



BRISBANE CATHOLIC EDUCATION STAFF MISCONDUCT PROCEDURE

1. INTRODUCTION

- 1.1 Brisbane Catholic Education (“BCE”) expects all staff to maintain a high standard of professional conduct and comply with all of BCE’s policies and procedures to ensure that the work environment is safe, respectful, tolerant and co-operative.
- 1.2 BCE staff hold a special position of trust, and therefore must be accountable for their actions. Conduct which is contrary to BCE’s policies and procedures, including the *Catholic Education Archdiocese of Brisbane Code of Conduct*, may amount to misconduct or serious misconduct and will be dealt with seriously, promptly and in line with the principles of natural justice and procedural fairness.

2. PURPOSE

- 2.1 This Procedure is to be used where a staff member is alleged to have engaged in conduct of a serious nature and/or repeated behaviour warranting implementation of this Procedure.
- 2.2 It is not intended that this Procedure be used for complaints of a minor nature, which are more appropriately dealt with in accordance with the *BCE Staff Complaints Management Procedure*. It is also not intended that this Procedure be used for complaints where there is an existing BCE procedure, guideline or mechanism about managing that complaint. Complaints that have been progressed through the *BCE Staff Complaints Management Procedure* or other appropriate complaints mechanisms may, however, be referred for handling in accordance with this Procedure.

3. SCOPE

- 3.1 This Procedure applies to all employees of BCE who work in BCE Schools or the BCE Office, including full-time and part-time employees, temporary or casual employees (“Staff”).

4. DEFINITIONS OF MISCONDUCT AND SERIOUS MISCONDUCT

- 4.1 **Misconduct** – is conduct which is not Serious Misconduct but is nonetheless a dereliction of duty or conduct that is inconsistent with established standards, such as conduct contrary to BCE’s policies and procedures, including the *Catholic Education Archdiocese of Brisbane Code of Conduct*.
- 4.2 **Serious Misconduct** – is defined in Reg 1.07 under the *Fair Work Regulations 2009* to mean:
- *wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment*
 - *conduct that causes serious and imminent risk to the health and safety of a person, or the reputation, viability or profitability of the employer’s business*
 - *theft*
 - *fraud*
 - *assault*
 - *the employee being intoxicated (alcohol or drugs, other than prescribed drugs) at work*
 - *the employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee’s contract of employment.*
- 4.3 To remove any doubt, **Serious Misconduct** may also include conduct which is considered a more serious dereliction of duty or a more serious contravention of established standards, such as those set out in BCE’s policies and procedures, including the *Catholic Education Archdiocese of Brisbane Code of Conduct*, than that contemplated in **4.1 Misconduct**.

- 4.4 Misconduct and Serious Misconduct can include a single act or repeated acts and may include conduct inside, as well as outside, the workplace where there is a connection with employment.

5. **SUSPECTED CRIMINAL OFFENCES**

- 5.1 If there is an allegation of criminal conduct the Principal/Manager must obtain the advice of the Manager Professional Standards and Student Protection or the Manager Employee Relations before making any report of the matter to Queensland Police Service.
- 5.2 Where the Queensland Police Service reports to the Principal/Manager, or he or she otherwise becomes aware, that a staff member is the subject of a police investigation, the Principal/Manager should immediately contact the Manager Professional Standards and Student Protection or the Manager Employee Relations.
- 5.3 Where a staff member is the subject of a police investigation, BCE must take care not to interfere with the police investigation. The Manager Professional Standards and Student Protection or the Manager Employee Relations will act as BCE's main liaison point with the Queensland Police in respect of staff conduct that may be considered to be a criminal offence.
- 5.4 Where allegations that are the subject of a misconduct procedure are also the subject of a criminal investigation or criminal proceedings, the misconduct procedure will not necessarily be delayed or ceased, but discretion may be exercised to do so depending on the circumstances of each case.

ADVICE AND SUPPORT

For Staff Members

If staff have any questions or concerns about the *BCE Staff Misconduct Procedure* they may contact a member of the Employee Relations Team on (07) 3033 7579 or by email at employeerelations@bne.catholic.edu.au

If the staff member is a member of the **Union**, they may seek advice or assistance from their Union.

