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Diocese of Toowoomba

Education and Training Legislation Amendment Act 2011

**Changes to legislation
impacting on the reporting of
sexual abuse**



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The new law

- In November 2011, the ***Education and Training Legislation Amendment Act 2011*** was passed by the Queensland Parliament.
- The Act amends the ***Education (General Provisions) Act 2006*** in respect of the reporting of **sexual abuse**.
- The changes to the law governing the reporting of sexual abuse by school staff members come into force from **9 July 2012** (the start of Term 3, 2012).



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What does the new law apply to?

The reporting by school staff members of
sexual abuse to students



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Who does the law apply to?

- The new reporting obligations apply to **all** school staff members.
- **School staff members** are persons employed by Toowoomba Catholic Education who normally perform their daily duties within a school or schools, whether on a temporary, permanent or contract basis.



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What is Sexual Abuse?

The Act provides the following guidance:

“**Sexual abuse**, in relation to a relevant person, includes sexual behaviour involving the relevant person and another person in the following circumstances –

- (a) the other person bribes, coerces, exploits, threatens or is violent toward the relevant person;
- (b) the relevant person has less power than the other person;
- (c) there is a significant disparity between the relevant person and the other person in intellectual capacity or maturity.”

Education and Training Legislation Amendment Act 2011 S.364



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What is Sexual Abuse?

The following additional advice is offered to assist staff members:

- Sexual abuse can be physical, verbal or emotional. It may involve physical contact with another person, but not necessarily so.



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What is Sexual Abuse?

The following additional advice is offered to assist staff members:

- Activity between peers may also be abusive, especially if the relationship is coercive, forceful, degrading or threatening.
- **The involvement of any staff member, other employee or volunteer within a school in sexual activity with, or sexual exploitation of, a student attending that school is always to be regarded as sexual abuse.**



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What does the new law mean for school staff?

You must immediately report when you (as the “first person”), in the course of your employment at the school, **reasonably suspect** that a student under the age of 18 years attending the school has been sexually abused by another person, regardless of who that person might be.



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What does the new law mean for school staff?

- You must make your report **in writing** and give it to the Principal.
- In cases where you suspect that the Principal may be the source of the abuse, or you decide not to report to the Principal, you must immediately give your written report to the Director of the Governing Body (or delegate).



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What is a “reasonable suspicion”

- A “*reasonable suspicion*” is a suspicion that would be formed by a reasonable person based on a reasonable view of the evidence available to them.



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What the new law means for the Governing Body of a school / schools:

- The Governing Body of a school will ensure that all staff are aware of their responsibilities under legislation and regulation by regularly conducting appropriate training.
- The Governing Body will officially approve one or more directors who may perform the function of receiving reports from a 'first person' and dispatching reports to the police.
- The Governing Body, **by unanimous decision of all the directors**, may **delegate** this function to an appropriately qualified person. Such a person **will not be** a member of the school staff.



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What the new law means for Principals

- Upon receiving the written report from the “first person, the Principal must immediately give a copy of the report to the police.
- If the Principal (as the “first person”) reasonably suspects sexual abuse of a student under 18 years attending the school, then the Principal must immediately give a written report to the police.
- After making a report to police as the “first person”, the Principal must also immediately provide a copy of the written report to the Director of the Governing Body (or delegate).



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What the new law means for the Director of the Governing Body (or Delegate)

- Upon receiving a written report from a “first person”, the Director of the Governing Body (or delegate) must immediately give a copy of the report to the police.



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How is this different?

- Previously, the law required school staff members to make a report **only** if they reasonably suspected that a student had been sexually abused by another person **who was an employee of the school.**
- Now, the law requires staff members to make a report if they reasonably suspect that a student has been sexually abused **by another person regardless of whether they are employed at the school.**



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Summary

You must report immediately when you **reasonably suspect** that a student under 18 years attending the school has been sexually abused by any person **regardless of who that person might be.**



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Future Change

- The recent law as first passed by parliament required school staff members to also make a report when they reasonably suspected that a student under 18 years attending the school was **likely** to be sexually abused by another person.
- Under the legislation initially passed, failure to report **likely** sexual abuse had no legal penalty.



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Future Change

- Owing to legal issues associated with the no penalty provision for the non reporting of likely sexual abuse, the mandatory reporting of likely sexual abuse will NOT come into force on 9th July 2012.
- Staff will be informed when the mandatory reporting of likely sexual abuse becomes law again.



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Reporting of likely sexual abuse

The reporting of **likely** sexual abuse will still be required under Toowoomba Catholic Education current student protection reporting processes relating to the reporting of harm and likely harm.



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Summary

- You will not be required by **law** to report **likely** sexual abuse of a student by any person. However, under Toowoomba Catholic Education Office student protection reporting processes you are still required to report a reasonable suspicion of harm and likely harm to a student including likely sexual abuse.
- Staff will be informed when the mandatory reporting of likely sexual abuse becomes law again.



