



Catholic Schools Office  
Armidale

# Policy Statement

# CHILD PROTECTION

*Responding to Allegations of Reportable Conduct and Allegations of Misconduct that May Involve Reportable Conduct Made Against School Employees*

<b>Approved by:</b>	Director of Catholic Schools
<b>Implementation:</b>	October 15 2007
<b>Revision Date:</b>	2009
<b>CSO Contact:</b>	Executive Assistant to the Director

## Child Protection: Responding to Allegations of Reportable Conduct and Allegations of Misconduct that May Involve Reportable Conduct Made Against Employees

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### Related Policies

Child Protection

Child Protection – Mandatory Reporting NSW

Child Protection – Code of Professional Standards for Catholic School Employees in the Diocese of Armidale

BCCS Complaints and Suggestions Policy

### Purpose

The protection of children from harm is the paramount consideration in establishing systems to prevent and to investigate reportable conduct. This policy addresses the obligation of the Catholic Schools Office on behalf of the Bishop and the school to investigate allegations of reportable conduct and allegations of misconduct that may involve reportable conduct made against school employees.

The primary objective of the NSW Child Protection Legislation, this policy and of the investigation of allegations of reportable conduct and other related matters, is the safety and well being of children.

This policy aims to ensure that:

- children's rights to a safe environment are balanced with employee's rights to a proper investigation,<sup>1</sup>
- allegations are investigated promptly and thoroughly, and
- the investigation process is grounded in principles of procedural fairness.

### Policy

The Catholic Schools Office takes seriously its obligation to create and maintain school environments which respect the right of children and young people to be safe in their places of learning, work and play<sup>2</sup>.

All allegations of reportable conduct or possible reportable conduct against an employee of the Catholic Schools Office will be subject to investigation by the employer in accordance with the *Ombudsman Act 1974* (NSW) using procedures outlined in this policy.

Reportable allegations, reportable convictions and reportable conduct must be notified to the Ombudsman<sup>3</sup>.

Employers are required to notify the Commission for Children and Young People of the name and other relevant identifying particulars of any employee against whom relevant employment proceedings have been completed<sup>4</sup>.

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<sup>1</sup> NSW Ombudsman *Child Protection in the Workplace Responding to Allegations Against Employees* p vii

<sup>2</sup> NSW Commission for Children and Young People *The Working with Children Check Guidelines* p 2

<sup>3</sup> NSW Ombudsman *Child Protection in the Workplace Responding to Allegations Against Employees* 3.3.1

<sup>4</sup> NSW Commission for Children and Young People *The Working with Children Check Guidelines* Section 5

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### Definitions

**Child** means a person under the age of 18 years<sup>5</sup>.

### Class or Kind Matters

The Ombudsman is empowered to exempt conduct of a specified class or kind from being reported to the Ombudsman. Such a 'class or kind' determination has been made regarding the Catholic Schools Office of the Diocese of Armidale.

Extracted from *Determination by the NSW Ombudsman under Section 25CA of the Ombudsman Act concerning the Catholic Schools Office, Armidale*

#### 3.0 Determination Regarding Employees of the Catholic Schools Office Armidale

3.1 Pursuant to s.25CA of the *Ombudsman Act 1974* (the Act), the Ombudsman has determined that the Catholic Schools Office, Armidale has achieved a standard of investigative practice whereby the following kinds of reportable allegations against employees of the Catholic Schools Office, Armidale need not be notified to the Ombudsman under s.25C(1):

##### 3.1.1 Allegations of physical assault, in so far as they involve:

- (a) Age group 1: Children attending pre-school to Year 4
- Hitting or smacking a child below the head and neck, grabbing, pushing, pulling or poking a child except where:
    - ◆ The behaviour resulted in harm or injury<sup>6</sup> to the child; or
    - ◆ The behaviour involved an assault to a child on the head or neck other than with a small and light object as specified in (c) below; or
    - ◆ Other allegations of the same type indicate a pattern or escalation of the behaviour<sup>7</sup>.
- (b) Age group 2: Children attending Year 5 to Year 12
- Any allegation of physical assault below the head and neck except where:
    - ◆ The behaviour resulted in harm or injury<sup>8</sup> to the child; or
    - ◆ The behaviour involved an assault to a child on the head or neck other than with a small and light object as specified
    - ◆ in (c) below; or

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<sup>5</sup> Section 25A NSW Ombudsman Act 1974

<sup>6</sup> Any alleged assault claimed to have resulted in more than transitory harm or injury, such as bruising, abrasions, welts, stiffness of the body part or area must be notified to the Ombudsman.

