



# Child Protection - Responding to Allegations Agreed Practice

## Rationale

At St John's we recognise the dignity of each person as made in the likeness of a loving God. We are committed to the health, safety and well being of the students and to making every effort to protect students in our care from any form of harm.

## Aims

The aims of St John the Apostle's Child Protection – Responding to Allegations Agreed Practice are to:

- Care for the health, safety and well being of students.
- Ensure that teachers are aware of their legal and professional responsibilities.
- Inform staff of the procedures in the event that an allegation is made against them.

## Agreed Practice

A complaint made against an employee of the Catholic Education Office (CEO) at St John the Apostle School which raises concerns for the safety and well being of a child or young person will be 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 Resources Division. The Principal, in consultation with a Human Resources Officer, will determine whether a complaint is of a matter which should be managed at the school level or by a CEO Human Resources Officer.

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

- Confidentiality.
- Adequate access to information regarding the complaint.
- An opportunity to respond to the complaint.
- 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 recommended disciplinary action.

### *Step 1: Record the Complaint*

The Principal, or person receiving the complaint, records in writing information from the complainant using the person's exact words and advises that the complaint will be acted upon. In recording the complaint the Principal or other person receiving the complaint notes WHO is involved, WHAT happened, WHEN did it happen, WHERE did it happen, HOW did it happen.

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 complainant.

### *Step 2: Confer with the Human Resources Officer*

The Principal must inform their Human Resources Officer of the initial details of the complaint. Together they determine action to be taken based on the following questions:

**Q:** *Is this a complaint which should be managed by the CEO?* The Principal and HR Officer may use the NSW standard to assess whether the complaint is of level or sensitivity which requires CEO involvement. The Principal may make some preliminary enquiries to assist this determination.

**A:** If it is determined that the complaint is a low level matter, it should be resolved at school level using modified procedures from this policy and the **School Level Response Flowchart**. All relevant information including details of the complaint, signed transcripts of interviews, correspondence, recommendations and findings are forwarded to the CEO for secure filing.

If it is a higher-level complaint or a sensitive issue, the resolution of the complaint will be managed by a HR Officer using procedures outlined in this policy.

**Q:** *Are there reasonable grounds to suspect a child is at current risk of harm? Are there reasonable grounds to suspect that the employee or employee's colleagues are at risk? What risks are there to the school, to confidentiality or to the resolution of the complaint?*

**A:** A risk assessment is made. Appropriate decisions must be made to respond to any perceived risk.

In the ACT, the [Children and Young People Act 1999 \( ACT\)](#), legally requires teachers, counsellors and carers as mandated people, to report to Family Services when they have formed a *reasonable suspicion that a child or young person has suffered or is suffering sexual abuse or non accidental physical injury*. Although the law requires that teachers and counsellors notify physical and sexual abuse, these guidelines also apply to the other categories of abuse

Section 159 of the Act legally requires mandated persons to report to Family Services when the abuse of children falls under the following categories:

- Non accidental injuries as a result of physical abuse.
- Neglect resulting in impairment to health.
- Emotional abuse causing psychological harm and /or emotional damage.
- Sexual abuse and exploitation.

Failure by a mandated person to report the abuse of a child or young person may result in a **fine or imprisonment for 6 months or both**.

If the HR Officer or Principal is unsure when making assessments regarding notification to Family Services, he or she should seek advice from the Head of Human Resources or from the ACT Family Services (Northern Line on 6207 1069; Southern Line 6207 1466).

- If a report is made to Family Services or to the Police, no investigation is conducted by the school or the CE without first consulting Family Services or the Police.
- If Family Services investigates an employee of the CE, the process is managed by the Head of Human Resources.

*Step 3: The Parents/Guardians of the child are notified.*

The parents/guardians of the child will be advised by the School Principal that the allegation has been received and that the investigation process has commenced. In matters alleging reportable conduct notification should also be confirmed in writing. A sample letter advising parents/guardians of the allegation is available from Human Resources.

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

*Step 4: The Investigation Process is Planned*

The Principal and the HR Officer, having regard to the nature of the allegation and particular school / community characteristics, plan the investigation in line with the system protocol.

