE CONDUCT

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## CONDUCTING AN INTERNAL INVESTIGATION INTO ALLEGATIONS OF ADULT ABUSE OR MISCONDUCT

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The Organisation has a holistic framework for addressing the individual needs of all individuals, and including those with special needs and other unique areas of cultural diversity.

The Organisation is cognizant of ensuring the program and ethos complements the varying cultural domains of our communal population in the context of meeting the minimum standards of child safety and child protection.

Please read this policy in conjunction the other Child Protection Policies.

### Overview

This document outlines the approach taken by Mizrachi Organisation when allegations of child abuse or misconduct have been made.

The document outlines the child protection policy of the Mizrachi Organisation and all its subsidiary and legally associated entities.

Mizrachi aims to ensure any organisations utilising Mizrachi premises have robust child safety policies and procedures in place, and that Mizrachi will maintain systems to ensure their effective application.

This policy was compiled in response to our community's awareness of the significant harm and damage caused by child abuse. This policy aims to educate its members about child abuse, and to provide guidance to all members of Mizrachi in the implementation of practices that minimize the risk of harm to children and promotes their wellbeing.

This policy also outlines the processes involved in reporting abuse and our legal obligations in reporting child abuse to the authorities

This policy is based on Victorian Child Safe Standards<sup>1</sup>.

All Victorian agencies that provide services to children and young people are currently based on these standards. These standards result from recommendations from the Betrayal of Trust inquiry and evidence about what is necessary to prevent child abuse.

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<sup>1</sup> Victorian Child Safe Standards, <http://providers.dhhs.vic.gov.au/child-safe-standards>

## Jewish Values Support Child Safety

Mizrachi upholds a number of Jewish values that support child safety. These values include:

1. Pikuach Nefesh – The principle that the preservation of human life is of primary importance. A person's physical safety and psychological safety are overriding priorities.
2. Kol Yisrael Arevim Zeh La'Zeh – The whole community has a collective responsibility for one another and therefore has a responsibility for the protection of children's safety.
3. Dina D'malkhuta Dina – The halachic rule that the law of the country is binding. In Australia there is specific legislation relating to child protection. Specifically, children need to be protected from harm and when abuse occurs the perpetrator must be held accountable. The Mizrachi Organisation rejects the application of 'Mesira' (not dobbing into authorities) to cases of child abuse.

## Legal Obligations

Please refer to the legal obligations as listed in the *Mizrachi Child Safe Policy 2018*.

## Policy Scope

The President of Mizrachi is the Head of the Organisation for the purposes of the Reportable Conduct Scheme.

Consistent with the Organisation's Child Protection and Reporting Policy, any disclosure made regarding alleged child abuse must be brought to the immediate attention of the President. The President will determine what action must be taken by following the guidelines as noted in this policy.

The President must:

- respond to a reportable allegation made against a worker or volunteer from the organisation, by ensuring that allegations are appropriately investigated
- report allegations which may involve criminal conduct to the police
- notify the Commission of Children and Young People (CCYP) of allegations within three business days after becoming aware of the allegation
- give the CCYP certain detailed information about the allegation within 30 days after becoming aware of the allegation
- after the investigation has concluded, give the CCYP certain information including a copy of the findings of the investigation
- ensure that the organisation has systems in place to:

- prevent reportable conduct from being committed by a worker or volunteer within the course of their employment
- enable any person to notify the head of a reportable allegation
- enable any person to notify the CCYP of a reportable allegation involving the head
- investigate and respond to a reportable allegation against a worker or volunteer from that organisation.

## Policy Definition

Please refer to the definitions as listed in the *Mizrachi Child Safe Policy 2018*.

## Internal investigations

If there is an allegation or reported observation of any wrongdoing, including physical harm the President is obliged to conduct an internal investigation.

Any internal investigation will be undertaken by the President or his delegate who must be a senior manager at least “once removed” from the alleged perpetrator.