<sup>7</sup> One-off incidents that in themselves are exempted but which reflect an increasing seriousness may constitute escalated behaviour requiring notification.

<sup>8</sup> See footnote 1 above

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- ◆ Other allegations of the same type indicate a pattern or escalation of the behaviour<sup>9</sup>.
- Allegations of unreasonable conduct or use of excessive force to protect a child in a situation which was perceived to be harmful or threatening to the safety of a child, group of children, employee or any other person, **which do not fall within the 'reasonable conduct' exemption set out in the definition of reportable conduct in s 25A** except where:
  - ◆ The behaviour resulted in harm or injury<sup>10</sup> to the child or children.

### (c) All age groups – use of objects

- Throwing a small and light object towards a child/children except where:
  - ◆ The object could reasonably be expected to inflict harm; or
  - ◆ It could be inferred that there was intention to harm any child.
- Hitting a child/children with a small and light object except where:
  - ◆ The object could reasonably be expected to inflict harm; or
  - ◆ It could be inferred that there was intention to harm a child/children.

3.1.2 Allegations of neglect where the alleged matter involves a failure to provide supervision or a failure to provide adequate medical treatment where the risk of harm was reasonably perceived at the time to be low, unless a pattern of behaviour is evident.

### 3.2 This Determination does not cover the following:

- (a) allegations of any sexual offence or sexual misconduct (including child pornography); or
- (b) allegations of physical assault that also include an allegation of any sexual offence or sexual misconduct; or
- (c) where the allegation involves a child/children in age group 1, any allegation of physical assault that is not listed in 3.1.1(a); or
- (d) reportable allegations which are also reported to the Department of Community Services (DoCS) or the Police; or
- (e) allegations of behaviour causing psychological harm; or
- (f) convictions of reportable conduct; or

<sup>9</sup> See footnote 2 above

<sup>10</sup> See footnote 1 above

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- (g) any allegations where the behaviour resulted in injury or harm to the child; or
- (h) allegations which when first received appeared to fall within the Determination but upon investigation reveal behaviours not exempted by this Determination, must be reported fully according to section 25C (1-3); or
- (i) any allegation which is similar to a prior allegation and which indicates a pattern of behaviour or an escalation in the seriousness of behaviour.

3.3 In relation to the kinds of reportable allegations against employees referred to in 3.1 above, the Bishop is responsible for ensuring that:

- Each allegation is investigated, including undertaking a risk assessment and making a finding as a result of that investigation. The level of investigation should be commensurate with the level of seriousness of the allegation and the perceived risk to a child or children;
- Appropriate action is taken as a result of that investigation;
- Adequate records are kept of the investigation and the reasons for taking or not taking any action as a result of the investigation; and
- Adequate records are kept of those matters covered by this Determination and ensuring those records are accessible to the Ombudsman for auditing purposes under section 25B of the Act; and
- The Ombudsman is provided within one month of the end of the months of June and December of each year, with the total number of allegations exempted from notification to the Ombudsman under the provisions of this Determination.

**Employee** includes:

- (a) any employee of the agency, whether or not employed in connection with any work or activities of the agency that relates to children; and
- (b) any individual engaged by the agency to provide services to children (including in the capacity of a volunteer)<sup>11</sup>.

### **Employer**

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

### **Head of Agency**

The Bishop of Armidale. Head of Agency authority is generally delegated to the Diocesan Director of Catholic Schools.

### **Ill-treatment**

Ill-treatment of a child occurs where an employee disciplines or corrects a child in excess of what is reasonable or appropriate for the situation. Any punishment administered by a person in

<sup>11</sup> Section 25A *Ombudsman Act 1974*

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authority that [unreasonably] restricts a child's freedom or makes excessive and unreasonable demands on them amounts to ill treatment<sup>12</sup>.

### **Investigation**

An investigation of a matter includes any preliminary or other inquiry into, or examination of, the matter<sup>13</sup>.

### **Neglect**

Neglect occurs when a child is harmed by the failure of a person whose job includes care responsibilities towards a child to provide the basic physical and emotional necessities of life, including a failure of such a person to provide or arrange for the provision of adequate and proper food, nursing, clothing, medical attention or lodging for a child in that person's care. Neglect includes the failure to provide safety from harm, which may be the provision of appropriate and adequate adult supervision<sup>14</sup>.