BCE provides the **Employee Assistance Program** to give free and confidential counselling to BCE staff who require support. The Employee Assistance Program is not available to contractors or volunteers. BCE staff are encouraged to access the Employee Assistance Program or seek other counselling support at any time. **BCE staff may access the Employee Assistance Program on 1800 808 374 or info@assureprograms.com.au** for confidential, short term counselling to assist with work or personal issues.

For Principals/Area Supervisors/Managers/Directors

The **Manager Professional Standards and Student Protection** and **Manager Employee Relations** will provide advice and assistance to Principals/Area Supervisors/Managers/Directors on the *BCE Staff Misconduct Procedure* and the appropriate steps to follow in managing allegations of misconduct. **The Manager Professional Standards and Student Protection can be contacted on (07) 3033 7409 or by email at professionalstandards&studentprotection@bne.catholic.edu.au** **The Manager Employee Relations can be contacted on (07) 3033 7579 or by email at employeerelations@bne.catholic.edu.au**

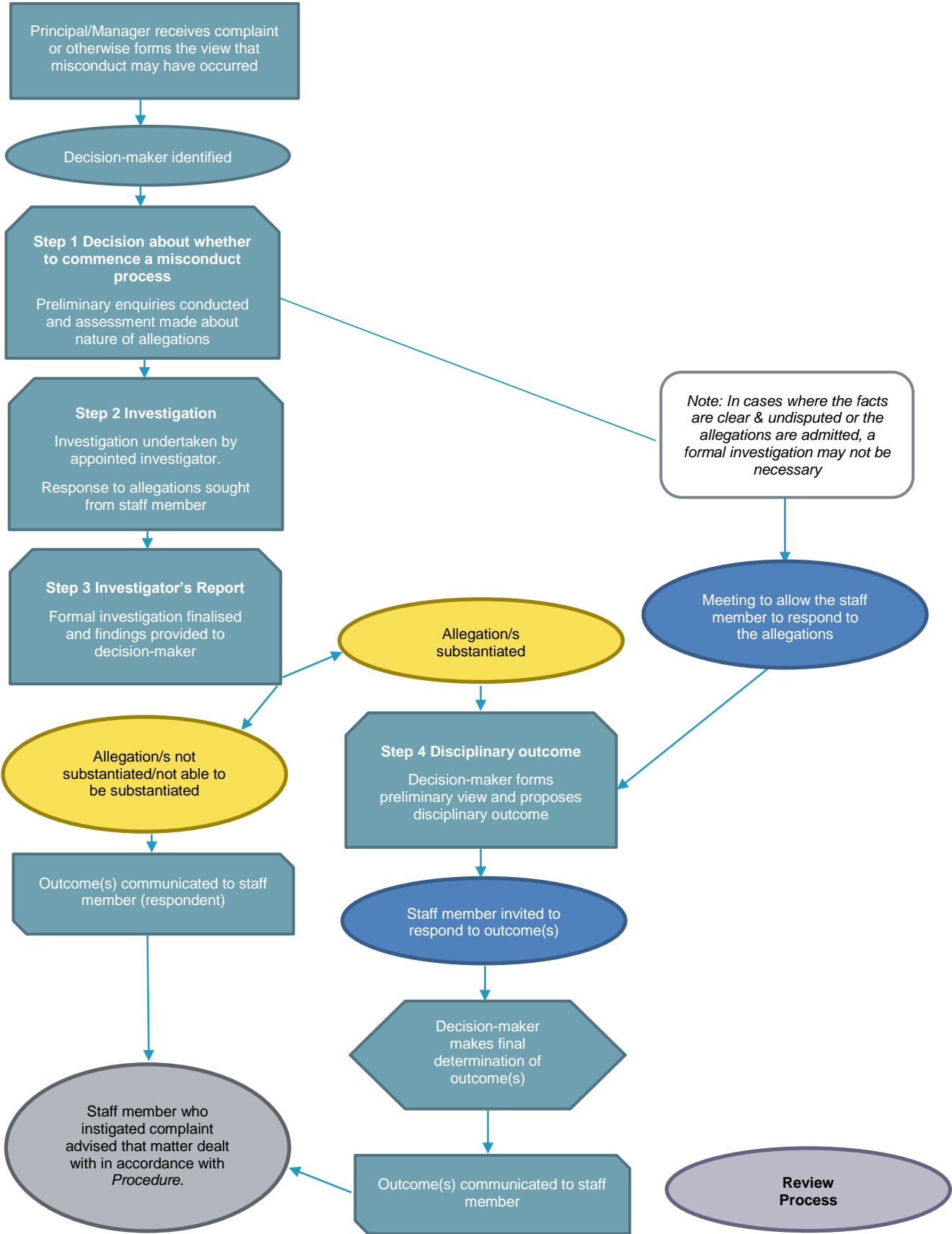
Managers may access the Manager Support Program on 1800 505 015 or info@assureprograms.com.au for assistance in managing personal and interpersonal work issues relating to employee performance and work relationships.

