



Catholic Education Office
DIOCESE OF BATHURST

CHILD PROTECTION PROCEDURES

Ombudsman Act NSW 1974

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CHILD PROTECTION PROCEDURES

MANAGING COMPLAINTS AND ALLEGATIONS

Within the Diocese of Bathurst all complaints and allegations against employees of schools in the Diocese are managed by the Executive Director through the Catholic Education Office under delegation for the Head of Agency, the Bishop of Bathurst.

Complaints and allegations are managed under the following three categories:

1. Complaints which are not notifiable to the Ombudsman
2. Allegations of reportable conduct notifiable to the Ombudsman
3. Allegations of reportable conduct notifiable to the Ombudsman and reportable to FACS.

CATHOLIC EDUCATION OFFICE

1) Complaints which are not notifiable to the Ombudsman.

WHEN IS A COMPLAINT NOT NOTIFIABLE TO THE OMBUDSMAN?

Pursuant to s.25CA of the Act, the Ombudsman has determined that The Catholic Education Office (CEO), in the Diocese of BATHURST, is an agency that has achieved a standard of investigation practice whereby only the reportable allegations against employees of the CEO specified below, need to be notified to the Ombudsman under s.25C(1):

- 1.1 NO allegation of a physical assault, or a threat of a physical assault, need be reported to the Ombudsman as a reportable allegation, unless it is alleged that:
 - a) There was contact with any body part or area of a child that was clearly hostile and forceful, or reckless, and which had the potential to, or resulted in significant harm or injury to the child; or
 - b) A child believed on reasonable grounds that the threat would result in significant physical harm or injury to them.

If an allegation of physical assault, or a threat of a physical assault specified in (a) and (b) above is reported to the Ombudsman as a reportable allegation, relevant documentation of the management by the CEO of any previous exempted matters concerning the employee must be provided to the Ombudsman attached to the notification of the reportable allegation, unless previously provided.

1.2 In relation to the class or kind of alleged conduct against the employees of the CEO listed above which is exempted from reporting to the Ombudsman, the CEO is nevertheless required to:

- a) Investigate the allegation, including undertaking a risk assessment and making a finding as a result of that investigation
- b) Take appropriate action as a result of that investigation

- c) Keep adequate records of the investigation and the reasons for taking or not taking any action as a result of the investigation
- d) Keep adequate records of those matters covered by this Determination and store those records in a place accessible to the Ombudsman for auditing purposes under s25B of the Act, and
- e) Provide to the Ombudsman, every six months, the total number and category breakdown of allegations exempted from notification to the Ombudsman under the provisions of this Determination.

PROCESS “A” – COMPLAINTS WHICH ARE NOT NOTIFIABLE TO THE OMBUDSMAN

A - Step 1. Record allegation

The ‘Responsible Person’ (normally the Principal) records in writing information from the person/s reporting the complaint against the staff member using the person's exact words and advises there will be an inquiry into the complaint. In recording the complaint the Responsible person notes WHO is involved, WHAT happened, WHEN did it happen, WHERE did it happen, HOW did it happen. This information is forwarded to the Team Leader, Administrative Services by email.

A - Step 2. Confer with CATHOLIC EDUCATION OFFICE

The Responsible Person confers with the Team Leader, Administrative Services at the Catholic Education Office and together they determine the next steps to be taken including an assessment on whether the matter is to be managed initially as a complaint of non-reportable conduct rather than reportable conduct notifiable to the Ombudsman.

In making this assessment they consider whether there are reasonable grounds to suspect a child is at current risk of significant harm and hence the complaint needs to be reported to the Department of Family and Community Services (“FACS”) as required by the Children and Young Persons (Care and Protection) Act 1998. The mandatory reporter guide is completed on the Keep Them Safe website and contact is made to the Helpline on 133627 if necessary.

A - Step 3. If report is made to FACS

If a report is made to FACS, no investigation is undertaken by the CEO but the matter is notified to the Ombudsman's Office. If FACS investigates an employee of the Bathurst Catholic schools system, the Team Leader, Administrative Services (or other designated officer) is the system representative who manages the process (see *Managing allegations of reportable conduct notifiable to the Ombudsman and reportable to FACS*).

A - Step 4. Initial child protection information details form

If it is determined the allegation/possible allegation is a complaint that is not notifiable to the Ombudsman's Office, the Team Leader, Administrative Services uses the non-Reportable planning template.

A - Step 5. Planning the process

The Team Leader, Administrative Services plans the process to be followed giving consideration to procedural fairness principles. Any issues associated with interaction between the parties are addressed by way of risk assessment. This is called a Pre-Risk Assessment

A - Step 6. Contact the child/parent /carer

The Team Leader, Administrative Services contacts the child and parent to:

- a) Advise them of the receipt of the complaint and seek approval to speak with child (in the presence of parent/carer) and time and place of that meeting
- b) Explain the investigation process to be followed
- c) Ensure the child is supported including the availability of counselling if required through Centacare
- d) Explain the need for confidentiality
- e) Advise they will be informed when the matter is finalised
- f) Confirm the above in writing (if parental consent is granted).

A - Step 7. Contact the staff member (The person subject of the complaint or allegation)

The Team Leader, Administrative Services makes contact with staff member to:

- a) Inform them a complaint of non-reportable conduct has been received and provide them with a description of the complaint
- b) Arrange a time to meet with the person to provide them with an opportunity to respond. The meeting needs to be as soon as possible. If agreeable to the Team Leader, Administrative Services and staff member, it is appropriate not to meet but for the response to be in writing
- c) Advise the person who will be conducting the enquiry into the complaint. In general this will be the Team Leader, Administrative Services or other designated officer
- d) Inform the staff member they may choose to have a support person present at the meeting. If the staff member elects to have a union organiser at the meeting, the Team Leader, Administrative Services may elect to have another CEO Officer accompany him/her at the meeting. The support person should not be an advocate during the meeting but act as a pastoral support.