### **Physical assault**

Physical assault involves a '**hostile act**' by the employee towards the child. The assault occurs regardless of the employee's intention to harm the young person or child and regardless of the child's consent. Assault can include pushing, shoving, hitting, smacking, threatening behaviour (verbal or actions) that causes the child to fear that an assault is likely to occur.

Physical assault of a child under common law principles, must include all three of the following elements:

- it is an act committed on or towards a child; **and**
- it involves either the application of force to a child **or** an act that causes a child to think that immediate force will be used on them; **and**
- it is either **hostile** or **reckless** (a reckless act is one where a person would reasonably foresee the consequence of or likelihood of inflicting injury or fear, and ignores the risk).

Actual physical harm does not have to occur in order for assault to have occurred. Physical contact which is an inevitable or accepted part of everyday life does not amount to an assault<sup>15</sup>.

### **Psychological Harm**

Psychologically harmful behaviour is behaviour that results in significant harm or trauma to a child. There needs to be a causal link between the inappropriate behaviour and the harm.

For a matter to involve reportable conduct of psychological harm, the following must be present:

- a description of persistent and targeted behaviour, eg. Scapegoating, humiliation or verbal abuse – although in rare cases the alleged behaviour may be a single incident which is extreme and harmful to a child;
- signs of harm, eg. displaying patterns of 'out of character behaviour' such as refusal to attend school, sleep disturbances, anxiety, physical symptoms, self harm; **and**

<sup>12</sup> NSW Ombudsman, *Child Protection in the Workplace: Responding to Allegations Against Employees* 3.5.7

<sup>13</sup> Section 25A Ombudsman Act 1974

<sup>14</sup> NSW Ombudsman, *Child Protection in the Workplace: Responding to Allegations Against Employees* 3.5.8

<sup>15</sup> *Ibid* 3.5.6

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- an alleged causal link between the behaviour and the harm<sup>16</sup>.

### **Relevant Employment Proceedings**

Disciplinary proceedings (in NSW or elsewhere) against an employee by the employer or by a professional body that supervises the professional conduct of the employee, being proceedings involving:

- reportable conduct by the employee; or
- an act of violence committed by the employee in the course of employment and in the presence of a child<sup>17</sup>.

### **Reportable Allegation**

An allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct<sup>18</sup>.

### **Reportable Conduct**

Reportable conduct means:

- any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence); or
- any assault, ill treatment or neglect of a child; or
- 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:

- 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
- 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; or
- conduct of a Class or Kind exempted from being reportable conduct by the Ombudsman under section 25CA of the *Ombudsman Act*<sup>19</sup>.

### **Reportable Conviction**

Reportable conviction means a conviction (including a finding of guilt without the court proceeding to a conviction), in this State or elsewhere, of an offence involving reportable conduct<sup>20</sup>.

<sup>16</sup> Ibid 3.5.9

<sup>17</sup> Section 33 Commission for Children and Young People Act 1998

<sup>18</sup> Section 25A *Ombudsman Act 1974*

<sup>19</sup> *ibid*

<sup>20</sup> Section 25A *Ombudsman Act 1974*

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### **Procedures**

The Principal, in consultation with the Executive Assistant to the Director, will determine whether an allegation or complaint, taken at face value, is a reportable allegation. The Executive Assistant to the Director will manage the investigation of reportable allegations. Following discussion between the Executive Assistant to the Director and the Principal the investigation of allegations which are not reportable allegations may be managed at school if deemed appropriate or by a Diocesan Education Consultant. The Ombudsman does not expect an extensive investigation of an allegation of a low risk matter<sup>21</sup>. In all cases, the level of inquiry should be commensurate with the seriousness of the alleged behaviour<sup>22</sup>.

In **all** cases the procedures outlined in this policy must be reasonably followed according to the particular facts and circumstances of each allegation.

The child or young person relevant to the allegation may expect that the allegation will be:

- accepted on face value;
- taken seriously;
- investigated thoroughly.

The employee against whom the allegation is made may expect a fair investigative process which includes:

- confidentiality;
- adequate access to information regarding the allegation;
- an opportunity to respond to the allegation;
- reasonable notice for meetings and interviews;
- the right to have a support person present for interviews;
- an impartial decision maker and an impartial decision making process;
- the opportunity to respond to adverse findings and disciplinary action.

**If there is a departure from rules of procedural fairness in particular cases the reasons for the departure must be documented.**

When planning a response to an allegation careful consideration should be 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 allegation should aim to minimise anxiety and to demonstrate sensitivity, compassion and respect for all involved while maintaining the integrity of the investigative / disciplinary process.