To maintain impartiality it is important that the manager of the person against whom an allegation has been made is not an investigator in the matter.

If an allegation is criminal in nature, you **MUST** get clearance  
from Victoria Police before beginning the investigation.

## What is a reportable allegation investigation?

An investigation into a reportable allegation is a workplace investigation aimed at gathering and examining information to establish facts and make findings in relation to allegations of child abuse against an employee, volunteer or contractor. The investigation may also make recommendations about what disciplinary or other action should be taken (if any).

An effective investigation requires a systematic approach to assessing and managing an allegation, followed by a sound decision-making framework that enables procedural fairness for all parties in the investigation process.

## What rules govern an investigation process?

Mizrachi Organisation has its own policies and procedures in place to guide the investigation that includes a Code of Conduct and a policy managing complaints and grievances.

## Proof

A reportable conduct investigation should apply the ‘balance of probabilities’ as the standard of proof. This means that an investigation should consider whether it is more likely than not that reportable conduct has occurred. This may involve comparing conflicting versions of events given by different witnesses in order to decide which version is the more probable. However, investigations do not need to undertake a mathematical or

mechanical assessment of probabilities. Rather, a person conducting an investigation and making findings should actually be persuaded, based on the available information that reportable conduct has occurred before making such a finding.

During a reportable conduct investigation, the subject of an allegation may choose, but is not required, to give information or documents that support their version of events. However, the subject of an investigation is not obliged to prove or disprove any fact or issue that is being investigated.

### Procedural fairness

It is important that the procedures that you use when conducting an investigation are fair and reasonable. This will usually include ensuring that, before any findings are made or disciplinary action is taken, the subject of an allegation:

- is notified of any adverse information that is credible, relevant and significant
- has a reasonable opportunity to respond to that information

Procedural fairness does not require that employees or others must be notified of allegations when the Commission is first notified or that are plainly false. Consideration should also be given to when the subject of the allegation should be first told about an allegation, in order to ensure the investigation is not compromised but remains procedurally fair.

The Commission will seek any response or submissions made by the employee in response to allegations or actions, preferably in writing.

<b>Understanding the issues</b>	<p>Think about:</p> <ul style="list-style-type: none"> <li>• the type of conduct alleged</li> <li>• the seriousness of the alleged conduct</li> <li>• the context in which the alleged conduct occurred</li> <li>• a history of previous reportable allegations against the employee</li> <li>• the potential for continuing risk to children</li> <li>• Is the allegation possibly criminal in nature and required to be reported to Police.</li> </ul>
<b>Planning an investigation</b>	<p>To determine the most appropriate investigative approach for your organisation and the circumstances of the allegation, consider:</p> <ul style="list-style-type: none"> <li>• the powers necessary to investigate the allegation</li> <li>• the resources and skills that are required</li> <li>• the authorisation necessary to undertake the investigation</li> <li>• who will undertake the investigation and conflicts of interest</li> <li>• record keeping.</li> </ul>
<b>Coordinating an investigation</b>	<ul style="list-style-type: none"> <li>• Develop an investigation plan setting out the tasks that you will undertake, and the order in which they will be undertaken</li> <li>• Be clear about the powers that you will exercise and your reasons for exercising them</li> <li>• Identify areas requiring legal advice or expert advice (such as a medical practitioner)</li> <li>• The use an investigation log or running sheet in which activities undertaken are entered and dated.</li> </ul>

## Information gathering

Throughout the investigation, other allegations or concerns may be identified. If this occurs, this additional information should be considered in the context of your investigation and may add or change the allegations put to the employee.

Information relevant to your investigation can be gained from a number of key sources:

### Physical evidence

Documents such as policies, procedures, incident reports, records of employment, rosters, emails can provide vital evidence. Objects, such as mobile phones and computers, inspection of premises, or photographic records can also provide physical evidence.

