

## Related Policies

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Child Protection  
 Child Protection – Mandatory Reporting NSW  
 Complaints

## Purpose

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This policy addresses the obligation of the Catholic Education Office on behalf of the Archbishop and schools to investigate complaints made against an employee where the complaint raises issues such as the employee's relationship with a student or the employee's conduct towards or with a student.

The primary objective of this policy is the safety and well-being of children. This policy also aims to ensure that principles of natural justice are employed to ensure that:

- complaints are investigated promptly and thoroughly and
- the complaint resolution process is grounded in principles of procedural fairness.

## Policy

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A complaint made against an employee of the Catholic Education Office (CEO) which raises concerns for the safety and well-being of a child or young person is subject to inquiry by the employer using procedures outlined in this policy.

All such complaints **must** be notified immediately to the Catholic Education Office (CEO) Human Resource Services.

The employee against whom the complaint is made should expect a fair inquiry process which includes:

- **Confidentiality:**  
 To preserve the dignity and wellbeing of the child/ren, the employee and other persons.  
 To ensure the investigation is not compromised.  
 Also to ensure the security of documents.
- **Procedural Fairness, the employee has the right to:**  
 The employee has the right to be informed of the allegation(s) and to put forward their case.  
 The employee has the right to respond to adverse comment, findings and recommended disciplinary actions.  
 Reasonable enquiries or investigations are made before deciding on a matter.  
 Investigation is conducted without unreasonable delay.  
 Reasonable notice for meetings and interviews.  
 The right to have a support person for interviews.
- **Unbiased and fair**  
 Investigation is conducted by independent persons.

Careful decision making that is fair and based on the evidence and made by an impartial decision maker.

- **Appropriate action as a consequence**

To minimise the risk for the future.

To ensure protection from intimidation or retribution for bringing forth a concern in good faith.

To ensure ongoing support, where appropriate, for the child/ren, the employee and other persons.

- **Closing the investigation file**

If there is a departure from rules of procedural fairness in particular cases the reasons for the departure are documented. The process for dealing with allegations is transparent. There are checks in place to ensure this:

- The process is accountable to the Head of Human Resource Services who is accountable to the Director.
- Protocols govern the employee's access to the confidential file of the proceeding.
- Employees as well as others have the right to complain to the Director if they are concerned about the conduct of an investigation.

The appropriate response by the employer to each complaint and each employee is determined by reference to the particular, factual circumstances surrounding each case. When planning a response to a complaint, careful consideration is given to the particular vulnerabilities of any child(ren), employee, witness or notifier of which the employer or investigator becomes aware. The procedures adopted in response to the complaint aims to minimise anxiety and to demonstrate sensitivity, compassion and respect for all involved while maintaining the integrity of the inquiry process.

If a complainant alleges **abuse** or **neglect** the matter is referred to Human Resource Services for consultation with the NSW Community Services (formerly DoCs). In some cases the Joint Investigation Response Team (JIRT) or the Police may be involved. In cases involving abuse or neglect, the employer must await the advice the Community Services or the Police as to when an employee is informed of the complaint or when the inquiry may be commenced. The employer liaises closely with such statutory agencies to ensure that the matter is dealt with fairly and efficiently.

### Definitions<sup>1</sup>

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#### Balance of Probabilities

Generally, proof of a fact on the balance of probabilities requires a determination whether it is more probable than not that the facts occurred. See, *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-2. It is important to note that veracity can be considered when balancing the probabilities.

**Child** is a person under 16 years of age.<sup>2</sup>

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<sup>1</sup> See generally, *NSW Ombudsman Practice Update 2011, Defining reportable Conduct*, attached to this policy.

<sup>2</sup> S 3 *Children and Young People (Care and Protection) Act 1998* (NSW)

### Class or Kind Matters

The "Class or Kind" definition is mandated for employees working in NSW. These matters must be investigated and a determination made.

Extracted from *Determination by the NSW Ombudsman under Section 25CA of the Ombudsman Act concerning the Catholic Education Office, Archdiocese of Canberra and Goulburn*

Part 3A of the Ombudsman Act 1974 ("the Act") sets out the Ombudsman's functions relating to child protection. These functions include the oversight and monitoring of investigations of reportable allegations or convictions against employees by heads of designated government agencies, designated non-government agencies ("agency") and public authorities within the meaning of Part 3A of the Act.