In some cases, statutory agencies with responsibilities for child protection may also be involved such as the Department of Community Services or the Police. In such cases, the employer must await the advice of these agencies as to when an employee is informed of the allegation or when the investigation may be commenced. The employer will liaise closely with such statutory agencies to ensure that the matter is dealt with fairly and efficiently.

<sup>21</sup> NSW Ombudsman *Child Protection in the Workplace: Responding to Allegations Against Employees* 5.1

<sup>22</sup> *ibid* 5.2

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### Procedural Steps

#### 1. Record the Allegation

The Principal, or person receiving the allegation, records in writing information from the person/s reporting the allegation against the employee using the person's exact words and advises that the allegation will be investigated. In recording the allegation the Principal notes WHO is involved, WHAT happened, WHEN did it happen, WHERE did it happen, HOW did it happen. The proforma Incident Report Form may assist with documenting the details of the allegation.

It is important that this initial step is not rushed. The Principal should take time to read over the information and ensure that the notes taken are an accurate statement of the information received from the person making the allegation.

*If the child's information seems to indicate that a serious criminal offence may have occurred, the Principal should not question the child, but should say something to the effect that what the child has told the Principal is important and that the Principal needs to talk to someone else about it. Matters that seem to involve serious criminal offences should not be clarified by the Principal without prior consultation with the police.*

#### 2. Confer with the Executive Assistant to the Director

School Principals **must** inform the Executive Assistant to the Director of the initial details of the allegation.

**The immediate response to an allegation should be one that protects the child or other children from the possibility of further allegations<sup>23</sup>.**

The Principal in consultation with the Executive Assistant to the Director must make an assessment of any perceived risk to the safety and wellbeing of the child and other children.

The risk to the employee, to other employees, the school, confidentiality and the investigation itself should also be assessed. Risk assessment should inform the planning of the investigation and any necessary preliminary action. Risk should be regularly reassessed and managed appropriately.

The Principal and the Executive Assistant to the Director determine action to be taken based on the following questions:

**Q: Is this an allegation / possible allegation of reportable conduct as defined by the *Ombudsman Act 1974*.**

**A:** If it is not an allegation of reportable conduct **or** is exempt from notification, the allegation is handled as a complaint at school level. Investigation must still be conducted and a finding made. The procedures in this policy are adapted according to the circumstances and following consultation with the Executive Assistant to the Director.

If it is an allegation of reportable conduct, the matter must be notified to the Catholic Schools Office and an investigation must be conducted and the finding reported to the Ombudsman.

**Q: Are there reasonable grounds to suspect a child is at current risk of harm?**

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<sup>23</sup> NSW Ombudsman, *Child Protection in the Workplace: Responding to Allegations Against Employees* 5.14.2

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**A:** If the answer is yes then the complaint must be reported to the Department of Community Services (DoCS) as required by section 27, Children and Young Persons (Care and Protection) Act 1998 (NSW).

If the Executive Assistant to the Director is unsure when making assessments regarding notification to the Ombudsman's Office or DOCS, he or she will seek advice from the Ombudsman or from the DOCS help line on 133627.

- If a report is made to DoCS or Police, an investigation is conducted by the school or the CSO only on the advice of DOCS or Police. The matter is notified to the Ombudsman's Office by the CSO.
- If DoCS or Police investigates an employee of the CSO, the process will be managed by the Executive Assistant to the Director.

**Q: Does the allegation fall within the definition of reportable conduct but is not reportable to the Ombudsman as it falls within exemption (a), (b) or (c)?**

**A:** If yes;

- An Initial Child Protection Information Details and Exemption Notification Form Ombudsman Act 1974 is completed by the Principal.
- The rationale for applying the appropriate exemption is documented on the above form.
- An initial risk assessment and draft investigation plan is completed by the Principal or Executive Assistant to the Director within 4 working days.
- The exemption notification form is forwarded to the CSO within 7 working days.
- The investigation procedures as outlined in this document are followed and forward Part B of the Ombudsman's notification form to the Executive Assistant to the Director. Conduct final risk assessment.

**Q: What if exemptions do not apply?**

**A:** If the allegation falls within the definition of reportable conduct and exemptions do not apply follow the investigation procedures outlined in this document.