6. IMPORTANT PRINCIPLES AND VALUES

- 6.1 The underpinning values of the *BCE Staff Misconduct Procedure* are guided by the fundamental principles of **natural justice** and **procedural fairness**. These principles include that the Procedure is:
- (1) fair and just;
 - (2) consistent and impartial;
 - (3) confidential to those involved;
 - (4) prompt; and
 - (5) careful and thorough.
- 6.2 Where a staff member is alleged to have engaged in misconduct, there will be, consistent with the requirements of **procedural fairness**:
- **An investigation.** Conducted by an appointed “investigator” who may be the immediate supervisor or another suitable person. An investigation may not be necessary, however, where the staff member has admitted to the alleged misconduct;
 - **A response.** An opportunity for the staff member to respond to the findings of the investigation (where applicable) and to the recommendation about proposed discipline outcomes; and
 - **A determination.** A determination of the discipline outcome by the employer.
- 6.3 All persons involved in this process must observe **confidentiality**, unless they are otherwise authorised or required to disclose information (for example, where there is a risk to the health and safety of staff or students). The details of the process for a specific allegation of misconduct should be known only to those directly concerned. The Principal/Manager will advise all parties to the process, support persons and witnesses to keep the details of a process, any investigation and documents confidential. Staff must not approach witnesses or any member of the school community, including parents and students, to discuss details of the process.
- 6.4 Staff members may involve a **support person/union representative** in any meetings between the staff member and the Principal/Manager. The Principal/Manager is expected to ensure staff are aware of their right to a support person/union representative in meetings between them and the staff member. The support person may be another staff member, friend or family member. The staff member must give reasonable notice of the support person’s/union representative’s attendance at a meeting.
- 6.5 Complainants making allegations of misconduct must be genuine. **Vexatious or frivolous complaints** will not be considered (and may themselves be considered as misconduct and dealt with under this Procedure).
- 6.6 It is against the law for a person to be **victimised**. Staff, who make reasonable and genuine complaints, witnesses and those seeking to resolve the complaint, must not be victimised or subject to any reprisals. Staff should report any such incidents. Substantiated incidents of victimisation or reprisals will result in disciplinary action.

7. **OVERVIEW OF THE MISCONDUCT PROCESS**

The flow chart summarises the misconduct process but should be read within the context of these procedures.



8. **IDENTIFICATION OF THE DECISION-MAKER AND THE INVESTIGATOR**

- 8.1 The Manager Professional Standards and Student Protection will provide guidance in determining the appropriate decision-maker and investigator given the specific circumstances of each matter.
- 8.2 A person will be identified as the **decision-maker** in the misconduct process. The decision-maker will decide whether to commence formal misconduct process.
- 8.3 In most cases, the **decision-maker** will be the relevant Principal/Manager, but the decision-maker may be the Director Employee Services or his/her delegate. Relevant considerations in determining the appropriate decision-maker will be:
- the position held by the staff member being investigated;
 - the nature and seriousness of the allegations being investigated; and
 - the potential consequence for the staff member should the allegations be substantiated.
- 8.4 The decision-maker will appoint an **investigator**. Where appropriate and in consideration of all the circumstances, the investigation may be conducted by the staff member's immediate supervisor.
- 8.5 If it is not appropriate for the immediate supervisor to be the **investigator**, another suitable person will be appointed to investigate. This person may be another staff member or a person from outside BCE. To be clear, the decision-maker and the investigator will not be the same person.

9. **MISCONDUCT PROCESS**

The misconduct process is as follows:

Step 1 Decision on whether to commence a misconduct process

In some cases, it may be useful to conduct a preliminary enquiry to assess the nature of the allegations of misconduct and determine whether they are such that would warrant commencing formal proceedings. In these cases, the Principal/Manager will conduct the preliminary enquiry in accordance with the *BCE Staff Complaints Management Procedure*.