## 2 Section 25CA Determination

- 2.1 Section 25CA of the Act permits the Ombudsman to determine that allegations of certain classes or kinds of conduct by employees of agencies are exempted from being reported to the Ombudsman.
- 2.2 For the purposes of certainty, this determination does not affect the specification in s25A of the Act that reportable conduct does not extend to:
  - a) conduct 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.
  - b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures.
- 2.3 This Determination does not exempt an agency from reporting allegations that involve:
  - a) any allegation of any sexual offence or sexual misconduct.
  - b) any allegation of conduct causing psychological harm.
  - c) allegations of neglect or ill-treatment of a child.
  - d) any conviction for an offence involving reportable conduct.
  - e) those matters initially exempted under s25A or s25CA, but where the investigation uncovers information that renders the matter reportable.
- 2.4 The determination identifies the categories of reportable conduct that are not required to be reported under this determination.

## 3 Determination Regarding Employees of the Catholic Education Office, Archdiocese of Canberra and Goulburn.

- 3.1 Pursuant to s25CA of the Act, the Ombudsman has determined that the Catholic Education Office (CEO) in the Archdiocese of Canberra and Goulburn, is an agency that have achieved a standard of investigative practice whereby only the reportable allegations specified below, against employees of those agencies, need to be notified to the Ombudsman under s25C(1):

- 3.1.1 NO allegation of a physical assault, or a threat of a physical assault, need be reported to the Ombudsman as a reportable allegation, unless it is alleged that:
- a) there was contact with any body part or area of a child that was clearly hostile and forceful, or reckless, and which had the potential to, or resulted in significant harm or injury to the child; or
  - b) a child believed that the threat would result in significant harm or injury to them.
- 3.2 In relation to the classes or kinds of alleged conduct against the employees of the CEO exempted in 3.1.1 to 3.1.5 above from being reportable conduct, the CEO is nevertheless required to:
- investigate the allegation, including undertaking a risk assessment and making a finding as a result of that investigation,
  - take appropriate action as a result of that investigation,
  - keep adequate records of the investigation and the reasons for taking or not taking any action as a result of the investigation,
  - keep adequate records of those matters covered by this Determination and store these records in a place accessible to the Ombudsman for auditing purposes under s25B of the Act, and
  - provide to the Ombudsman, every six months, the total number and category breakdown of allegations exempted from notification to the Ombudsman under the provisions of this determination.

### **Current Concern**

Simply means at the time of making the report the reporter is concerned about the safety, welfare or wellbeing of the child or young person. It may also include a situation that a child has told you about that may have happened to them in the past.

### **Employee**

For the purposes of this policy employee means any person engaged either by the school or the Catholic Education Office for any work or activities of the school or Catholic Education Office that relates to children and includes any individual engaged by the agency to provide services to children. Volunteers may also be investigated under the definition of employee.

### **Employer**

For the purposes of this policy employer means the Director of Catholic Education or the Director's delegate. The school Principal or other member of a school Executive may be delegated to assume particular roles on behalf of the Director.

### **Inquiry**

An inquiry into a complaint includes any preliminary or other inquiry into, or examination of, the matter.

### Reportable Allegation

- a) A reportable allegation means an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct where the behaviour suggests that the allegation may be a pattern of behaviour; or
- b) may indicate misconduct which poses a significant risk to children.

This includes breaches of boundaries of code of conduct, inappropriate use of power relationship, targeting children for specialised treatment, inappropriate touching (but not sexual), inappropriate relationship (not sexual) between an adult and a child that breaches community standards, taking children home in breach of agency guidelines.

### Reportable Conduct

For the purposes of this policy, reportable conduct is the conduct so defined by the *Ombudsman Act 1974* (NSW). This definition is included to assist determination of the level of response required by the Principal and the Catholic Education Office. Complaints which meet the definition of "Reportable Conduct" and which do not attract an exemption will normally be managed by a Human Resource Services Officer.

Section 25A of the Ombudsman Act defines 'reportable conduct' as:

- a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material), or
- b) any assault, ill-treatment or neglect of a child, or
- c) any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child. Reportable conduct does not extend to:
  - (i) conduct 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
  - (ii) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures.

**Young Person** is a person aged 16 or 17 years of age.<sup>3</sup>

### Procedures for responding to an allegation

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The Principal, in consultation with a CEO Human Resource Services Officer, will determine whether a complaint is of a matter which should be managed by a Human Resource Services Officer or at School level.

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<sup>3</sup> S3 *Children and Young People (Care and Protection) Act 1998* (NSW),

In **all** cases the procedures outlined in this policy must be reasonably followed according to the particular facts and circumstances of each complaint. Please refer to *Summary of Investigative Process Flowchart NSW Systemic Catholic Schools* as a guide to this process. The form is attached to this policy.