- The Principal completes Section A of the Initial Child Protection Information Details and Exemption Notification Form Ombudsman Act 1974, and sends it to the Executive Assistant to the Director within 48 hours of the allegation. The Executive Assistant to the Director ensures that Part A of the Ombudsman's Notification Form is forwarded to the Ombudsman's Office within 30 working days of the allegation being made or conviction of reportable conduct.
- On completion of the investigation the CSO must take into consideration whether the matter is to be reported to the Commission for Children and Young People (CCYP)<sup>24</sup>.
- It is the employer's responsibility to ensure any reporting requirement to CCYP is fulfilled. The CCYP guidelines must be followed.

<sup>24</sup> NSW Commission for Children and Young People, *The Working With Children Check Guidelines* Section 5

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- Part B of the Ombudsman's Notification Form and all relevant documentation will be forwarded to the Ombudsman within 4 days of the finalisation of the investigation.

### **3. The Investigation Process is Planned**

The Principal and the Executive Assistant to the Director, having regard to the nature of the allegation and particular school/community characteristics, plan the investigation in line with the CSO protocol.

An investigator (or panel of 2 investigators) will be appointed by the Principal / Executive Assistant to the Director.

The investigation objectives are clarified and established.

Any relevant documentation relating to the allegation will be compiled.

A timeframe for notifying parents and the employee is discussed.

Witnesses to be interviewed will be identified.

A timeframe for obtaining consent to interview children and the conducting of interviews will be drafted.

The Principal ensures that **Section A of the Initial Child Protection Information Details and Exemption Notification Form *Ombudsman Act 1974*** is sent to the Executive Assistant to the Director on the secure fax line (6771 2501).

The Executive Assistant to the Director ensures that Part A of the Ombudsman's Notification Form is completed and sent within the specified time.

### **4. Notifying Parents of the Allegation**

The parents/guardians of the child will be informed by the Principal that an allegation has been received and that the matter will be taken seriously and investigated. This information should also be confirmed to the parents in writing.

It is important that the notification to parents occurs as close as possible to the notification to the employee (Step 5).

### **5. Principal and Staff Member Meet**

Principal meets briefly with staff member to:

- inform the employee that an allegation / complaint has been received and to advise the employee of the general nature of the allegation i.e. sexual assault, misconduct, reportable conduct, physical assault, behaviour causing psychological harm;
- give the employee a copy of this policy and the "Responding to allegations of child abuse and other CCYP – notifiable matters" Protocol;
- inform the employee of the investigative procedure and the expected timeline for bringing the matter to completion;
- inform the employee of who will be investigating the allegation/complaint. The employee is informed that he or she may raise any possible conflict of interest regarding the person(s) investigating. (The Principal and the Human Resources Officer will together consider and seek resolution of any such issues raised by the employee before the investigation commences);

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- ask the employee if he or she wishes to nominate any witnesses to the alleged incident to be interviewed during the investigation;
- inform the employee that as soon as information is gathered a meeting will be held with the employee to fully inform the employee of the allegation. The employee may choose to have a support person, who may be a union representative present at that meeting;
- offer the employee adequate support including an offer of counselling at no cost to the employee through the Employee Assistance Program and, if the staff member wishes, a support person at the school or CSO who can assist them through the process.

**The employee also receives this advice in writing.**

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

In some cases the staff member may wish to acknowledge that the allegation is true. An admission that the allegation is true should be recorded in writing, signed and dated by the employee. No further investigation may be required, the Principal/Executive Assistant to the Director proceeds with step 9.

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 Executive Assistant to the Director managing the case must consider the staff member's request for an early interview.

Arranging an early interview will not preclude the holding of the later interview outlined in step 9 below.

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

The investigator(s) proceeds to gather relevant information.

The need for confidentiality must be stressed with all witnesses and parties concerned.

Investigators must have concern for the developmental stage of child witnesses. Questions should be planned in advance, keeping in mind what information the interviewer is seeking or seeking to assess or clarify. Questions should be open and not leading. Investigators should not interview a child on more occasions than is absolutely necessary. Part 8G of *NSW Ombudsman, Child Protection in the Workplace: Responding to Allegations Against Employees* offers excellent guidelines for interviewing children.

Child witnesses should not be interviewed formally without parental permission. Parents may be present for the interview but may not participate unless directed by the investigators. The number of persons present at the interview should be kept to a minimum.

Records of interview should be read, signed and dated by the witness. If the witness refuses to sign the record of interview the investigators should document both the request and the refusal.

If the witness disputes the accuracy of the record of interview, he or she should be asked to indicate in writing what he or she believes was actually said.