The staff member receives this advice in writing.

A - Step 8. Managing the investigation process

The Team Leader, Administrative Services gathers relevant information by way of interview and/or written statements. Reports, diagrams and other documents may also be relevant. In planning the inquiry (step 5) consideration is given to issues such as:

- preserving the employees dignity
- obtaining statements from children as promptly as possible
- maintaining confidentiality

The inquiry may include:

Meeting with staff member about the allegation

At the meeting with the staff member, the Team Leader, Administrative Services:

- a) Clarifies any issue/s regarding the procedure to be followed
- b) Informs the person of the allegation that has been made providing as much detail as possible - the complaint has been provided in writing
- c) Offers the person the opportunity for a break in the meeting to allow him/her time to consider the complaint

- d) Invites the person to respond and records the response - the person may elect to respond in writing
- e) Asks for the name(s) of any witness/es to the alleged incident
- f) Assures that the issue will be dealt with promptly and confidentially and seeks confidentiality from all present at the meeting
- g) Ensures the person has adequate support including the offer of Centacare's Employee Assistance Program and, if the staff member wishes, a support person who can assist them through the process but not to act as an advocate
- h) Informs the person of the process that will be followed including an anticipated time line.

Confirming the staff member's response

At the conclusion of the interview or soon after the interview, the Team Leader, Administrative Services provides the employee with a copy of the record of interview and invites the employee to verify or amend the record. The employee is asked to initial any amendments, initial each page and date and sign the record of interview and return it to the Team Leader, Administrative Services.

If the person acknowledges the complaint is true, there is generally no need to interview other persons.

Interviewing witnesses and gathering information

The Team Leader, Administrative Services proceeds to gather relevant information, including obtaining information from relevant persons identified by both the notifier and the staff member.

The information may be gathered from written statements, interviews and review of relevant documents and records. All records of interviews and statements must be signed and dated.

If children are to be interviewed parents need to be advised and offered the opportunity to be present at the interview.

A - Step 9. Finding

When all information has been gathered the Team Leader, Administrative Services will review the information and recommend a finding.

The complaint may be found to be:

- a) Sustained
- b) Not sustained – Insufficient evidence
- c) Not sustained – Lack of evidence of weight
- d) False
- e) Not reportable conduct

A - Step 10. Review of Risk Assessment

The Responsible Person and Team Leader, Administrative Services reviews initial risk assessment and provides a post- Risk Assessment.

A - Step 11. Letter to staff member

The Team Leader, Administrative Services advises the staff member in writing of:

- a) The finding from the investigation
- b) The recommended disciplinary action and/or support initiatives (if sustained)
- c) An invitation to provide any further information which will be considered relating to the finding and disciplinary action
- d) Whether or not the matter will be reported to the Office of the Children's Guardian as Misconduct (either sexual misconduct or serious physical assault)
- e) The requirement for all documentation to be stored securely by The Catholic Education Office for monitoring by the NSW Ombudsman
- f) The need for confidentiality
- g) The offer of counselling through Centacare
- h) The opportunity to view the file under Government Information Public Access Act (2009) using relevant application.

A - Step 12. Storage of Investigation File

The original copy of the file is secured in confidential files in the Team Leader, Administrative Services's office separate to personnel files.

A - Step 13. Report to Executive Director, Catholic Education Office, Diocese of Bathurst

The Team Leader, Administrative Services advises the Executive Director of the finding and whether a report will be made to the Office of the Children's Guardian. The Executive Director is provided with copies of final letters to Person Subject to Investigation and notifier.

A - Step 14. Advice to notifier and/or parent/child

The Team Leader, Administrative Services advises the notifier and/or parent/child by written notification that the matter has been addressed and provides them with the opportunity to contact The Catholic Education Office for further information if required.

A - Step 15. Dispute Resolution

In the event of disputation about the process, the finding or disciplinary action the staff member may request for the case to be reviewed.

An application for review is made initially to the Director at the Catholic Education Office. Complaints about the process or handling of the investigation by the CEO can be made to the NSW Ombudsman.

2) Allegations of reportable conduct notifiable to the Ombudsman

MATTERS NOTIFIABLE TO THE OMBUDSMAN COVERED BY THESE PROCEDURES

2.1 Allegations of sexual offences including:

- a) Indecent assault
- b) Sexual assault
- c) Aggravated sexual assault
- d) Sexual intercourse and attempted sexual intercourse
- e) Possession/dissemination/production of child pornography
- f) Using children to produce pornography
- g) Grooming or procuring children under the age of 16 years for unlawful sexual activity
- h) Deemed non-consensual sexual activity on the basis of special care relationships.

2.2 Allegations of sexual misconduct including:

- a) Grooming
- b) Inappropriate conversations of a sexual nature
- c) Comments that express a desire to act in a sexual manner
- d) Unwarranted and inappropriate touching involving a child
- e) Sexual exhibitionism towards a child
- f) Personal correspondence (including electronic communications e.g. emails and text messages) with a child or young person in relation to the adult's sexual feelings for a child or young person
- g) Exposure of children and young people to sexual behaviour of others including display of pornography
- h) Watching children undress e.g. in change rooms or toilets when supervision is not required or justified

2.3 Allegations of physical assault where the alleged conduct was not reasonable for the purposes of discipline, management and care of children and not in line with the Diocesan Code of Conduct.

2.4 Allegations of physical assault where the alleged conduct does not relate to the use of physical force that is trivial or negligible.

2.5 Allegations of physical assault where the alleged conduct is not exempt from notification in accordance with the Class and Kind determination.