The decision-maker will then consider information gathered as part of a preliminary enquiry and make a determination about whether or not to commence the misconduct process.

Where the decision-maker determines that a misconduct process will commence, the staff member will be given a copy of this Procedure and be reminded of their right to seek advice before any process commences.

If, during a preliminary enquiry, a staff member **admits all of the allegations**, the matter may not proceed to **Step 2 Investigation** but rather may proceed to **Step 4 Disciplinary outcome**.

Directions once the process has commenced

During the misconduct process, the decision-maker, or delegate, may do any of the following:

- direct the staff member to proceed immediately to perform alternative duties or work at an alternative place of work;
- further the requirement for confidentiality and expressly direct the staff member not to speak to other staff members of BCE about the matter or not visit certain places of work;
- suspend the staff member with pay, if recommended by the Director Employee Services and determined by the Executive Director; or
- any other action deemed necessary in the circumstances.

Step 2 Investigation

If a decision is made to commence the misconduct process the person appointed as the investigator will commence the investigation and be responsible for providing the staff member with a written document outlining the allegations. The allegations must be in sufficient enough detail for the staff member to establish an understanding of the acts, matters or conduct being alleged. Relevant information will only be withheld where it is necessary in order to protect the personal privacy of an individual or where a child is involved and the paramount interests of the child prevail.

The investigation will include seeking a response from the staff member.

The investigation will also include:

- Collecting any relevant materials and evidence;
- Speaking with the staff member about the allegations;
- Speaking with any relevant witnesses and obtaining statements if relevant;
- Investigating any explanation made by the staff member for the purposes of verifying the explanation so far as possible.

If further allegations are identified through the investigation, the investigator will provide these in writing to the staff member and seek a response.

Step 3 Investigator's Report

The investigator will prepare a report and make findings as to whether each allegation is able to be substantiated.

The standard of proof in any misconduct process is the **balance of probabilities**. This standard of proof is a civil standard of the balance of probabilities – that is, on the balance of probabilities, it is more likely than not, that the allegations occurred. The standard of evidence will increase where there are serious allegations. The investigator, however, does not have to be satisfied beyond reasonable doubt (which is the criminal burden of proof).

Where the investigator makes a finding that an allegation/s is/are **not substantiated or not able to be substantiated**, the process will conclude in relation to that allegation and the staff member will be informed of this.

Where the investigator makes a finding that the allegation/s is/are **substantiated** the matter will progress to **Step 4 Disciplinary outcome**.

Step 4 Disciplinary outcome

Based on the investigator's report, the decision-maker will form a preliminary view on the matter and will propose a disciplinary outcome, details of which will be provided to the staff member. The proposed disciplinary outcome must not be disproportionate to the seriousness of the matter. Possible discipline outcomes could include, but are not limited to:

- no action;
- performance management (including coaching or mentoring, retraining and professional development, monitoring or increased supervision, counselling and mediation);
- formal counselling;
- formal warning;
- final warning;
- transfer of the staff member with or without their agreement to a different role or work location;
- or
- providing a recommendation to the Executive Director that the employment of the staff member be terminated (*refer Section 10*).

In determining the proposed discipline outcome, the following should be considered:

- whether the incident is an isolated one or whether the conduct has occurred previously;
- the nature and seriousness of the incident, including the effect and circumstances;
- whether the staff member is aware of the required standard of behaviour that has been breached, and the consequences of breaching it;
- any mitigating or extenuating circumstances;
- the employment history and general behaviour of the staff member;
- the length of the staff member's service;
- the skill, experience and role held by the staff member;
- the impact of the sanction on the staff member;
- previous advice/counselling in relation to the same or other behaviour;
- how other staff members have been treated in similar circumstances;
- whether there is an ongoing risk to the public, clients or work colleagues;
- whether the staff member has shown any remorse; and
- whether the staff member has admitted to inappropriate or unacceptable behaviour.

The staff member will be invited to provide a written response to the proposed disciplinary outcome within a suitable time frame, being not less than five (5) and up to ten (10) working days, addressing the outcomes of the investigation and the proposed **disciplinary outcome**.

Following consideration of any response from the staff member, the decision-maker will make a final decision about the matter and advise the staff member of the outcome in writing, including the reasons for making the final decision.