1. On receipt of the allegation at the School or Catholic Education Office:
  - The person receiving the complaint records the exact words of the complainant noting, WHAT happened, HOW it happened, WHERE it happened, WHO was affected. Reassure complainant and establish confidentiality.
  - Advise the complainant that the complaint will be acted on in accordance with this policy and provide a copy of this policy.
  - A risk assessment is initiated and receives on-going review.
  - A report is made to NSW Community Services if there is a current concern regarding abuse. Consultation with the Child Protection and Legal Officer at the CEO takes place.
  - A confidential file is opened, the initial details are gathered.
  
2. **Mandatory Duty to Report**  
 Please see the *Child Protection-Mandatory Reporting (NSW)* policy for the Catholic Education Office, Archdiocese of Canberra and Goulburn for guidance on the duty to report. If a report is made to Care and Protection Services or to the Police, no investigation is conducted by the school or the CEO without first consulting Family Services or the Police.
  
3. **Informing the employee of an allegation against them:**
  - Discussion with Human Resource Services occurs as to when to inform an employee. Such factors as police involvement, the need for further investigation and the possible response of the employee is considered prior to informing an employee of an allegation against them.
  - When the time is determined to be right, the Principal or a Human Resource Services Officer advises an employee that an allegation has been made and the general nature of the allegation.
  - The employee is advised that an investigation has been authorised and the name of the investigator is provided.
  - The employee is advised as to the outcome of the initial risk assessment if it adversely affects the employee.
  - Support and counselling, at no charge to the employee, are offered and arranged if accepted.
  - The employee is advised as to the arrangements for the initial meeting when the employee will meet with the investigator. Notice of the investigation is given in writing.
  - The employee is advised s/he may have a support person at the interview.
  - The employee is advised of the right to contact their Union Representative.
  - The employee is advised that h/she may raise issues of concerns and these issues will be interviewed.
  - Ask the employee if they have witnesses they wish to have investigated.
  - The employee is advised they may provide a written submission to support their case.
  - The employee is told that confidentiality is imperative, in the interest of all parties and due process.
  - The employee is informed of the investigation process and the proposed time frame.

**4. The Parents/Guardians of the child are notified.**

The parents/guardians of the child are advised and assurances of confidentiality in consultation with Human Resource Services. Assurances of confidentiality are sought from all parties.

**5. The Investigation Process is planned in accordance with the Manual for Investigation.**

The Principal and the HR Officer, having regard to the nature of the complaint and particular school/ community characteristics, plan the investigation in line with the Manual for Investigation. The following occurs:

- An investigator is appointed by the Principal / HR Officer.
- The investigation objectives are clarified and established.
- Any relevant documentation relating to the complaint is compiled.
- Witnesses are identified and consent obtained from parents for child witnesses to be interviewed.
- A timeframe for conducting interviews is drafted.
- A draft investigation plan, signed by the Principal, is discussed with Human Resource Services as soon as practicable after receiving the complaint.

**6. Staff member may make an initial response.**

In some cases the staff member may wish to acknowledge that the complaint is true. An admission that the complaint is true is recorded in writing, signed and dated by the employee. No further investigation may be required, the Principal/HR Officer proceeds with step 9. Consultation with Human Resource Services occurs.

The staff member may request an interview early in the process in order to clarify procedural matters or to provide initial information. The Principal and the HR Services Officer managing the case must consider the staff member's request for an early interview. Arranging an early interview does not preclude the holding of the later interview outlined in step 9 below.

**7. Interviewing witnesses and gathering information.**

- Using the Investigation Plan found in the Investigation Manual as a guide, the investigator(s) proceeds to gather relevant information
- The need for confidentiality is stressed with all witnesses and parties concerned.
- Investigators must have concern for the developmental stage of child witnesses. Questions are planned in advance keeping in mind what information the interviewer is seeking or seeking to assess or clarify. Questions are open and not leading. Investigators may need to re-interview witnesses to clarify as far as possible inconsistencies in recall of facts between witnesses.
- Child witnesses should not be interviewed formally without parental permission. Parents may be present for the interview as a support person but do not participate unless directed by the investigators.
- Records of interview are read, signed and dated by the witness. Witnesses are given an opportunity to read their record of interview and make comment. If the witness refuses to sign the record of interview the investigators document both the request and the refusal.