2.6 Repeated allegations of physical assault.

2.7 Repeated allegations of neglect where the risk of harm was reasonably low

2.8 Any allegation of neglect where the risk of harm was NOT reasonably low

2.9 Any allegations of behaviour causing psychological harm where the following are present:

- a) A description of persistent and targeted behaviour
- b) Possible signs of harm
- c) An alleged causal link between the behaviour and the harm.

2.10 Any allegation of ill treatment of a child.

PROCESS “B” – ALLEGATIONS OF REPORTABLE CONDUCT NOTIFIABLE TO THE OMBUDSMAN

B - Step 1. Record allegation

The ‘Responsible Person’ records in writing information from the person/s reporting the complaint against the staff member using the person's exact words and advises there will be an inquiry into the complaint. In recording the complaint the principal notes WHO is involved, WHAT happened, WHEN did it happen, WHERE did it happen, HOW did it happen. This information is forwarded to the Team Leader, Administrative Services by email.

B - Step 2. Confer with CATHOLIC EDUCATION OFFICE

The Responsible Person confers with the Team Leader, Administrative Services at the Catholic Education Office and together they determine the next steps to be taken including assessing whether the allegation/possible allegation is an allegation of reportable conduct under s.25A of the Ombudsman Act 1974. They also determine whether there are reasonable grounds to suspect a child is at current risk of significant harm and hence the complaint needs to be reported to FACS as required by the Children and Young Persons (Care and Protection) Act 1998. Using the mandatory reporter guide on the Keep Them Safe website or by ringing the FACS Helpline on 133627.

B - Step 3. If report is made to FACS

If a report is made to FACS and FACS advise they will be investigating the matter, no investigation is undertaken by the CEO until further advised by FACS but the matter is notified to the Ombudsman's Office. If FACS investigates an employee of the Bathurst Catholic schools system, the Team Leader, Administrative Services (or other designated officer) is the system representative who manages the process.

B - Step 4. Initial child protection information details form

If it is determined the allegation/possible allegation is a complaint that is notifiable to the Ombudsman's Office, the Team Leader, Administrative Services completes Part A of the Ombudsman Notification Form and forwards to the Ombudsman.

B - Step 5. Planning the process

The Team Leader, Administrative Services plans the process to be followed giving consideration to procedural fairness principles. Any issues associated with interaction between the parties is addressed by way of a pre-risk assessment conducted by the Team Leader, Administrative Services.

B - Step 6. Contact the child/parent /carer

The Team Leader, Administrative Services contacts the child and parent to:

- a) Advise them of the receipt of the complaint and seek approval to speak with child (in the presence of parent/carer) and time and place of that meeting
- b) Explain the investigation process to be followed
- c) Ensure the child is supported including the availability of counselling if required through CENTACARE
- d) Explain the need for confidentiality

- e) Advise they will be informed when the matter is finalised
- f) Confirm the above in writing (if parental consent is granted).

B - Step 7. Contact the staff member (The person subject of the complaint or allegation)

The Team Leader, Administrative Services makes contact with staff member to:

- a) Inform them an allegation has been received, that it is notifiable to the Ombudsman and advise them of the general nature of the allegation i.e. sexual offence, sexual misconduct, misconduct that may involve reportable conduct, physical assault, behaviour causing psychological harm, ill treatment, neglect
- b) Arrange a time to meet with the person to provide them with an opportunity to respond. The meeting needs to be as soon as possible. If agreeable to the Team Leader, Administrative Services and staff member, it is appropriate not to meet but for the response to be in writing
- c) Advise the person who will be conducting the enquiry into the allegation. In general this will be the Team Leader, Administrative Services or other designated officer
- d) Inform the staff member they may choose to have a support person present at the meeting. If the staff member elects to have a union organiser at the meeting, the Team Leader, Administrative Services may elect to have another CEO Officer accompany him/her at the meeting. The Support person's role is not to be an advocate at the meeting.

The staff member receives this advice in writing.

B - Step 8. Managing the investigation process

The Team Leader, Administrative Services gathers relevant information by way of interview and/or written statements. Reports, diagrams and other documents may also be relevant. In planning the inquiry (step 5) consideration is given to issues such as:

- preserving the employees dignity
- obtaining statements from children as promptly as possible
- maintaining confidentiality

The inquiry may include:

Meeting with staff member about the allegation (This meeting may also occur after complainants and witnesses have been interviewed)

At the meeting with the staff member, the Team Leader, Administrative Services

- a) Clarifies any issue/s regarding the procedure to be followed
- b) Informs the person of the allegation that has been made providing as much detail as possible - the complaint has been provided in writing
- c) Offers the person the opportunity for a break in the meeting to allow him/her time to consider the complaint
- d) Invites the person to respond and records the response - the person may elect to respond in writing
- e) Asks for the name(s) of any witness/es to the alleged incident
- f) Assures that the issue will be dealt with promptly and confidentially and seeks confidentiality from all present at the meeting

- g) Ensures the person has adequate support including the offer of Centacare counselling, if the staff member wishes, a support person who can assist them through the process. The support person is not to be an advocate
- h) Informs the person of the process that will be followed including an anticipated time line.

Confirming the staff member's response

At the conclusion of the interview or soon after the interview, the Team Leader, Administrative Services provides the employee with a copy of the record of interview and invites the employee to verify or amend the record. The employee is asked to initial any amendments, initial each page and date and sign the record of interview and return it to the Team Leader, Administrative Services.

If the person acknowledges the complaint is true, there is generally no need to interview other persons.

Interviewing witnesses and gathering information

The Team Leader, Administrative Services proceeds to gather relevant information, including obtaining information from relevant persons identified by both the notifier and the staff member.