The decision-maker will be responsible for ensuring that the outcome is implemented.

Where the decision-maker determines that they will recommend to the Executive Director that the staff member's employment be terminated, they will prepare and forward a report to the Executive Director.

10. RECOMMENDATION TO THE EXECUTIVE DIRECTOR THAT EMPLOYMENT BE TERMINATED

- 10.1 A report to the Executive Director recommending that the staff member's employment be terminated will outline a chronology of the formal misconduct proceedings so far and reasons for the recommendation.

Included in the report will be copies of all letters provided to the staff member as part of the process and any correspondence from the staff member.

Where an investigation report was prepared as a result of an investigation undertaken in accordance with the *BCE Staff Complaints Management Procedure* this investigation report will also be included in the Executive Director's report.

- 10.2 Upon receipt of the decision-maker's report, the Executive Director will consider all material and form a preliminary view about the matter.

Before making a decision about the matter, the Executive Director will write to the staff member advising them that they have formed a preliminary view and provide reasons for this view.

The staff member will be provided with a suitable timeframe, being not less than five (5) and up to ten (10) working days, within which the staff member will be asked to provide a response to the Executive Director's preliminary view.

The Executive Director will decide, based on the information provided by the staff member in their response:

- i. That they will accept the recommendation of the decision maker that employment should be terminated. In this case the Executive Director will write to the staff member confirming that their employment is terminated and advise them of the date of termination as well as any final payment details; or
- ii. That they will not accept the recommendation of the decision maker that employment should be terminated. In this case the Executive Director may determine that;
 - a. it is necessary to conduct a review of the matter, which will be conducted in accordance with **Section 10.3**; or
 - b. an alternative disciplinary outcome is required (*refer Step 4*).

- 10.3 Where the Executive Director decides that a **review** of the matter is required, the review will not be conducted by a person who has been previously involved in the formal misconduct proceedings.

The purpose of the review is to determine whether the matter has been approached in a fair and just manner.

The Executive Director will also consider whether the staff member should be suspended with pay during the course of the review.

The decision-maker and the staff member will be notified that a review will be conducted and that they are expected to, if necessary, cooperate with the person conducting the review.

The person conducting the review will prepare a report for the Executive Director containing recommendations about the issues. The staff member will be advised of the outcomes of the review.

11. INFORMING THE STAFF MEMBER WHO INSTIGATED THE COMPLAINT

If formal misconduct proceedings were conducted because of a complaint of misconduct by another staff member, the decision-maker must advise the staff member that the complaint has been dealt with in accordance with this Procedure.

12. REVIEW PROCESS

- 12.1 Except in circumstances where employment has been terminated, a staff member who is dissatisfied with a misconduct process, may make a written request to the Director, Employee Services seeking a review of the process. The request must:

- i. be received within 14 days of the staff member receiving notification of the outcome of the misconduct process;
- ii. state clearly the reasons for dissatisfaction with the process; and
- iii. state clearly the outcome the staff member believes would resolve the dissatisfaction.

- 12.2 The Director, Employee Services may delegate the matter to be reviewed by an appropriate person who has not been involved in the misconduct process. The Director, Employee Services (or their delegate) will, in a timely manner, review the process and determine if there are any procedural deficiencies or whether the outcome was fair and reasonable in all the circumstances. At the conclusion of this review, the Director, Employee Services (or their delegate) will notify the staff member of their decision. The outcome of this review is final and there is no other appeal or review mechanism provided by BCE.

- 12.3 In circumstances where employment has been terminated or at any time in the process, a staff member may refer the matter for advice or assistance to external bodies (for example, the Queensland Anti-Discrimination Commission or Fair Work Commission) and if staff are members, they can seek advice from their Union.

13. GENERAL

- 13.1 This Procedure does not contractually create or contribute to a legal cause of action against BCE.
- 13.2 The processes outlined in this Procedure are not prescriptive, but are a guide to assist Principals/Managers to manage situations where a staff member is alleged to have engaged in conduct of a serious nature and/or repeated behaviour warranting implementation of this Procedure.

14. REVIEW OF PROCEDURE

- 14.1 BCE may, amend this Procedure from time to time as BCE considers necessary.
- 14.2 This Procedure will be periodically reviewed to ensure that it remains effective and relevant to the workplace.