- If the witness disputes the accuracy of the record of interview, he or she is asked to indicate in writing what he or she believes was actually said.
8. **The employee is interviewed and responds to the complaint.**
- Following information gathering and clarification of facts the investigator(s) are able to present the complaint to the employee for his or her response.
  - The employee is given reasonable notice of the time and location of the interview.
  - The employee may be advised of the identity of the alleged victim except where the employer has compelling reason not to disclose the identity; such compelling reasons must be comprehensively documented.
  - The identity of the notifier should not automatically disclosed to the employee or witnesses interviewed during the investigation unless:
    - a) the notifier consents in writing to disclosure of his / her identity, or
    - b) the disclosure of the identity of the notifier is necessary to investigate the matter effectively.
  - The employee is given every opportunity to respond to the complaint and any information adverse to his or her interest. The employee may be questioned to seek further information or to clarify matters.
  - The employee is given an opportunity, as soon as practicable, to read, verify/ amend, date and sign a copy of the record of interview. If he or she refuses to do so, the investigator(s) record both the request and the refusal.

### 9. **Preliminary Finding**

A preliminary findings report of the investigation is considered by the arbiter of fact, who is usually the Principal or the Head of Human Resource Services.

If there is a reportable allegation, the preliminary findings are considered by the Head of Human Resource Services.

Where no reportable allegation is found, the Principal in consultation with Human Resource Services, or the Head of Human Resource Services makes a finding of:

- allegation is sustained
- allegation is not sustained—insufficient evidence
- no reportable conduct
- the allegation is false
- the allegation is vexatious
- the allegation is misconceived.

If the allegation is not reportable, a Class or Kind Determination may need to be made and documented. Please consult a Human Resources Officer on this issue as all Class or Kind Determinations are provided to Human Resource Services and stored in a confidential file.

The arbiter of fact meets with the employee to outline the finding. The employee is given the opportunity to respond to any adverse finding and to any disciplinary or support initiatives that the Principal intends to implement as a result of the finding.

In all cases, the employee is given the opportunity to debrief regarding the complaint and the process used to resolve the complaint. An offering of counselling, at no cost to the employee, is made. Counselling is arranged through the Head of Human Resource Services. If it is found that conduct which generated a high risk complaint did occur or if there is some evidence that it did occur, the employee is advised of the preliminary finding and proposed action by the employer.

- The arbiter of fact informs the employee of the preliminary finding.
- The employee is provided with the opportunity to respond to an adverse finding within 5 working days. The time frame can be negotiated by mutual consent.
- The employee is advised of any proposed disciplinary action or support initiatives.
- The employee is advised that she or he may apply to view the file in accordance with the relevant legislation.
- The employee is offered support including an offer of counselling at no cost to the employee and, if the staff member wishes, a support person who can assist debrief regarding the investigation.
- This information is conveyed in writing.

### 10. **Confirming a final finding**

The employee's response to an adverse finding is given due consideration.

The arbiter of fact determines the finding based on the balance of probability, consulting where necessary, with the Human Resource Services Officer managing the case and advises the Principal or Head of Human Resource Services of the finding.

The arbiter of fact advises the employee in writing of:

- the finding that the allegation(s)
  - is sustained
  - is not sustained—insufficient evidence
  - no reportable conduct
  - is false
  - is vexatious (ie where inquiries into the matter find that, even though the complaint was made in good faith, it was based on a misunderstanding of what actually happened).
- disciplinary action and / or support initiatives to be implemented
- the procedures in place for storage of files in relation to this case
- the employee's right to ask to view the file
- the availability of support and/or counselling.

### 11. **Parents are notified of the conclusion of the process.**

At the conclusion of the process, the parents/guardians of the child who was the alleged victim of the notification are informed that the investigation process has been completed. Parents/guardians are not entitled to know the outcome of the investigation. Findings are confidential to employer and employee. Further parental enquiries regarding investigations or findings are directed to the Head of Human Resource Services.

### 12. **The File is closed**

Please refer to the Manual for Investigation, Closing the File, for the correct format and information which is to be included in this process. The following documentation is usually required before the file is closed:

- how the employee was informed of and asked to respond to the allegation
- how the employee chose to respond to the allegation
- information recording the complaint
- draft investigation plan
- risk analysis
- letter advising the employee of the complaint and inviting the employee to a meeting
- a support person was offered and if one attended interviews
- counselling was offered
- confidentiality was discussed
- letter advising parents/guardians of child of the commencement of the investigation process;
- employee's response to the complaint (if written)
- whether the allegations were sustained, not sustained, misconceived or proven false and the evidence that led to this conclusion
- all meeting records signed and dated
- all statements (witnesses etc) signed and dated
- letter advising employee of the preliminary finding (**usually only required for higher level complaints**)
- any documentation detailing a response from the employee (if relevant)
- letter advising the employee of the determination (final finding) and any intended disciplinary action by the employer (**usually only required for higher level complaints**)
- letter advising parent / guardian of the conclusion of the investigation process
- relevant e-mails and memos
- analysis of the allegation, whether it was sustained and the evidence relied upon to support the finding
- if an investigation was conducted at school level, the investigation in its entirety must be sent to Human Resource Services and placed on a confidential file.