The information may be gathered from written statements, interviews and review of relevant documents and records. All records of interviews and statements must be signed and dated.

If children are to be interviewed parents need to be advised and offered the opportunity to be present at the interview.

B - Step 9. Finding

When all information has been gathered the Team Leader, Administrative Services will review that information and recommend a finding.

The complaint may be found to be:

- a) Sustained
- b) Not sustained – Insufficient evidence
- c) Not sustained – Lack of evidence of weight
- d) False
- e) Not reportable conduct

B - Step 10. If allegation is sustained

Staff member is advised of the preliminary finding and Team Leader, Administrative Services contacts staff member to:

- a) Inform them of the preliminary finding, i.e. the allegation is found to be sustained and the reason for the finding
- b) Advise them of the proposed disciplinary action or support initiatives
- c) Provide them with an opportunity to respond to the preliminary finding within one week (if new information is provided the preliminary finding is reconsidered)
- d) Advise they may request to view the file (See Appendix 2)
- e) Explain the process and expected time line, including that the child protection notification form will be forwarded to the Ombudsman's Office

- f) Ensure the staff member has adequate support and follow up any concerns raised by the staff member

This information is confirmed in writing advising of the preliminary finding.

B - Step 11. Determining the finding following a preliminary finding

The Team Leader, Administrative Services recommends the finding, consulting with the Executive Director of Schools. The finding is based on the facts collected and on the balance of probabilities.

B - Step 12. Letter to staff member

The Team Leader, Administrative Services advises the staff member in writing of:

- a) The finding from the investigation
- b) If sustained, the recommended disciplinary action and/or support initiatives
- c) The requirement for all documentation to be forwarded to the Ombudsman's Office and notifying the Executive Director of Schools
- d) The requirement for the Ombudsman's Office, through the CEO, to advise them in writing when the matter is completed
- e) Whether or not the matter will be reported to the Office of the Children's Guardian
- f) The requirement for the file to be stored confidentially by the Catholic Education Office
- g) The need for confidentiality
- h) The offer of counselling
- i) The opportunity to view the file – At this time the staff member may request to view the file of the case by writing to the Executive Director of Schools.

B - Step 13. Report to the Ombudsman

The Team Leader, Administrative Services assembles a copy of all material relevant to the case, including Part B Notification Form and forwards it to the Ombudsman's Office as well as notifying the Executive Director of Schools.

The original copy of the file is secured in confidential files in the office of the Team Leader, Administrative Services separate to personnel files.

B - Step 14. Ombudsman Review

The Ombudsman's Office oversees the conduct of the investigation and in some circumstances may monitor or conduct the actual investigation.

B - Step 15. Advice to Notifier's Parents/Carer

The Team Leader, Administrative Services advises the notifier's parents/carers that the matter has been addressed and refers them to the Ombudsman's Office for further information if required.

B - Step 16. Dispute Resolution

In the event of disputation about the process, the finding or disciplinary action, the staff member may request for the case to be reviewed.

An application for review can be made to the Executive Director of Schools. Complaints about the process or handling of the investigation by the Agency can be made to the NSW Ombudsman.

3) Allegations of reportable conduct notifiable to the Ombudsman and reportable to FACS

MATTERS NOTIFIABLE TO THE OMBUDSMAN AND REPORTED TO FACS COVERED BY THESE PROCEDURES

Under the Children and Young Persons (Care and Protection) Act 1998, any allegation of child abuse must be reported to Community Service if there are reasonable grounds to believe a child or young person is at **risk of significant harm** (See Appendix 1). This includes sexual allegations, physical assault, ill treatment, neglect and exposing the child or young person to behaviour which might cause psychological harm, (See Appendix 1).

PROCESS “C” – ALLEGATIONS OF REPORTABLE CONDUCT NOTIFIABLE TO THE OMBUDSMAN AND REPORTABLE TO FACS

C - Step 1. Record allegation

The ‘Responsible Person’ records in writing information from the person/s reporting the allegation against the staff member 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. This information is forwarded to the Team Leader, Administrative Services at the CEO.

C - Step 2. Confer with CATHOLIC EDUCATION OFFICE

The Responsible Person confers with the Team Leader, Administrative Services at the Catholic Education Office and together they determine the next steps to be taken including assessing whether the allegation/possible allegation is an allegation of reportable conduct under the Ombudsman Act 1974. They also determine whether there are reasonable grounds to suspect a child is at current risk of significant harm and hence the complaint needs to be reported to FACS as required by the Children and Young Persons (Care and Protection) Act 1998.

C - Step 3. Report is made to FACS

The Team Leader, Administrative Services reports the matter to FACS by phoning the FACS Helpline after completing the mandatory reporter guide. FACS is advised that the Team Leader, Administrative Services is the system representative at the CEO who is responsible for managing the process.

C - Step 4. Initial child protection information details form

The Team Leader, Administrative Services completes part A of the Notification to Ombudsman Form and forwards it to the Ombudsman, as well as notifying the Executive Director of Schools.

C - Step 5. Planning the process

The Team Leader, Administrative Services liaises with the Responsible Person to plan the process to be followed giving consideration to procedural fairness principles. Any issue associated with interaction between the parties is addressed by way of risk assessment conducted by the Responsible Person in conjunction with the Team Leader, Administrative Services.

C - Step 6. Team Leader, Administrative Services contacts staff member

The Team Leader, Administrative Services contacts the staff member to communicate contents of Catholic Education Office letter to:

- a) Inform them an allegation has been received, that it has been reported to FACS and it is notifiable to the Ombudsman and advising them of the general nature of the allegation
- b) Advice of the name of a FACS or police officer they may wish to contact (if available)
- c) Advice the CEO will not proceed to investigate further unless advised to do so by FACS/Police
- d) Advise they may be stood down (either paid or unpaid depending on nature of allegation)
- e) Encourage them to seek advice through a union or legal representative
- f) Advise that confidential counselling is available through CENTACARE
- g) Provide contact details of the Team Leader, Administrative Services if further information is required.

