



**Systemic issues relevant to the handling of
sexual abuse/sexual misconduct allegations and related cases**

May 2013

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13. Systemic issue: Being clear about what constitutes sexual misconduct in an educational setting

From our analysis of cases over the years, we know that a high proportion of sexual offences that occur in employment contexts such as schools are preceded by the employee engaging in conduct with or towards a child that is in breach of professional standards. As the conduct does not always involve behaviour of an overtly sexual nature, it is crucial that employers are able to identify early signs of inappropriate conduct of this nature and take adequate action to address it.

Currently, the most significant concern we have in relation to the DEC's handling of reportable conduct relates to its identification of, and responses to, sexual misconduct allegations. Similarly, various independent schools have trouble identifying sexual misconduct.

Historically, the Ombudsman and the CCYP published the same definitions of reportable conduct, including sexual misconduct. In 2010 we issued a Practice Update to clarify our definition of sexual misconduct. We did this for two main reasons. The first was that we formed a view that the reference to the construct of 'grooming' in the original definition had become inappropriate. This is because 'grooming' is now a criminal offence, with distinctly criminal terminology and definitions attached to it. The second is that it had become apparent to us that agencies tasked with investigating sexual misconduct allegations were understandably reluctant to speculate on whether an employee's behaviour constituted 'grooming' and for these reasons, we formed the view that it is preferable to clearly describe the nature of inappropriate conduct which should be viewed as sexual misconduct. Therefore, we took the opportunity to state, more clearly and simply, the types of conduct that fall within the sexual misconduct category of reportable conduct.

Our Practice Update clearly sets out the two heads of sexual misconduct as (1) Crossing of professional boundaries and (2) Sexually explicit comments and other sexually overt behaviour.

We have engaged with the CCYP around our sexual misconduct Practice Update. Although the CCYP has chosen not to significantly alter its own definition at this time (primarily due to the complexities involved in doing so), it has not objected to our definition. However, we have sought to reach an agreement with the CCYP to operate under one definition - and recent advice from the Acting Commissioner supports this approach.

In response to two sexual misconduct cases which we raised with the DEC in 2011, DEC indicated that 'the Ombudsman's definition was not relevant when determining whether reportable conduct occurred because the CCYP 'threshold is much higher'. We met with the DEC to discuss these two cases along with other similar examples in May 2012. The DEC maintained that while the Ombudsman's 2011 Practice Update defining reportable conduct is 'helpful', it is still open to interpretation. A number of case examples have been included below to illustrate the nature of the debate.

Following our meeting with DEC in May 2012, we sought to confirm with the CCYP our understanding of their definition. Following our meeting, the CCYP made a limited amendment to their definition. The CCYP's guidelines state the following:

"Sexual misconduct" describes both a pattern of conduct aimed at the involvement of children in sexual acts and a range of behaviours that may include:

- any sexual relationship with a child;
- inappropriate conversations of a sexual nature;
- comments that express a desire to act in a sexual manner with individual children or young people;
- unwarranted and inappropriate touching of a child, or in the presence of a child;
- sexual exhibitionism in the presence of a child;
- personal correspondence (including electronic communication) with a child or young person in respect of the adult's sexual feelings for a child or young person;
- deliberate exposure of children and young people to sexual behaviour of others including display of pornography;
- possession of child pornography; and
- patterns of behaviour aimed at engaging or 'grooming' a child as a precursor to sexual abuse.

These behaviours are not always reportable conduct where they occur in isolation. However a repeating pattern of behaviour, or several of these behaviours together, could indicate that the conduct is grooming and is reportable conduct.

We are confident that under the leadership of the acting Children's Commissioner, the CCYP and our office should be able to reach a common definition of sexual misconduct.