### 13. **Dispute Resolution**

In the event of disputation about the investigation, determination of findings and disciplinary action, the employee is entitled to request that the particulars of the matters in dispute be referred to an appropriate means of dispute resolution.

**14. Security of Records and Documentation**

All documentation relating to complaints and ongoing investigations must be maintained in a secure and confidential environment with access restricted to the person conducting the inquiry and other authorised person(s).

Information regarding the complaint, investigation and finding is usually not noted in any personal record maintained in relation to the employee. This means the information is removed from any records or files such as personnel, student records or similar files. Such records are forwarded to the CEO for confidential and secure storage: they must not be destroyed.

**15. Employee's access to investigation file**

An employee who is the subject of a complaint may have access to the file in accordance with the Government Information (Public Access) Act 2009. Employees seeking access to their files are to contact Human Resource Services in writing.

**16. Matters of Jurisdiction**

Any matters of jurisdiction are referred to the Human Resource Services Officer who liaises with the Head of Human Resource Services and Catholic Commission for Employment Relations regarding the matter.

## References

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*Ombudsman Act 1974* (NSW) Part 3A [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/oa1974114/](http://www.austlii.edu.au/au/legis/nsw/consol_act/oa1974114/)  
*Children and Young People (Care and Protection) Act 1998* (NSW)  
[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/caypapa1998442/](http://www.austlii.edu.au/au/legis/nsw/consol_act/caypapa1998442/)

Online NSW Mandatory Reporter Guide; [www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au);

Keep Them Safe; [www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au);

NSW Ombudsman, Practice Update 2011, Defining Reportable Conduct.

[http://www.ombo.nsw.gov.au/\\_data/assets/pdf\\_file/0013/5620/PU\\_CP\\_02\\_11\\_Reportable\\_Conduct\\_v3.pdf](http://www.ombo.nsw.gov.au/_data/assets/pdf_file/0013/5620/PU_CP_02_11_Reportable_Conduct_v3.pdf)

## Forms

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Procedure Checklist (ACT)

Summary of Investigative Process Flowchart NSW Systemic Catholic Schools

Catholic Education Office, Archdiocese of Canberra and Goulburn, Manual for Investigation



## Child Protection (NSW) Responding to Complaints Against Employees

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<b>Approved By:</b>	Service Area Leadership Team
<b>Issuing Service Area:</b>	Human Resource Services
<b>Implementation Date:</b>	1 July 2005
<b>Policy Revision Date:</b>	August 2013
<b>CEO Contact Officer:</b>	Head, Human Resource Services
<b>TRIM Record Number:</b>	R175887

## Procedure Checklist

- The person receiving the notification records the complaint.
- HR Officer is notified
- Determination made as to whether this complaint will be managed at school level or at CEO level
- Determination made as to whether NSW Community Services (formerly DoCs) need to be notified, please consult with Human Resource Services
- Risk analysis is made by the Principal & the HR Officer
- Investigation Plan is drafted
- HR Officer receives Draft Investigation Plan
- Investigator(s) appointed
- Letter to employee advising him/her of the complaint is drafted by the Principal / HR Officer.
- Parents/guardians are informed of the complaint in writing.
- Principal meets with the employee to notify him / her of the complaint. Content of the meeting is confirmed by the Principal in writing. Counselling is offered to employee. Confidentiality is discussed.
- Permission is sought to interview child witnesses
- Information gathering. All statements are verified, signed and dated.
- Interview with employee – complaint is put to the employee. Interview is minuted, verified, signed and dated. The employee is given an opportunity to review the minutes and note changes or additions.
- Any signed written response to the complaint by the employee accepted.
- Information is compiled and forwarded to Head of Human Resources or Principal for preliminary finding.
- Employee informed of preliminary finding and (if sustained) invited to respond to finding and proposed disciplinary action.
- Head of Human Resources or Principal considers employee's response and makes final determination.
- Employee informed of final finding. All relevant documentation gathered for file.
- Parents informed of completion of process.
- File completed and filed in accordance with policy. Closing the file includes analysis of the allegation, whether it was sustained and the evidence relied upon to support the finding as well as any action taken. If an investigation was conducted at school level, the investigation in its entirety must be sent to Human Resource Services.

**Summary of Investigative Process, Flowchart for NSW Systemic Catholic Schools, Archdiocese of Canberra & Goulburn**