FACS and Police investigate.

The investigation process is managed by FACS and/or the Police. It may result in charges being laid or it may result in the matter being referred back to the Catholic Education Office. If the matter is referred back to the Catholic Education Office the process continues. Interagency liaison will occur to ensure there is an appropriate response to meet the needs of all parties in a timely manner.

C - Step 7. Contact the child/parent /carer

If more details are required about the allegation and there is no statement available from the Police/FACS, the Team Leader, Administrative Services contacts the child and parent to:

- a) Advise them of the receipt of the complaint and confirm they do not wish to make a report to the police
- b) Take a statement from the child of what happened, when did it happen, where did it happen, who was involved, what was the context for the incident.
- c) Explain the investigation process to be followed
- d) Ensure the child is supported including the availability of counselling through Centacare
- e) Explain the need for confidentiality
- f) Advise they will be informed when the matter is finalised.

C - Step 8. Meeting with staff member about the allegation (This meeting may also occur after complainants and witnesses have been interviewed)

The Team Leader, Administrative Services meets with the staff member and:

- a) Clarifies any issue/s regarding the procedure to be followed
- b) Informs the person of the allegation that has been made providing as much detail as possible - the allegation is provided in writing
- c) Offers the person the opportunity for a break in the meeting to allow him/her time to consider the complaint
- d) Invites the person to respond and records the response - the person may elect to respond in writing
- e) Asks for the name(s) of any witness/es to the alleged incident;
- f) Assures that the issue will be dealt with promptly and confidentially and seeks confidentiality from all present at the meeting
- g) Ensures the person has adequate support including the offer of Centacare counselling and if the staff member wishes, a support person at the school who can assist them through the process
- h) Informs the person of the process that will be followed including an anticipated time line.

The staff member may elect to have a support person present at the meeting who may be a union or legal representative. The Team Leader, Administrative Services will be present with another CEO Officer depending on the circumstances.

C - Step 9. Staff member's response

At the conclusion of the interview or soon after the interview, the Team Leader, Administrative Services provides the employee with a copy of the record of interview and invites the employee to verify or amend the record. The employee is asked to initial any amendments, initial each page and date and sign the record of interview and return it to the Team Leader, Administrative Services.

If the person acknowledges the complaint is true, the Team Leader, Administrative Services proceeds with step 12.

If the person denies the complaint, the Team Leader, Administrative Services advises they will be seeking further information relevant to the inquiry.

C - Step 10. Gathering relevant information

The Team Leader, Administrative Services proceeds to gather relevant information, including obtaining information from relevant persons identified by both the notifier and the staff member.

The information may be gathered from written statements, interviews and review of relevant documents and records. All records of interviews and statements must be signed and dated. If children are to be interviewed parents need to be advised and offered the opportunity to be present at the interview.

C - Step 11. Determining a preliminary finding

When all information has been gathered the Team Leader, Administrative Services recommends the preliminary finding. The finding is based on the facts collected and on the balance of probabilities.

C - Step 12. Staff member is advised of the preliminary finding

Team Leader, Administrative Services contacts the staff member to:

- a) Inform them of the preliminary finding, i.e. the allegation is found to be sustained or otherwise and the reason for the finding
- b) Advise them of the proposed disciplinary action or support initiatives
- c) Provide them with an opportunity to respond to the preliminary finding within one week (if new information is provided the preliminary finding is reconsidered)
- d) Explain the process and expected time line, including that the child protection notification form will be forwarded to the Ombudsman's Office
- e) Ensure the staff member has adequate support and follow up any concerns raised by the staff member. This information is provided in writing.

C - Step 13. Determining the finding following a preliminary finding

The Team Leader, Administrative Services reviews all documentation related to the case including any additional response made by the staff member.

The Team Leader, Administrative Services recommends the finding, consulting with the Executive Director of Schools.

The allegation may be found to be:

- a) Sustained
- b) Not sustained – Insufficient evidence
- c) Not sustained – Lack of evidence of weight
- d) False
- e) Not reportable conduct

C - Step 14. Letter to staff member

The Team Leader, Administrative Services advises the staff member in writing of:

- a) The finding from the investigation
- b) If sustained, the recommended disciplinary action and/or support initiatives
- c) The requirement for all documentation to be forwarded to the Ombudsman's Office
- d) The requirement for the file to be stored confidentially at the CEO
- e) The requirement for the Ombudsman's Office to advise the CEO in writing when the matter is completed
- f) Whether or not the matter is being reported to the OCG
- g) The need for confidentiality
- h) The offer of counselling
- i) The opportunity to review the file – advise they may request to view the file.

C - Step 15. Report to the Ombudsman

The Team Leader, Administrative Services completes part B of the Ombudsman's notification form and forwards it (with all relevant documentation) to the Ombudsman's Office as well as notifying the Executive Director of Schools.

The original copy of the file is secured in confidential files in the office of the Team Leader, Administrative Services separate to personnel files.

C - Step 16. Executive Director and Ombudsman review

The Ombudsman's Office monitors the conduct of investigations that involve FACS/Police and in some cases may monitor or conduct the actual investigation.

C - Step 17. Advice to notifier

The Team Leader, Administrative Services advises the parents and the person/s who raised the complaint that the matter has been addressed and refers them to the Ombudsman's Office for further information if required.

C - Step 18. Dispute resolution

In the event of disputation about the process, the finding or recommended disciplinary action the staff member may request for the case to be reviewed.

An application for review can be made to the Executive Director of Schools. Complaints about the process or handling of the investigation by the Agency can be made to the NSW Ombudsman.