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### 8. The employee is interviewed and responds to the allegation

Following information gathering and clarification of facts the investigator(s) presents the allegation to the employee for his or her response.

The employee must be given at least 24 hours notice of the time and location of the interview.

The employee will 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 or witnesses interviewed during the investigation should not be automatically disclosed to the employee unless:

- the notifier consents in writing to disclosure of his / her identity; or
- the disclosure of the identity of the notifier is necessary to investigate the matter effectively; or
- the making of the allegation is found to be malicious or vexatious.

During the interview the employee must be fully informed of the information that has come to the investigators regarding the allegation. The employee must be given every opportunity to respond to the allegation and any information adverse to his or her interest. The employee may be questioned to seek further information or to clarify matters.

The employee should be 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) should record both the request and the refusal.

### 9. Finding

#### 9.1 Where the allegation concerns “reportable conduct”

When all the information is gathered, all documentation is reviewed and considered by the Executive Assistant to the Director. The Executive Assistant to the Director is responsible for considering all available information and deciding whether, on the balance of probabilities, the allegation is:

- sustained, (evidence shows that it's more probable than not that the conduct as alleged did occur); **or**
- not sustained – insufficient evidence (i.e. insufficient evidence is available to establish that the alleged conduct did or did not occur); **or**
- false (where inquiries into the matter find that reportable conduct or an act of violence did not occur. There may be conclusive evidence that the alleged conduct did not occur or there may be no evidence of any weight that it did occur. A high level of probability is needed to make a finding of 'false'); **or**
- vexatious (ie where inquiries into the matter find that the allegation was made without substance and with the intent of being malicious or to cause distress to the person against whom the allegation was made); **or**
- misconceived (ie where inquiries into the matter find that, even though the allegation was made in good faith, it was based on a misunderstanding of what

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actually happened. This category is ONLY used when conduct is found to be appropriate); **or**

- not Reportable Conduct<sup>25</sup>,
  - where the conduct was found to be inappropriate but does not meet the criteria of reportable conduct i.e. It is not a sexual offence, sexual misconduct, assault, ill treatment or neglect of a child, or behaviour that has caused psychological harm to a child;
  - where the conduct is found to be accidental;
  - where the victim was not a child.

The Executive Assistant to the Director may seek clarification and direct that further action occur to ensure that the relevant interests of the child and the employee are served.

### 9.2 Where the allegations concerns conduct that is “exempt”

The Ombudsman also expects that employers will investigate exempt matters to an appropriate standard and commensurate with the nature of the allegation and that they use the exact same terminology in findings as with findings of reportable conduct (see 9.1 above). However, correspondence to employees who are the subject of an allegation and to parents of children may use less formal terminology where appropriate as long as this does not affect the clarity as to outcome.

The Principal or Executive Assistant to the Director will meet with the employee to outline the finding of the investigation. If the allegation is sustained, the employee must be given the opportunity to respond to that finding and to any disciplinary or support initiatives that the Principal or Executive Assistant to the Director intends to implement as a result of the finding.

Exempt matters are not reported to the CCYP.

In all cases, the employee should be given the opportunity to debrief regarding the allegation and the investigation. An offering of counselling, at no cost to the employee, should be made. Counselling will be arranged through the Executive Assistant to the Director.

## 10. If an allegation of reportable conduct is sustained, the employee is advised of the preliminary finding and proposed action by the employer.

The Executive Assistant to the Director informs the employee of the preliminary finding.

The employee is provided with the opportunity to respond to an adverse finding within 10 working days.

The employee is advised whether the matter will be notified to the CCYP<sup>26</sup>.

The employee is advised of any proposed disciplinary action or support initiatives.

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<sup>25</sup> NSW Ombudsman, *Child Protection in the Workplace: Responding to Allegations Against Employees* 5.12.5

<sup>26</sup> NB Allegations of reportable conduct which are not sustained may be subject to notification to CCYP (Section 5 *The Working With Children Check Guidelines*)

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The employee is advised that she or he may request to view the file.

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.

### **11. The Final Finding**

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

The Head of Human Resources determines the finding, consulting where necessary with the Human Resources Officer managing the case, the Principal and the Ombudsman's Office and advises the Principal of the finding.

The Head of Human Resources advises the employee in writing of:

- the finding;
- whether the matter will be notified to the Ombudsman and / or CCYP;
- disciplinary action and/or support initiatives to be implemented;
- the procedures in place for storage of files in relation to this case;
- the availability of support and/or counselling.