- An investigator (or panel of 2 investigators) will be appointed by the Principal / HR Officer.
- The investigation objectives should be clarified and established.
- Any relevant documentation relating to the allegation should be compiled.
- Witnesses should be identified and consent obtained from parents for child witnesses to be interviewed.
- A timeframe for conducting interviews should be drafted.
- A draft investigation plan, signed by the Principal, will be faxed to the Head of Human Resources within 36 hours of receiving the allegation.

#### *Step 5: Principal and staff member meet*

Principal meets briefly with staff member to:

- Inform the employee that an allegation has been received and to advise the employee of the general nature of the allegation i.e. sexual assault, misconduct that may constitute 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 timeline for bringing the matter to completion.
- Inform the employee of the names of the members of the investigating panel. The employee is informed that he or she may raise any issues or concerns regarding the composition of the investigating panel. (The Principal and the HR Officer will together consider and seek resolution of any such issues raised by the employee before the investigation commences).
- 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 present at that meeting. If the staff member elects to have a union organiser at the meeting a CE Officer may be appointed to attend the meeting.
- Offer the employee adequate support including an offer of counselling at no cost to the employee and, if the staff member wishes, a support person at the school or CE who can assist them through the process.

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

#### *Step 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/HR Officer 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 HR Officer 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.

#### *Step 7: Interviewing witnesses and gathering information*

Using the draft investigation plan as a guide 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 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 but may not participate unless directed by the investigators.

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.

#### *Step 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 allegation to the employee for his or her response.

The employee must be given reasonable 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 should not be automatically disclosed to the employee or witnesses interviewed during the investigation 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.

### *Step 9: Finding*

#### *9.1 Where the allegations concerns conduct that is “not reportable” i.e. a low risk matter*

When all the information is gathered, the Principal will consider all available information and make a finding. It may be found that the alleged incident or conduct which generated the complaint:

- Did occur; **or**
- Did not occur; **or**
- Was justifiable in the circumstances; **or**
- Was misconceived by the complainant (i.e. 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).

The Principal may find that there is insufficient information available to conclusively determine whether the conduct did or did not occur.

The Principal will meet with the employee to outline the finding. The employee must be 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 should be 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, should be made. Counselling will be arranged through the Head of Human Resources.

#### *9.2 Where the complaint concerns conduct that is “reportable” i.e. a higher risk matter*

When all the information is gathered the investigator(s) forwards all documentation to the Human Resources Officer. The investigator(s) does not

make a finding but makes a report and recommendations. The Head of Human Resources is responsible for considering all available information and deciding whether, on the balance of probabilities, the alleged incident or conduct which generated the complaint:

- Did occur; **or**
- Did not occur; **or**
- Was justifiable in the circumstances; **or**
- Was misconceived by the complainant (i.e. 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).

The Head of Human Resources may find that there is insufficient information available to conclusively determine whether the conduct did or did not occur.

The Head of Human Resources may seek clarification and direct that further action occur to ensure that the relevant interests of the child and the employee are served.

*Step 10: 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 Head of Human Resources 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 of any proposed disciplinary action or support initiatives.

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 with debriefing regarding the investigation.

This information is conveyed in writing.

*Step 11: Confirming a 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 and the Principal, and advises the Principal of the finding.

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

- The finding.
- 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.

#### *Step 12: 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 entitled to know the outcome of the investigation. Findings are confidential to employer and employee. Further parental enquiries regarding investigations or findings should be directed to the Head of Human Resources.

#### *Step 13: The File is closed*

The following documentation will usually be required before the file is closed:

- Information recording the allegation.
- Draft investigation plan.
- 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 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 (**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.

#### *Step 14: Apologies*

With the commencement of the [Civil Law \(Wrongs\) Act 2002 \(ACT\)](#) on 1 November, 2002, in most cases the giving of an apology is no longer an admission of fault or liability. Part 2.3 of the Act provides that “an oral or written expression of sympathy or regret, or of a general sense of benevolence or compassion, in relation to an incident” (s 13) “is not (and must not be taken to be) an express or implied admission of fault or liability by the

person in relation to the incident; and is not relevant to deciding fault or liability in relation to the incident.” (s 14s)

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.” (NSW Ombudsman, [Child Protection in the Workplace: Responding to Allegations Against Employees](#) pp 13 - 14)

### *Step 15: Dispute Resolution*

In the event of disputation about the investigation, determination of findings and/or 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.