IMPORTANT CONSIDERATIONS WHEN MANAGING CHILD PROTECTION INVESTIGATIONS

Safety of the child

An immediate concern is to ensure the safety of the child/children

- a) When the allegation is first made
- b) During the investigation
- c) At the conclusion of the investigation.

Appropriate assistance such as counselling is to be offered, where necessary, for the child and the family through CENTACARE.

Consideration needs to be given as to the appropriateness of interviewing a child directly. Evidence may be able to be obtained without interviewing. Children should be interviewed on as few occasions as possible. On most occasions parents/carers should be present at interviews with children.

If the Team Leader, Administrative Services needs to speak with children who may have been witnesses to an alleged incident it may not be necessary to have parents present and at the very least parental permission is to be sought for the interview. For younger children, parents should be asked if they wish to attend. With older children it may be preferable to ask them to write down what they witnessed. For guidelines on interviewing children, please *consult NSW Ombudsman Guidelines, Child Protection: Responding to Allegations of Child Abuse Against Employees*.

Parents/carers are to be adequately informed at all appropriate stages of the process and provided with written information as to the outcome of their complaint at the conclusion of the process.

If, following a complaint, there is a concern that a child may be at risk of significant harm from the staff member against whom the complaint has been made, the staff member may be asked to take leave during the investigation process.

Support for staff member

An allegation of reportable conduct is extremely serious. It is a very difficult time for everyone concerned. It is essential to provide effective support for the staff member concerned, including:

- a) Advice about the provisions of the child protection legislation and their rights and responsibilities under the legislation. This information may be provided by a member of staff who acts as the person's support person or the staff member may seek union or legal representation
- b) Advice about the nature and time line of the investigation process to be followed
- c) In addition the staff member may seek professional counselling through Centacare's Employee Assistance Program
- d) Advice and support from the NSW/ACT Independent Education Union
- e) There may be occasions when an application needs to be made for paid leave.

Support for the person making the allegation

It is recognised that the person who makes the allegation may experience discomfort or distress at the requirement to make such an allegation. The level of distress may be increased if the complainant is a member of the school staff in which the incident is alleged to have occurred or a friend.

It is important for the school principal to monitor the wellbeing of the person making the allegation and to provide relevant information regarding the management of their complaint.

The staff member may seek professional counselling through Centacare's Employee Assistance Program phone.

Investigation Process

An investigation is not a disciplinary process. It is a process to collect information objectively.

It has to be planned and consideration needs to be given to:

- a) What information do I have?
- b) What further information do I need?
- c) How will the information be obtained? (e.g. interview statement, documents)
- d) Are there any complications or potential problems I need to plan for?

It is important to gain factual information about the allegation i.e. who was involved, what happened, when it happened, where it happened, how it happened.

The complainant and the Person Subject to Investigation are to be treated fairly and respectfully throughout the investigation. Only witnesses who need to be interviewed will be interviewed and they will be advised of the need for strict confidentiality. The investigator will remain objective during the process and have no conflict of interest.

The summary of any interview conducted includes the name and position of the person being interviewed, name and position of any other person present, the name and position of the interviewer and the date of the interview.

The interviewee should be asked to sign and date to affirm the record is true and accurate. However, the interviewee is free to refuse to do this. Interviewees may prefer to submit a signed and dated written statement. The interviewee may also make written amendments directly to the record of interview before signing. The interviewee must initial all amendments made.

There may be a need to outsource investigations to an accredited professional agency/firm to ensure impartiality and to obtain specialist experience. This may be more so for serious allegations not exempted by Class and Kind Determination.

Documentation

Comprehensive documentation needs to be maintained throughout the process.

All documentation needs to be legible, dated and where necessary signed.

If a person does not wish to sign a document, it should be recorded that they were provided with a copy of the document and invited to make amendments.

On completion of the case, documentation is filed confidentially in the office of the Team Leader, Administrative Services and separate from personnel files.

In conclusion

It is important that the person managing the case, usually the Team Leader, Administrative Services checks at the end of the process to see if any further action is required prior to the matter being finalised.

Each case is different and the needs of people are different. For example, it may be appropriate to make contact with the staff member and the person who raised the allegation some weeks after the process has been finalised to identify and address any unresolved issues or concerns.

APPENDICES

APPENDIX 1

Child Protection and the Safety, Welfare and Wellbeing of Children and Young People

School Staff must **ensure the Principal is informed** as soon as practicable **where there are concerns** for the safety, welfare or wellbeing of a child or young person.

With recent changes to mandatory reporting in NSW, reports to Community Services *Child Protection Helpline* now need to meet the new threshold of “**risk of significant harm**” as opposed to “risk of harm”.

1. **If a child or young person is abused or at risk of harm**
→ Continue to ensure Principal is informed
Principal/delegate needs to ensure there is an assessment as to the action to be taken, including to advise the CEO (Brian Morrissey) and **consult** as appropriate.
2. **Does the concern need to be reported to the *Child Protection Helpline*?**
→ YES – if the child or young person is at risk of SIGNIFICANT harm

Deciding whether to report to the *Helpline* requires professional judgement.

There are avenues to **consult**:

- I. Mandatory reporters in NSW are urged to **consult** by using the **Mandatory Reporting Guide** www.keepthemsafe.nsw.gov.au an (online interactive tool) to guide decision making about whether or not a report to the *Child Protection Helpline* is appropriate. Using the online Mandatory Reporting Guide will generate a report about the decision and reasons. This record can be saved electronically and printed to add other details. A copy should be sent to the CEO.
- II. Schools can consult the CEO – Brian Morrissey on 6338 3000 or 0427 415 355
- III. Catholic Schools and other non-government organisations in NSW also can **consult** the **Support Line** (Phone 1800 722 479) for advice during the transition.