### **12. Notification to the Ombudsman**

#### **12.1 Where the allegation is of reportable conduct and EXEMPTIONS DO NOT apply**

The Executive Assistant to the Director completes Part B of the Ombudsman's Notification Form forwards all relevant documentation regarding the case to the Ombudsman's Office.

For a final finding the following documentation is required:

- Ombudsman Notification Form – Sections A and B;
- letter advising the employee of the allegation and inviting the employee to a meeting;
- letter advising parents/guardians of child of the commencement of the child protection investigation process;
- employee's response to the allegation (if written);
- all meeting records signed and dated;
- all statements (witnesses etc) signed and dated;
- letter advising employee of the preliminary finding;
- 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;
- letter advising parent / guardian of the conclusion of the investigation process;

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- relevant e-mails and memos.

### 12.2 Where the allegation is of reportable conduct and EXEMPTIONS DO apply

The Principal or Executive Assistant to the Director (ie. The person responsible for conducting the investigation) should record a clear document trail. This documentation will be subject to auditing by the Ombudsman's Office. Documentation should include:

- rationale for applying the exemption;
- ongoing risk assessment;
- letter advising the employee of the allegation and inviting the employee to a meeting;
- letter advising parents/guardians of child of the commencement of the child protection investigation process;
- employee's response to the allegation (if written);
- all meeting records signed and dated;
- all statements (witnesses etc) signed and dated;
- letter advising employee of the preliminary finding;
- 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;
- letter advising parent / guardian of the conclusion of the investigation process;
- relevant e-mails and memos.

### 13. 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.

Generally parents/guardians are not informed of the outcome of the investigation. Findings are confidential to employer and employee. Further parental enquiries regarding investigations or findings should be directed to the Executive Assistant to the Director.

### 14. 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 the NSW Ombudsman for review.

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### 15. Security of Records and Documentation

All documentation relating to complaints, allegations 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 allegation, investigation and finding should not be noted in any personal record maintained at school in relation to the employee. This means the information must be removed from any records or files such as personnel, student records or similar files. Such records should be forwarded to the Catholic Schools Office for confidential and secure storage: they must not be destroyed.

### 16. Employee's access to investigation file

An employee may, subject to reasonable notice, apply to inspect the investigation file regarding a relevant employment proceeding or other Commission for Children and Young People notifiable matters concerning him or her. Access may be granted to the investigation file, prior to the completion of the investigation, in exceptional circumstances.

Before an employee is given access to the file advice from the Catholic Commission for Employment Relations should be sought regarding documents or parts of documents which must be excluded from employee access. Exclusions will be made to protect the identity of victims and notifiers and to ensure compliance with privacy and other legislation.

The employee, having inspected the file, may submit additional documentation that will be added to the investigation file by way of amendment, correction or clarification of information held on the file. If the employee contends that the additional or clarified information was relevant to the finding application for a review of the finding may be made.

### 17. Notification to the Commission for Children and Young People

Section 39 of the *Commission for Children and Young People Act 1998* requires all employers to notify the CCYP of the name and other relevant identifying particulars of any employee against whom relevant employment proceedings have been completed since 3 July 1995.

Where it is decided that an employee's conduct is reportable and that the employment proceedings should be reported, employers must categorise these proceedings.

A two tier reporting system has been introduced for relevant employment proceedings. This system recognises the varying degrees and complexities of employee behaviour in a child protection context.

Employers are required to indicate whether they are reporting a Category One or Category Two employment proceeding<sup>27</sup>.

Detailed information regarding Category classification and implications for future employment screening when notification is made to CCYP can be found in Section 5 of the *Working With Children Check Guidelines*. The Guidelines are available in schools and on the CCYP website at [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au).

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<sup>27</sup> NSW Commission for Children and Young People, *The Working With Children Check Guidelines* Section 5.2

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### 18. Apologies

With the commencement of amendments to the Civil Liability Act 2000 (NSW) on 6 December 2002, in most cases the giving of an apology is no longer an admission of fault of liability. Part 10 of the Act provides that an apology (including an expression of sympathy or regret) does not constitute an admission of liability and will not be relevant to the determination of fault or liability in connection with civil liability of any kind, other than in certain limited circumstances<sup>28</sup>.

The following text from the NSW Ombudsman's Child Protection Guidelines offers further information on offering apology to students, parents and employees.