### *Step 16: Security of Records and Documentation*

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

Information regarding the allegation, investigation and finding should not be noted in any personal record maintained 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 CEO for confidential and secure storage: they must not be destroyed.

### *Step 17: Employee's access to investigation file*

An employee may, subject to reasonable notice, apply to inspect the investigation file regarding an allegation of reportable conduct 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.

### *Step 18: Matters of Jurisdiction*

Any matters of jurisdiction should be referred to the Human Resources Officer who will liaise with the Head of Human Resources and CCER regarding the matter.

## **Definitions:**

### *Abuse*

Under the [Children and Young People Act 1999 \(ACT\)](#) abuse, in relation to a child or young person means –

- physical abuse; or
- sexual abuse; or
- emotional abuse (including psychological abuse) if the child or young person –
- has suffered, is suffering or is likely to suffer in a way that has caused, is causing or is likely to cause significant harm to his or her wellbeing or development;
- has been, is being or is likely to be exposed to behaviour that is a domestic violence offence within the meaning of the Protection Orders Act 2001 , dictionary, and that has caused, is causing or is likely to cause significant harm to the child or young person's wellbeing or development.

### *Child*

Under the [Children and Young People Act 1999 \(ACT\)](#), is a person who is **under 12 years old**.

### *Employee*

For the purposes of this policy means any person engaged by the school 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 (including in the capacity of a volunteer).

### *Employer*

For the purposes of this policy 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.

### *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 authority that [unreasonably] restricts a child's freedom or makes excessive and unreasonable demands on them amounts to ill treatment.

### *Inquiry*

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

### *Neglect*

Under the [Children and Young People Act 1999 \(ACT\)](#) neglect of a child or a young person, means a failure to provide the child or young person with a necessity of life that has caused, is causing or is likely to cause the child or young person significant harm to his or her wellbeing or development. Examples of necessities of life: food, shelter, clothing and medical care.

### *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.

### *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**
- an alleged causal link between the behaviour and the harm.

### *Reportable Allegation*

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:

1. may be a pattern of behaviour ; or
2. 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*

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 the 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;  
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 s25A.

### *Young Person*

Under the [Children and Young People Act 1999 \(ACT\)](#), a young person is a person who is **12 years old or older, but not yet an adult**.

### **References:**

[Responding to Allegations of Child Abuse and other CCYP Notifiable Matters Protocol](#)

[Ombudsman Act 1974 \(NSW\) Part 3A](#)

[Children and Young People Act 1999 \(ACT\)](#)

[Civil Law \(Wrongs\) Act 2002 \(ACT\)](#)

[NSW Ombudsman, Child Protection in the Workplace Responding to Allegations Against Employees](#)

### **Related Policies / Agreed Practices**

Work Health and Safety

Child Protection

Draft Manual for Investigation (CE publication)

Duty of Care (CE publication)

## Review

The St John the Apostle Agreed Practice is reviewed at least once each five years in line with current Registration practices. It may also be reviewed more often according to the need and educational trends.

<b>Reviewed by:</b>	Tracy Donnellan
<b>Revision date:</b>	7/5/2015
<b>Approved by:</b>	Matthew Egan-Richards
<b>Implementation date:</b>	2015



### 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 Family Services need to be notified
- Risk assessment made by the Principal & the HR Officer
- Investigation Plan is Drafted
- HR Officer receives Draft Investigation Plan
- Investigator(s) appointed
- Parents/guardians are informed of the complaint in writing.
- Letter to employee advising him/her of the complaint is drafted by the Principal / HR Officer.
- Principal meets with the employee to notify him / her of the complaint. Content of the meeting is confirmed by the Principal in writing.
- 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.
- 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.

### **Child Protection (ACT) Responding to Complaints Against Employees**

- 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
  
- Parents informed of completion of process
  
- File completed and filed in accordance with policy