



## POLICY/PROCEDURE: Allegations of Misconduct

### Policy Statement

CatholicCare NT is committed to fair, impartial and timely response to allegations of misconduct against a staff member, student or volunteer. Allegations of misconduct will be thoroughly investigated and the outcome or action that results, following the completion of an investigation, will be made known to all relevant parties. The safety, protection and confidentiality of staff, volunteers and clients will be taken into consideration throughout any investigation procedure.

### What Constitutes Misconduct?

For the purpose of this policy misconduct includes, but is not limited to, behaviours such as:

- insubordination (disobedience or defiance)
- failure to notify of an absence
- rude or abusive language in the workplace
- failure to follow policies and procedures
- dishonesty

### Procedure

#### 1. Responsibility

- 1.1 The responsibility for oversight of any allegation of misconduct rests with the relevant Manager.
- 1.2 The Manager must inform and advise the relevant General Manager and Director of any allegations, their progress and outcome.
- 1.3 The General Manager may delegate investigation processes to a Manager, Team Leader, Human Resources (HR) or call on other internal or external resources if additional expertise is required or mandated.
- 1.4 Any disciplinary action taken as a result of an investigation must be with the prior knowledge and approval of the Director.

#### 2. Discipline in the Workplace

This is the means by which all Managers and Team Leaders correct behavioural deficiencies and ensure adherence to established organisational rules. The purpose of discipline is to correct behaviour, it is not designed to punish or embarrass a staff member. Often, a disciplinary approach is not required. However, if unacceptable behaviour is a persistent problem or if the staff member is involved in misconduct that cannot be tolerated, then discipline is an option to correct the behaviour.

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### 3. Investigations

Steps involved in the process are:

- 3.1 Misconduct occurs in the workplace. Any staff member who becomes aware of misconduct must inform their Team Leader, Manager or General Manager as soon as possible.
- 3.2 Where possible, two members of management or their appointees will conduct interviews with witnesses or other relevant persons in order to gather evidence that may support or refute the allegation. This process will involve the person making the allegation to submit details in writing to the appropriate level of management and attend an interview to provide factual evidence relating to the allegation utilising the staff record of conversation form. Any witnesses to the misconduct will be interviewed. Information such as dates, times and specific details concerning the misconduct will be important to record along with any other associated information. Interviews will be minuted and signed.
- 3.3 Management or appointees will interview the staff member named in allegation. The staff member will be informed of the alleged misconduct with details provided in writing. They will be given the opportunity to respond in writing to the allegation. The employee may wish to bring a support person to the interview. The interview will be minuted and signed.
- 3.4 All staff involved in the investigation process must be advised of the requirement to maintain confidentiality on all matters to do with the allegation.
- 3.5 Management reviews all the evidence and will come to a decision based on the “balance of probabilities” (this is a lower standard than “beyond reasonable doubt” that is used in criminal law, refer to Section 4 for clarification).
- 3.6 If, on the “balance of probabilities”, Management believes that an employee has been involved in misconduct, disciplinary action is an option. Disciplinary action may include issuing a letter of reprimand or warning, a letter of suspension or termination. Refer CCNT Policy/Procedure: Staff Disciplinary Proceedings (ORG/HR/P018).
- 3.7 Decisions regarding disciplinary or other actions will take into account any risk factors for staff and/or clients and principles of Just Cause.
- 3.8 Where the allegation is of abuse involving a child or young person, interviews with that child or young person and the staff member who is subject to the allegations will not be conducted by CCNT. Allegations must be reported to Team Leader, Manager or General Manager and subsequently passed on to the Intake Number for notifications of child abuse 1800 700 250 as well as report to the Australian Childhood Foundation (ACF) within 28 days. The subject staff member may be relocated or asked to step down until the outcome of any investigation (Refer to Section 7, Safety of Parties). Decisions by management will depend on the outcome of a departmental decision or investigation and could include but not be limited to:
  - conduct an internal investigation
  - dismissal of allegations
  - disciplinary action with potential for dismissal of staff member
- 3.9 Where the allegation identifies bullying, harassment or sexual harassment of a staff member, refer to CCNT Policy/Procedure: Sexual Harassment & Victimisation (ORG/HR/P028) or, Bullying and Harassment (ORG/HR/P029)

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#### 4. Balance of Probabilities

- 4.1 The role of management is to determine whether allegations of misconduct occurred. To do this, the investigating team needs to determine whether there is a sufficient amount of evidence to prove allegations. The amount of evidence required is known as the 'standard of proof'.
- 4.2 The standard of proof differs between civil and criminal matters. Civil matters, which includes workplace misconduct, identifies the standard as the 'balance of probabilities.' Generally, this means that based on the evidence, it might be concluded that misconduct is more likely to have occurred than not (or vice versa).
- 4.3 As a general rule, circumstantial or unsupported evidence requires very careful consideration before being used in the decision making process. In cases of serious allegations of misconduct, well supported evidence must be obtained.