### Direct evidence

Speaking with people including witnesses, organisational management, other staff members and the person the allegation has been made against enables you to gather their direct observations, experience and recollections of events or actions. Particular care must be taken when it is proposed that an investigation involve children or the person who is the subject of the allegation.

### Specialist knowledge

Information from people with specialist knowledge, such as a medical practitioner may be relevant to an investigation.

## Reporting the findings

The investigation report should document the terms of reference of the investigation, together with how the investigation was undertaken, what evidence and information was obtained, what conclusions were made and, if applicable, any recommendations for consideration.

The report should be provided to the President or their delegate to inform a decision as to the appropriate disciplinary or other action to be taken.

## Welfare and support

A reportable conduct investigation can be stressful and demanding on all people involved. Vital to the intent of keeping children safe is the need to ensure appropriate support to an alleged victim. Steps must be taken to mitigate risks that the alleged victim is not re-traumatised by the investigation process.

Mizrachi has appropriate welfare and support systems to support staff and volunteers.

## Where to get help

Organisations covered by the Reportable Conduct Scheme should contact the Commission for clarification and guidance, and to talk through any issues of concern.

- Telephone: 03 8601 5281
- Email: [childsafestandards@ccyp.vic.gov.au](mailto:childsafestandards@ccyp.vic.gov.au)

Further information is also available on the Commission for Children and Young People's website at [ccyp.vic.gov.au](http://ccyp.vic.gov.au).

## Reporting Requirements

As per the Child Wellbeing and Safety Act 2005, an employee/ volunteer aged 18 years or over who engages in, or is suspected of, engaging in 'reportable conduct', must be reported to the Commission of Children and Young People.

Reportable conduct includes:

- A sexual offence
- Sexual misconduct
- Physical violence
- Behaviour that causes significant emotional or psychological harm to a child
- Significant neglect of a child

'Misconduct' such as breach of professional standards or code of conduct does not constitute 'reportable' conduct. For example, driving a program participant home out of work hours constitutes misconduct, touching the program participant inappropriately on the trip home constitutes 'reportable conduct'. Such matters will be dealt with immediately as per the Mizrahi disciplinary policy.

It is not the responsibility of the President to determine if there is a reasonable belief that a members, staff member or volunteer has committed reportable conduct. Any individual (i.e. fellow staff, manager, volunteer) may form a reasonable belief that a member, staff member or volunteer has committed reportable conduct. Once this reasonable belief is identified, it is the President's responsibility to report the incident and take action as per the guidelines below, including updating the CCYP and providing any further information that relates to the outcomes on any internal investigations.

The President is responsible for:

1. Reporting allegations against members, staff or volunteers, to the Commission for Children and Young People strictly within 3 business days or 72 hours (non-compliance with the reporting timeframe is a criminal offence); and
2. Reporting conduct that is suspected to be criminal to Victoria Police.
3. All reports must be authorised by the President and issued via a web based form <https://ccyp.vic.gov.au/reportable-conduct-scheme/notify-and-update/> or via the manual forms <https://ccyp.vic.gov.au/reportable-conduct-scheme/reportable-conduct-scheme-forms/>
4. The President is responsible for issuing an update to the Commission within 30 days. This should include details about the allegation, disciplinary or other actions taken and the response of the person in question to the allegation. The updates can be provided to the Commission via the above listed forms.
5. There is a Memorandum of Understanding between Bnei Akiva and Mizrahi that clarifies who makes reports. Any reportable event on the 81 Balaclava Rd Campus must be brought to the attention of the President of Mizrahi so that he/she can make the report within 72 hours.



- The President is the nominated Head of Organisation for any event that occurs on the Balaclava Rd site.
- Bnei Akiva Reportable Conduct concerns that occur at any other location must be reported by the Merakez of Bnei Akiva as the Head of that Organisation.