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Note

The legal obligation to report sexual abuse of a student under 18 years is limited to a reasonable suspicion formed “***in the course of the staff member ’ s employment at the school. ”***”



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Legal protection

The law ensures that staff members reporting a reasonable suspicion of sexual abuse or likely sexual abuse of a student under these provisions will not be liable under a civil, criminal or administrative process.



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Practice scenarios

Let's consider some scenarios to illustrate how the Act might be applied in practice



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Scenario 1

Two 6 year old boys are discovered in the toilets looking at each other's genitals. One boy says that the other boy touched his penis and the other boy asks the teacher not to tell his mum.



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Scenario 2

A 6 year old boy and a 12 year old boy are discovered in the toilets. The 6 year old boy says that the other boy gave him lollies to kiss his penis.



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Scenario 3

A 15 year old female and a 15 year old male are found by the groundsman engaging in oral sex in the bushes on the school grounds. There is no obvious imbalance in power in the relationship between these students who both appear to be willingly engaged in the activity.



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Scenario 4

A 10 year old girl in your class is living with her mother (who has a substance abuse problem) and her mother's new boyfriend. The mother's new boyfriend is alleged to have been convicted for a number of sexual offences against children. The girl tells you that she is afraid of her mum's boyfriend, that he brushes up against her, says rude things to her and tries to watch when she is in the shower. Her mum is often asleep or drug-affected and the girl is often alone with her mum's boyfriend.



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Scenario 5

You overhear two 8 year old girls in your class telling other students that a teacher has been getting them free drinks and ice creams from the local shop.

When you speak with the girls they tell you that the teacher has given them each an iPod but told them not to tell anyone.

The girls said that he also told them to come into his classroom after school if they wanted help with their homework. The girls said that the teacher always tells them how pretty they are and has offered to ask their parents if he can take them to the movies in the holidays.



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What about the current Student Protection Processes?

While the legislation governing the reporting of sexual abuse has changed, Toowoomba Catholic Education Student Protection Processes already require **employees to report any suspicions of harm and/or likely harm, (including harm caused by sexual abuse)** to the Principal. The existing obligations remain in place.



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So just as before

School staff members must still **report all suspicions of student harm or likely harm** (not relating to sexual abuse) the Principal or another Student Protection Contact (SPC) at the school.

Where the staff member suspects the Principal of being the cause of harm or likely harm, the Student Protection Contact must pass the report to the Assistant Director, Staff and School Development at the Toowoomba Catholic Education Office



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Summary - Staff reporting responsibilities

In the past, the requirement to report suspected sexual abuse by someone other than an employee arose from the **Toowoomba Catholic Education Student Protection Processes, not law**.

If an employee failed to report a reasonable suspicion of sexual abuse by someone other than another employee, they could have been subject to disciplinary procedures for not complying with the Toowoomba Catholic Education Student Protection Processes, but they would not have been breaking the law.



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Summary - Staff reporting responsibilities

From the start of Term 3 2012, if an employee fails to report a reasonable suspicion of sexual abuse of a student **by any person**, they will be in breach of the law as well as subject to disciplinary procedures for not complying with the Toowoomba Catholic Education Student Protection Processes.



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Making a mandatory report

- If you have a concern but are unsure if it amounts to a reasonable suspicion, you should discuss this with your Principal, School Student Protection Contact, or Student Protection Officer at the Toowoomba Catholic Education Office.
- To make a mandatory report around sexual abuse or likely sexual abuse you should use the new *Mandatory Report Form* provided in the Toowoomba Catholic Education Student Protection Policy and Procedure, which can also be accessed on in the Intranet from Term 3 2012.



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What if I don't make a report?

- It is **an offence** and the law establishes a penalty for failing to report a reasonable suspicion of sexual abuse of a student under 18 years attending the school by any person.
- The offence is punishable by a maximum penalty of \$2,000.



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What if I don't make a report?

- If an employee fails to report a suspicion of harm/ or likely harm to a student including likely sexual abuse by any person they could be subject to disciplinary procedures for failing to comply with the Toowoomba Catholic Education Student Protection Processes.
- If the staff member is a registered teacher, there may also be consequences imposed by the Queensland College of Teachers for failure to report.



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Student Protection Processes

- Consistent with Toowoomba Catholic Education Student Protection Processes, staff are already required to report to the Principal any suspicions of harm and/or likely harm including sexual abuse.
- In the past the requirement to report sexual abuse or likely sexual abuse by any person other than an employee was a matter of organisational policy – **not law.**



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TO CONCLUDE

From the start of Term 3 2012, the requirement for school staff members to immediately report any reasonable suspicion that a student under 18 years attending the school has been sexually abused by any person is **mandatory by law.**

Further information about Student Protection matters can be obtained from your Principal or the Toowoomba Catholic Education Office