#### 5. Just Cause

Just cause includes the following factors but is not limited to those listed. These factors are important considerations when management is making decisions on the degree of disciplinary action or even whether to proceed with disciplinary action.

- Did the employee clearly understand the rule or policy that was violated? For example, were the policies and procedures provided to the employee prior to the violation?
- Was the policy consistently and fairly enforced by management? For example, did management have a history of ignoring the organisation's policy on dress standards but singled out an employee for discipline anyway?
- Did the employee know that violating the policy could lead to discipline?
- the seriousness of the misconduct in terms of violating policy regarding conduct; for example, swearing at a colleague or stealing CatholicCare property would be considered serious
- the length of service of the employee
- Provocation – was the employee pushed into acting rudely as a result of a client or colleague's actions? (this is a common defense for employees involved in insubordination)
- Did the employee admit to the misconduct and apologise for their behavior?

#### 6. Conflict of Interest

All staff involved in the resolution of allegations of misconduct will ensure that they have no conflict of interest or bias in relation to any party connected to the allegation, and that there is no perception by the parties that they have a conflict of interest. Staff who have concerns about perceptions of possible conflict of interest or partiality, should exclude themselves from the process, refer on to another appropriate senior staff member or seek advice from the Director.

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## 7. Safety of Parties

- 7.1 Where Management deems it is in the interests of protection for either a client, staff member or the staff member suspected of misconduct, that immediate separation action is taken, the Manager must advise the Director.
- 7.2 The Director will have approval responsibility to relocate or ask a staff member to step aside from their duties pending an investigation.
- 7.3 Direction for relocation or stepping aside will be put to the staff member concerned in writing, counter-signed by the Director. The written document will advise the staff member of the reason(s) for the relocation and of the processes of any investigation procedure. The written document will also reference employment conditions during the period of relocation.
- 7.4 Staff who are relocated or asked to step aside from primary duties pending investigation, will remain on full pay and employment conditions during the period of investigation.
- 7.5 The Manager has responsibility for advising all staff members involved in the alleged misconduct, particularly the staff member alleged of the misconduct, of the external support options available to them.

## 8. Outcomes

- 8.1 Any action or outcome to an investigation of staff misconduct will occur only after the due and fair consideration by management of all issues and viewpoints, taking into consideration principles of Just Cause.
- 8.2 Misconduct that is considered serious, e.g., being under the influence of alcohol or illegal drugs at work will lead to instant dismissal.

## 9. Formal Disciplinary Action

- 9.1 The Director has final approval on the decision to undertake formal disciplinary proceedings with any staff member.
- 9.2 Where it is found via appropriate investigation that a staff member's conduct warrants formal disciplinary action, this will be put to the staff member in writing, countersigned by the Director or relevant General Manager. Refer to CCNT Policy/Procedure: Staff Disciplinary Proceedings (ORG/HR/P018).

## 10. Records

- 10.1 Copies will be kept of all misconduct allegations, investigation interviews and disciplinary proceedings and any other related correspondence.
- 10.2 The staff member's personnel file will contain relevant correspondence including the misconduct allegation and outcome.
- 10.3 Any person who is the subject of an internal investigation will be given copies of records of proceedings where they are a direct participant.
- 10.4 The subject staff member of an investigation will not be permitted copies of, or access to, any interview records of other persons.

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## References

### Legislation

- Care and Protection of Children Act 2007 (NT)
- Anti-Discrimination Act 2011
- Workplace Gender Equality Act 2012
- Australian Human Rights Commission Act 1986
- Racial Discrimination Act 1975

### Associated Documents

This document should be read in conjunction with these policies and procedures:

- CCNT Policy/Procedure: Staff Disciplinary Proceedings (ORG/HR/P018)
- CCNT Policy/Procedure: Policy/Procedure: Sexual Harassment & Victimisation (ORG/HR/P028)
- CCNT Form: Staff Record of conversation
- CCNT Policy/Procedure: **Bullying & Harassment Policy** (ORG/HR/P029)

### Links

#### Workplace Gender Equality Act 2012

<http://www.comlaw.gov.au/Details/C2012C00899>

#### Anti Discrimination Act (NT) 2011

<http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/59b26920603f6a266925784c000708a7?OpenDocument>

#### Australian Human Rights Commission Act 1986

[http://www.austlii.edu.au/au/legis/cth/consol\\_act/ahrca1986373/](http://www.austlii.edu.au/au/legis/cth/consol_act/ahrca1986373/)

#### Racial Discrimination Act 1975

[http://www.austlii.edu.au/au/legis/cth/consol\\_act/rda1975202/](http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/)

#### Care and Protection of Children Act 2007 (NT)

[http://www.austlii.edu.au/au/legis/nt/num\\_act/capoca200737o2007315/](http://www.austlii.edu.au/au/legis/nt/num_act/capoca200737o2007315/)

#### Ombudsman NT – Child Abuse

<http://www.ombudsman.nt.gov.au/agencies/child-abuse/>

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