### **Failure to Disclose and Protect**

The 'Failure to Disclose' offence (which came into effect on 27 October 2014), under the Crimes Amendment (Protection of Children) Act 2014, applies to any adult who holds a reasonable belief that a sexual offence has been committed by an adult against a child in Victoria. This applies to all adults, not just professionals who work with children, and requires that a report is made to the Police.

The 'Failure to Protect' offence (which came into effect on 1 July 2015) applies to persons within organisations who knew of/or aware of the risk of child sexual abuse perpetrated by someone in the organisation and had the capacity to reduce or remove such risk, but negligently failed to do so.

All Mizrahi members, staff and volunteers are obligated to report to the President any concerns regarding an adult linked with the organisation that poses a risk of committing a sexual offence against a child in the care, supervision or authority of Mizrahi. The legislation requires immediate action by the President ensure the child's safety is immediately secured and the risk reduced or removed (and not simply relocated to another location or role).

For further information on reporting and investigation allocations visits <https://ccyp.vic.gov.au/reportable-conduct-scheme/reporting-and-investigating-allegations/#TOC-1>

## The internal investigation procedures

1. If there is an allegation of wrongdoing, including physical harm, against an employee, volunteer or any other adult, that person will be immediately “stood down from his/her duties”, on full pay (where they are an employee), pending the outcome of an internal investigation. The employee will be advised by the President the reasons for the stand down and the likely time frame of the investigation. This will be confirmed in writing by the President as soon as practicable.
2. The person against whom an allegation has been made will be interviewed by the President and one other member of the Executive.
3. A follow-up meeting will be held with the person making the allegation/s in order to provide feedback regarding the interviews of the alleged perpetrator, any relevant witnesses or other evidence. At this meeting, it may be important to further clarify the allegations in order that any additional responses, clarifications, etc can be made.
4. Once all interviews have been concluded, the President, in conjunction with relevant senior staff and/or the Rabbi, will analyse all the information collected and deliberate the matters in order to ascertain whether or not the allegations can be substantiated or not.
5. Thereafter, the President, together with any relevant Senior Managers, will determine what specific consequences or actions should be taken, including but not limited to:
  - a. consulting with, reporting the matter to, or the investigation of the incident by an external agency
  - b. seeking legal advice where necessary
  - c. notifying the insurer, should the investigation reveal inappropriate behaviour by a staff member or volunteer that could result in legal action
  - d. relevant file notes, letters, cautions, warnings that need to be made
  - e. suspension or dismissal of the relevant employee
  - f. relevant counselling for the employee against whom an allegation has been made, and/or the person making the allegation, and/or the alleged victim
  - g. whether or not to withdraw the “suspension” of the relevant staff member and allow him/her to return to work
  - h. any other relevant action
  - i. The employee against whom the allegation was made will be advised verbally and/or in writing about the outcome of the investigation and any determined outcomes (as per above).
  - j. The person making the complaint will also be advised in writing about the substantiation or otherwise of their report.

6. At the conclusion of the investigation, all relevant documentation pertaining to the allegation and the investigation will be collated and filed in the employee's records and all members of the investigating team will debrief on the matter in order to identify improvements in College processes, policies or protocols and the procedure of the internal investigation.
7. At any point in an investigation, if new information comes to light which changes the scope of the investigation, this may necessitate a review of decision making or may require a report/further report to Police. Investigators should remain open and aware to the impact of new information which arises during the course of investigations. Advice should be sought from the Commission for Children and Young People as and when required during the course of an investigation.
8. In complying with the child safe standards, the College is mindful of the diversity of students and school communities and applies the following inclusion principles as part of each standard:
  - promoting the cultural safety of Aboriginal and Torres Strait Islander children
  - promoting the cultural safety of children from culturally and/or linguistically diverse backgrounds (CaLD)
  - promoting the safety of children with a disability.

## Policy Review

This policy is reviewed annually. The next review date is March 2020

## Additional policies

- Mizrahi Child Safe Policies
- Mizrahi Reporting Child Abuse and Neglect Policy