<i>Case ref.</i>	<i>Case Summary</i>	<i>Sector/ agency</i>	<i>SOA</i>	<i>Multiple victims</i>	<i>Charge</i>	<i>Conviction</i>
2009/2155 lead file	An independent school notified us of allegations that a senior teacher had acted inappropriately towards students at a school where he had previously taught. It was alleged that the teacher had in the past frequently taken inappropriate photographs of students during water sports without authority to do so, developed overly familiar relationships with students, and engaged in excessive personal contact with one student in particular. It was also alleged that he had failed to comply with directions not to	Education – Independent school School 1 conducted investigation	ARH	YES	NO – sustained sexual misconduct (category one relevant)	NO

		<p>engage in such behaviour.</p> <p>During the school's investigation, similar allegations arose about the teacher's conduct towards his current students. Although the school was concerned about this behaviour, they concluded that his conduct was inappropriate, but not reportable.</p> <p>We identified a number of significant deficits in the investigation. We encouraged the school to pursue certain avenues of enquiry, including seeking information under Chapter 16A from other schools where the teacher had been employed, and to apply the definition of sexual misconduct outlined in our Practice Update. Through this process, the school received information about similar allegations at a third school.</p> <p>Ultimately, the school obtained significant evidence of a decade-long pattern of inappropriate behaviour towards children. We provided ongoing support during what became a very difficult and complex process. The school sustained a finding of sexual misconduct in relation to the teacher, notified him to the CCYP under Category One, and allowed him to resign.</p> <p>We provided significant advice and guidance to School 1 about investigation requirements, its liaison with previous schools that employed the SOA, and how to manage grooming dynamics.</p> <p>See discussion about Knox school in relation to this SOA for further details.</p>	<p>as SOA was their employee when allegations arose - SOA also employed by School 2 and Knox Grammar</p>			<p>employment proceedings). The SOA was allowed to resign.</p>	
	<p>REDACTED</p>	<p>REDACTED</p>	<p>REDACTED</p>	<p>REDACT</p>	<p>REDAC</p>	<p>REDAC TED</p>	<p>REDACT ED</p>

