MEMORANDUM TO PRINCIPALS AND TEACHERS CONCERNING CHILD PROTECTION

Our Catholic schools and other similar centres offer us privileged opportunities for the evangelisation and care of youth.

We are pastorally concerned for all our students.

We respect the uniqueness and dignity of each student.

We recognise that parents have the prime responsibility for the education of their children.

Within that context, child protection is a serious responsibility for each teacher.

1.0 CHILD SEXUAL ABUSE

Recent changes have occurred in N.S.W. State legislation in the area of Child Sexual Assault. Several areas of legislation affecting children and teachers are mentioned. Among these are the Crimes (Child Assault) Amendment Act 1985.

This Act now makes it an offence for a person to have or attempt to have sexual intercourse with a child under the age of 16 years. There are three classes of offences:

(i) Intercourse with a child under 10 years

(ii) Intercourse with a child over 10 years

(iii) Offences of a sexual nature against children, although not sexual intercourse, are now

(a) indecent sexual assault

(b) act of indecency.

Each of (i), (ii) and (iii) carry heavier penalties if the child is under the authority of the alleged offender when the abuse took place, e.g. parent, guardian or teacher.

The category of child abuse covers not only sexual abuse but physical and behavioural abuse, emotional abuse and neglect. This legislation is concerned specifically with child sexual abuse.

This memorandum may be considered at a forthcoming Principals' Meeting — Please file for reference.
Sexual abuse constitutes such a physical act as is made a crime by the Crimes Act 1900 and involves an act of intercourse or physical sexual assault. Any other act of assault is capable of being excusable as being within parental responsibility or teacher responsibility of discipline in acting "in loco parentis", or if not, is actionable otherwise at law.

Any complaint that a child has been subjected to physical behaviour by an adult must therefore be carefully construed as to whether it amounts to a physical abuse of a child in the nature of sexual abuse, or is explicable by other reasons.

2.0 REASONABLE GROUNDS TO SUSPECT

New reporting obligations arise under the Community Welfare (Child Assault) Amendment Act 1985. This Act requires prescribed persons, who in the course of their work, become aware of, or suspect, any sexual assault of children to notify the Department of Youth and Community Services. This department is the Statutory Body responsible for investigation in this matter.

The requirements of the legislation to report child abuse now extends to -

School Principals
Deputy Principals
School Teachers
Social Workers in Schools
School Counsellors

The above Act requires that a prescribed person (Principal or teacher) who has reasonable grounds to suspect that a child has been abused (in this consideration "sexually abused") is required to report "in respect of these grounds".

The responsibility thrown on an informant by the Act is therefore dependent upon -

(a) whether the complaint details the element of a sexual assault; and

(b) whether the teacher receiving the complaint has "reasonable grounds" for believing that the child has been so abused.

Mere wording of an allegation by a child in itself does not constitute "reasonable grounds to suspect". The decision is that of the teacher and not the child. It requires a judgment by the teacher of a reasonable assessment of the complaint.

(a) Is it a sexual assault within the meaning of the Crimes Act?

(b) Has the complainant an understanding of the meaning of a sexual assault?

(c) Are there known facts in relation to the child which could render the complaint ignorant, malicious or vindictive or otherwise undermine its credibility?
It is only when a teacher, dealing with such a complaint, comes to a reasonable conclusion that he can be said to have "reasonable grounds" for making the complaint required by the Act. The conclusion is to be that of a reasonable person who, in the circumstances and with the knowledge and means of knowledge available to him, has arrived at a reasonable suspicion.

Nevertheless, a complaint of sexual assault, no matter however trivial or insubstantial, is a matter for investigation.

3.0 NOTIFICATION PROCEDURES

As an interim arrangement, notification procedures in the Guidelines set by the relevant Diocesan Catholic Education Offices will be followed by teachers in Christian Brothers' Congregational Schools, except in respect of a possible allegation against a member of the school staff (see Section 4.0).

If such guidelines do not exist, the Interim Guidelines of CEO Sydney will be followed.

A Training Seminar on this topic was conducted recently at Marsfield for Principals and other key school personnel. Principals are responsible for suitable inservice programs for staff. Principals are responsible for relevant documentation of reported instances as set out in the Guidelines.

4.0 NOTIFICATION PROCEDURES IN RESPECT OF ALLEGATION AGAINST A STAFF MEMBER

If a verbal allegation is made to a teacher in regard to a staff member,

(a) the teacher should refer the complaint to the Principal;
(b) the teacher should not interview or receive the complaint;
(c) the Principal will receive the complaint;
(d) the Principal, or his delegate, in hearing the complaint, deals with it, and examines its worth for suspicion on the principles set out above (Reasonable Grounds to Suspect);
(e) the Principal will confer with the Provincial Council

(f) any necessary reporting will then be made by the Principal in accordance with the Act.

5.0 TEACHER PROTECTION

In the light of the above information, teachers should recognise that, while they have a serious duty of care for their students in a variety of situations on and off the school premises, they ought be at all times circumspect and prudent. They should avoid by word or deed any impropriety which could be misconstrued as compromising behaviour. Both heterosexual and homosexual connotations of impropriety need to be recognised.

The whole community has been saturated by the media with stories and allegations of wide child abuse and this has permeated through the minds and has become reflected in the attitudes and behaviour of the children themselves. This
euphoria has tended to warp the reception by a child of caring and kindness to such an extent that any physical contact between a teacher and a pupil is now open to suspicion, even though innocent.

Accusations of child abuse bring suffering and distress to everyone involved. Individuals falsely accused of child abuse have been psychologically scarred, and their reputations have been severely tarnished. Whole families have been destroyed. Even when cleared of such charges, parents may lose custody of their children, and individuals who work with children may be permanently listed as possible child abusers. For these reasons, there should always be a careful appraisal of grounds which might be claimed to raise a reasonable suspicion.

6.0 GUIDELINES

The following specific guidelines are stated:

(1) The Principal must be informed of all serious matters concerning the welfare of students such as child abuse, student pregnancy, use of illegal drugs etc.

(2) When interviewing students, teachers should never be alone with a student in a totally private setting. Open-door, curtain free, semi-public environments, including the school playground, are preferable situations.

(3) Teachers should involve groups of students rather than individuals in classroom activities after hours or in recess; extended discussions with students ought be held in public environments.

(4) In playground supervision, teachers need to be circumspect in supervising student amenities blocks (toilets, change-rooms, showers).

(5) Camps and excursions may be conducted as authorised school activities and as such require the prior approval of the Principal. For overnight or extended activities, a minimum of two adult supervisors is necessary. With mixed groups of students both male and female supervisors are necessary. While parents and/or ex-students may act as volunteer helpers, they ought not be seen as teachers with the related duty of care.

(6) In situations of alleged thefts by students, search of lockers or personal bags or the request to turn out pockets is the right of the school. This should be done in the presence of a witness. Care and sensitivity need to be employed to preserve the dignity of the individual. Body searches are never permitted and may amount to assault.

I am confident that our efforts to care for our students have been and will continue to be valued by parents and students. I trust that, in bringing the above information to your attention, you will be more confident in seeking specific assistance from your Principal.

K.S. McDonnell, CFC Provincial
17 October, 1987