2.1 If the child or young person is at risk of SIGNIFICANT harm

→ Report to the Child Protection Helpline (Phone 133 627)

- I. Document the report, including noting the report reference number given by the *Helpline*
 - The record can be on the print-out generated by the Mandatory Reporting Guide, or
 - By completing the Risk of Significant Harm Report form.
- II. Send a copy to the CEO: by fax: 6338 3002
- III. Schools will take reasonable steps, consistent with their function and expertise, to coordinate child/family assistance. Document this assistance.

- 2.2 **If the child or young person is Not at risk of significant harm**
- ➔ NOT reportable to the *Helpline*
 - ➔ Principal/delegate will need to ensure the CEO is advised of issues, and the school keeps a record of the matter
- I. Schools will take reasonable steps, consistent with their function and expertise, to coordinate child/family assistant.
 - II. Schools are able to **consult** the CEO. Document the assistance.
 - III. The **Human Services Net** can be used to help identify services in the local area that may assist families. To access the HSNet service directory, first register on HSNet – www.hsnet.nsw.gov.au/login/register.aspx

Please contact me when you have a mandatory report, I will work with you on the new procedures.

Brian Morrissey.

APPENDIX 2

PROTOCOLS FOR ACCESSING FILES RELATING TO CHILD PROTECTION INVESTIGATION PURSUANT TO THE COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 1998 (section 43) AND GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009

- An applicant may apply to inspect an Investigation File relating to an allegation of reportable conduct, which he/she was the subject and may be granted access when the investigation has been completed. An Investigation File may be sufficiently complete when a finding has been made.
- An applicant may grant a nominated representative/s access to his/her Investigation File on his/her behalf, or whilst in the employees company. Access will only be given on completion of the attached authority by all persons seeking access.
- The applicant or nominated representative/s will receive acknowledgement of receipt of these signed Protocols for Accessing Files document within 5 working days.
- A copy of the prepared file will be available to the applicant (or their nominated representative) within 15 working days after the receipt of this signed protocols document.
- Access will be to the information on the Investigation File, except for any relevant exempt information as outlined in Schedule 1 of the government Information (Public Access) Act 2009. The relevant clauses are:

Section 14 (1) Schedule 1

Clause 5: Information subject to legal professional privilege

Clause 7: Document affecting law enforcement and public safety

Clause 10: Specific reports concerning the care and protection of children

Section 14 (2) Table 1

Note 2: Law enforcement and security

Note 3: Individual rights, judicial processes and natural justice

- Where deemed necessary, the CEO may decide to only provide access to the Investigation File under supervision at the Leichhardt office. In this instance, the Investigation File must not be marked, tampered with, altered in any way by the employee, or nominated representative/s.
- Access to the Investigation File is provided in the understanding that applicants and nominated representative/s:
 1. Will maintain strict confidentiality on the contents of the Investigation File; and
 2. Will not use information derived from the Investigation File to approach, contact, harass, intimidate or otherwise interfere with any of these persons named in the investigation or their associates, including relatives.
- Access may be defined if there is any reasonable belief that the applicant or nominated representative/s will not maintain confidentiality, or will not abide by the provisions of this Protocol.
- Access may be defined if there is any reasonable belief that the applicant or nominated representative/s will not maintain confidentiality, or will not abide by the provisions of this Protocol.
- The applicant or nominated representative/s is reminded that he/she may submit written material, for inclusion on the file pursuant to the Government Information (Public Access) Act 2009
- Any person accessing an Investigation File on behalf of or in company with the applicant is required to co-sign this Protocol agreeing to be bound by its conditions.

APPENDIX 2

I seek access to my Child Protection Investigation File and have read this Protocol.

I understand and agree to abide by the conditions contained in this protocol.

(Applicant Name)

(Signature)

(Date)

(Nominated Representative)

(Signature)

(Date)

Professional Conduct and Child Protection

RESPONDING TO ALLEGATIONS INVOLVING SCHOOL PERSONNEL

Child Protection Legislation has been with schools and the teaching profession for some time. Nowadays, allegations of '*reportable conduct*' involving employees **must** be reported to the school authority and notified to the Ombudsman who monitors that such allegations are handled in a fair and just manner.

The Catholic Education Office in the Diocese of Bathurst has put in place procedure to fulfil the legal obligation to respond to allegations. These are not easy matters to deal with as they are highly sensitive and raise complex issues and emotions. However, the welfare of children and young people and our legal responsibilities are not negotiable. The Catholic Education Office has continually refined its process to protect the rights and interests of all parties. All efforts are made to maintain the integrity of the people involved and to ensure care and support. The procedures to handle these allegations are to ensure justice and fairness for all involved.

Key principles in the handling of allegations and internal investigations

- *Respect and Support for the dignity of all persons*
- *Confidentiality*
 - to preserve the dignity and wellbeing of the child/ren. The employee and other persons
 - to ensure the investigation is not compromised
 - to ensure security of relevant documents
- *Natural Justice*
 - the employee has the right to be informed of the allegation/s and to put their case
 - the employee has the right to respond to adverse comment
 - reasonable enquiries or investigations to be made before deciding on the matter
 - investigation to be conducted without undue delay
- *Unbiased and fair*
 - Investigation conducted by independent persons
 - Careful decision making that is fair, just and based on evidence
- *Appropriate action as a consequence*
 - To minimise risk for the future
 - To ensure protection from intimidation or retribution for bringing forth a concern in good faith
 - To ensure ongoing support, where appropriate, for child/ren, the employee and other persons

- *Closure of the matter investigated*

The process for the dealing with allegations needs to be transparent. There are checks in place to ensure this.