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	in mind is that the major failings in practice in this case occurred a number of years ago.																			
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15.	<p>Systemic issue: Knox Grammar</p> <p>In 2009, four former and one current Knox teacher were charged in relation to historical child sexual offences against students. They were Adrian Nisbett, Craig Treloar, Barrie Stewart, Damian Vance and Roger James - all but Barrie Stewart pleaded guilty. The offences for which they were charged were alleged to have occurred between 1984 and 1987, other than the Roger James matter, which dated back to 1976.</p> <p>We have only been notified in relation to the allegations relating to Adrian Nisbett and Craig Treloar. Adrian Nisbett was notified to us in 2003 and 2004, while he was still a teacher at Knox, and Craig Treloar was still teaching at Knox at the time of his arrest. The other former teachers were apparently no longer in child-related employment in NSW and were therefore not within our jurisdiction at the time of their arrest.</p> <p>The five teachers were charged with offences that arose in the period that Ian Paterson was headmaster. We understand Ian Paterson was the Headmaster until around 1995. The allegations in relation to ARH when he was teaching at Knox, relate to the period that Peter Crawley was headmaster. The current Headmaster, John Weekes, has been in the position since 2004.</p> <table border="1"> <thead> <tr> <th><i>Case ref.</i></th> <th><i>Case Summary</i></th> <th><i>Sector/ agency</i></th> <th><i>SOA</i></th> <th><i>Multiple victims</i></th> <th><i>Charge</i></th> <th><i>Conviction</i></th> </tr> </thead> <tbody> <tr> <td>2003/8367 2004/1462</td> <td>The 2003 matter concerned alleged grooming behaviour by Adrian Nisbett in 2002 towards a 17 year old boy. For various reasons, including the unwillingness of the family of the victim to participate in the investigation process, and the more limited definition of sexual misconduct then in use in reportable conduct matters, the matter</td> <td>Education - Independent Knox Grammar School</td> <td>Nisbett</td> <td>YES</td> <td>YES</td> <td>YES</td> </tr> </tbody> </table>						<i>Case ref.</i>	<i>Case Summary</i>	<i>Sector/ agency</i>	<i>SOA</i>	<i>Multiple victims</i>	<i>Charge</i>	<i>Conviction</i>	2003/8367 2004/1462	The 2003 matter concerned alleged grooming behaviour by Adrian Nisbett in 2002 towards a 17 year old boy. For various reasons, including the unwillingness of the family of the victim to participate in the investigation process, and the more limited definition of sexual misconduct then in use in reportable conduct matters, the matter	Education - Independent Knox Grammar School	Nisbett	YES	YES	YES
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	<p>was not sustained.</p> <p>In 2004, there was a change of headmaster. The new headmaster, John Weekes, had concerns about Nisbett's conduct in the 2003 matter and made inquiries to ascertain whether there had been earlier concerns raised about Nisbett. He then became aware that sexual misconduct allegations had been made against Nisbett in the early to mid 1980s and that these had apparently been investigated. This included allegations of inappropriate touching, having students in his room and that he had shown a student pornography. In relation to the investigation that occurred in the early to mid 1980s, no documentation was able to be located.</p> <p>After notifying our office, the school became aware of another alleged victim from that era, Adrian Steer. In 2004, Adrian Steer provided evidence that in 1986 in the dark room at Knox, Nisbett had rubbed his right elbow against Steer's groin repeatedly. This allegation was sustained. Nisbett resigned and was notified to the CCYP as a category one.</p> <p>In 2007, Knox advised us that the alleged victim in the 2003 matter had now come forward and told the headmaster that he had been sexually assaulted by Adrian Nisbett. Adrian Nisbett was no longer teaching at that time and the alleged victim was an adult.</p>					
2009/2133	<p>In December 2009, Craig Treloar pleaded guilty to sexual offences in relation to four boys aged under 16. He also apparently pleaded guilty to possession of child pornography. Due to the convictions, Knox was not required to investigate the allegations.</p> <p>Media reports in relation to Craig Treloar (see for example in <i>The Australian</i> on 15 June 2010) referred to evidence given by Treloar at his sentencing hearing indicating that he had been investigated in the 1980s for showing pornographic material to students, but had not been sacked.</p>	<p>Education - Independent Knox Grammar School</p>	Treloar	YES	YES	Treloar was convicted of 6 offences against 4 victims.
2009/2155 2009/7009 2010/6623	<p>ARH was an English teacher at Knox Grammar school between 1992 and 2000. He then moved to School 2 from 2001 until 2008 as Head of English. In 2009, he went to School 1 where concerns were raised about his interactions with boys and his conduct towards certain male students (see case discussion in previous section). School 1 then made inquiries of Knox and School 2, and discovered similar concerns had been raised. In relation to Knox, the concerns included forming a very close relationship with one boy, frequent photography of students, transporting students in his car, his communication style of touching boys or patting them as he spoke to them. It was found that ARH's conduct at Knox did not reach the threshold for reportable conduct. However, as we have previously noted, through reviewing the totality of relevant holdings regarding ARH, School 1 - after extensive consultation with our office - reached a sexual misconduct finding against ARH for his repeated 'crossing of the boundaries' behaviour.</p>	<p>Education - Independent Knox Grammar School</p> <p>Investigation conducted by School 1</p>	ARH	YES	NO – sustained sexual misconduct (category one relevant employment proceedings). The SOA was allowed to resign.	NO
16.	<p>Systemic issue: Risks associated with small schools in their handling of sexual misconduct allegations</p> <p>The risks associated with small schools in the context of these matters may include the following:</p> <ol style="list-style-type: none"> 1. They may have limited understanding and knowledge of their legislative obligations in relation to child protection. They may not understand the requirements of recruitment screening, as well as their obligation to notify our office and investigate allegations of reportable conduct. 2. As they often have limited experience and expertise in dealing with allegations against staff relating to sexual misconduct (including understanding the dynamics of grooming behaviour), and consequently may struggle to investigate such allegations given their complexity. 					

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