"The most common instances where it would be appropriate for an apology to be given will be where conduct has not been of a standard expected by a school. If such behaviour does not constitute an intentional infliction of physical or sexual harm, then an apology may be given that not only expresses regret for the detriment suffered, but also provides some explanation for the way the situation occurred (eg accident, oversight, inadvertence, distraction, etc).

An agency should consider apologising (to the employee) for distress caused by an investigation into an allegation against an employee where the matter is not sustained and the employee suffered some detriment in the course of the investigation. An apology can express regret for that detriment. This can be done while still maintaining that the action causing the detriment (eg temporary transfer to other duties) was a necessary part of the investigation (which may also have been in the best interests of the employee).

Where an investigation has been conducted less than perfectly, for example, if the completion of the investigation was unnecessarily delayed or there was a breach of confidentiality or some other procedural error, an apology, including an explanation for the deficiency in the investigation, should be made for any detriment or distress caused<sup>29</sup>."

### 19. Matters of Jurisdiction

Any matters of jurisdiction should be referred to the Executive Assistant to the Director who will liaise with the Ombudsman regarding the matter.

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<sup>28</sup> NSW Ombudsman, *Child Protection in the Workplace: Responding to Allegations Against Employees*

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<sup>29</sup> *ibid*

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### References

- *The Working With Children Check Guidelines* [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au).
- NSW Ombudsman; *Child Protection in the Workplace Responding to Allegations Against Employees*  
[http://www.ombo.nsw.gov.au/publications/Publist\\_pdfs/guidelines/Child%20Protection%20in%20the%20workplace1.pdf](http://www.ombo.nsw.gov.au/publications/Publist_pdfs/guidelines/Child%20Protection%20in%20the%20workplace1.pdf)
- *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/)
- *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/)
- *Commission for Children and Young People Act 1988*  
[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/cfcaypa1998397/](http://www.austlii.edu.au/au/legis/nsw/consol_act/cfcaypa1998397/)
- *Child Protection (Prohibited Employment) Act 1998*  
[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/cpea1998401/](http://www.austlii.edu.au/au/legis/nsw/consol_act/cpea1998401/)

### Forms

- Initial Child Protection Information Details and Exemption Form

### Resources

- Incident Report Form
- Guide Sheet for Principals – Exempt Matter or Reportable Conduct Allegations Relating to a Staff Member

### Acknowledgements

The Catholic Schools Office, Armidale gratefully acknowledges the support and contribution of the Catholic Education Office, Canberra Goulburn in the formulation of this policy.

<p><b>Approved by:</b> Diocesan Director of Catholic Schools</p> <p><b>Implementation Date:</b> 15 October 2007</p> <p><b>Supersedes Policy Dated:</b> Not applicable</p> <p><b>Revision Date:</b> 2009</p> <p><b>CSO Contact Officer:</b> Executive Assistant to the Director</p>
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### APPENDIX

#### Procedure Checklist

- The allegation is recorded by the person receiving the notification.
- The Executive Assistant to the Director is notified.
- Determination made as to whether this is an allegation of Reportable Conduct.
- Determination made as to whether DoCS or Police need to be notified.
- Risk assessment made by the Principal & the Executive Assistant to the Director.
- If a reportable allegation the Executive Assistant to the Director completes Sections A Ombudsman's Notification Form.
- If not a reportable allegation because exemptions apply the Executive Assistant to the Director completes Exemption Notification Form and Risk Assessment.
- The Executive Assistant to the Director posts Part A Ombudsman's Notification Form to NSW Ombudsman by registered mail.
- Parents/guardians are informed of the allegation in writing.
- Investigator(s) appointed.
- Letter to employee advising him/her of the allegation is drafted by the Principal / Human Resources Officer.
- Principal meets with the employee to notify him / her of the allegation. Content of the meeting is confirmed by the Executive Assistant in writing.
- Permission is sought to interview child witnesses.
- Information gathering: All statements are verified, signed and dated.
- Interview with employee – allegation is put to the employee. Interview is minuted, verified, signed and dated.
- Any signed written response to the allegation by the employee accepted.
- Information is compiled for preliminary finding and decision re notification to CCYP.
- Employee informed of preliminary finding and (if sustained) invited to respond to finding and proposed disciplinary action.
- Executive Assistant to the Director considers employee's response and makes final determination.
- Employee informed of final finding.
- Parents informed of completion of process.
- Completed Detailed Child Protection Notification Form and compiled documentation forwarded to NSW Ombudsman.
- CCYP notification as required.
- File completed and filed in accordance with policy.