- The process is accountable to the *head of agency* and is subject to scrutiny by the Ombudsman.
- The Executive Director of Schools represents the Bishop of Bathurst as *head of agency*.
- The employee's confidential file of the proceeding will be able to be viewed by the employee.
- Employees as well as others have the right to complain to the Executive Director of Schools and/or to the Ombudsman if they are concerned about the conduct of an investigation.

It is important to 'hold on to normality' and keep these issues in perspective. We must recognise and honour the outstanding dedication to staff, to the children and young people in our Catholic schools. Most people working in our schools are never likely to be the subject of an allegation requiring an investigation. Furthermore, the more serious allegations will be investigated by external agencies such as, the Department of Community Services (DoCS) and/or Police. If these external agencies become involved, an internal investigation is suspended until clearance is given by the external agency.

All people working in our Catholic schools are called to act in the interest of children and young people, so that working together we may maintain the highest professional standards and the integrity of the teaching profession and to maintain an authentic Catholic school.

PROCEDURE FOR RESPONDING TO THE ALLEGATION

A. On receipt of the 'allegation' at the catholic Education Office:

- A risk assessment is initiated (**Note:** Risk management will be ongoing).
- A report is made to DoCS if there is a current concern that a child is 'at risk of harm'.
- A confidential file and initial report is prepared for the Executive Director of Schools and it is determined whether:
 - i. it is a 'reportable allegation' (ie, it requires reporting to the Ombudsman and investigation by CEO/School); OR
 - ii. a reporting exemption applies (ie, it is to be handles within the CEO and School investigated
- head of agency is advised and for 'reportable allegations' the initial details are notified to the Ombudsman.

B. Catholic Education authorises an investigation, appointing an Investigator to conduct the internal investigation. In case of 'reportable allegations', an investigation report will be considered by the Executive Director of Schools. However, where reporting exemptions apply and there are no reportable allegations, then an investigation report will generally be considered by the Child Protection Coordinator. (*Details of the investigation procedure are provided on the next page*).

C. Catholic Education Office advises the Principal of the school to meet with the *employee*. The Principal informs the *employee* that a child protection matter has arisen. The Principal will ensure support for the *employee*, informing hat she/he may have a support person present whilst she/he is being informed of the process to investigate the matter. The *employee* is sent the written notice of the investigation, as well as this brochure of the investigation procedure.

The Catholic Education Office:

- i. Advises an allegation has been made and the general nature of the allegation
- ii. Advises an investigation has been authorised by the CEO and provides the name/s of the investigator
- iii. Advises of the outcome of the initial risk assessment if it adversely affects the *employee*
- iv. Offers and arranges support (eg, counselling, a 'contact person' regarding the investigation)
- v. Advises of arrangements for the initial meeting of the employee with the Investigation Team. The *Notice of Investigation* is provided in writing. The Principal liaises with the *employee* as to arrangements for the *employee's* initial meeting with the Investigator (See #2 in Procedure for Conducting the Internal Investigation). The meeting is arranged at an agreed time and place, usually shortly after the employee has been informed of the allegation.

- vi. Advises the *employee* she/he may have a 'support person' present at the interview
- vii. Advises of the *employee's* right to contact their union (usually IEU)
- viii. Advises she/he may provide a written submission in support of their case together with the interview or in lieu of an interview
- ix. Advises that confidentiality is imperative, in the interest of all parties and due process

D. The investigation is a process involving the collection of factual information, to assist in reaching a finding. The Principal supplies any relevant documentation. The parents of the student/s involved with the investigation are informed of the process. The Investigation Team seeks assurance of confidentiality from any person involved with the investigation. The investigation process allows the *employee* to respond to the allegation. (*Refer to the process #1 to #6 in Procedure for Conducting the internal Investigation*).

E. The investigation report is considered:

1. For 'reportable allegations' – it is considered by the Executive Director of Schools.
2. Where no 'reportable allegations', and exemptions (a) & (b) (see page 7**) apply – it is considered by the Child Protection Coordinator.
 - The Executive Director or Child Protection Coordinator
 - accepts/rejects the finding/s of the investigation
 - considers the recommendations
 - decides on a course of action
 - The Executive Director or Child Protection Coordinator writes to the *employee*:
 - advising of his/her acceptance or rejection of the finding/s of the investigation
 - providing details of the findings he/she has accepted
 - also, where relevant, stating any disciplinary or other action.

The *employee* may provide a written submission in response.

The Principal is contacted in relation to the findings and their implications.

F. The Principal and *employee* meet regarding any ongoing issues.

G. Where there are 'reportable allegations', a copy of the investigation file is forwarded to the Office of the Ombudsman. The Ombudsman's Office reviews the findings and process and decides if further investigation/information is required prior to closing the matter. Where the allegation involves conduct of a 'class or kind' that is exempted by the Ombudsman (ie, reporting exemption (c) (see page 7 **), such investigations are also periodically audited by the Office of the Ombudsman.

Procedure for conducting the Internal Investigation

The general procedure.

The Investigator:

1. **Clarifies** the allegation/s with the complainant/s and/or alleged victim/s
2. **Conducts** an initial interview with the *employee*, confirming the *employee* is aware:
 - of available, eg. Union, counsellor, etc
 - that she/he may have a 'support person' present at the interview
 - that the support person may be a Union representative
 - that she/he may have the opportunity, as soon as practicable, to read, verify/amend, and date and sign a copy of the record of interview
- 2.1 **Provides** the allegation/s in writing to the *employee*, providing sufficient information for the *employee* to respond.
- 2.2 **Invites** a response to the allegation/s
 - a) The *employee* considers the allegation/s and may provide a verbal response in the interview
 - b) The *employee* may nominate lines of inquiry for the investigator/s to follow
 - c) A written response to the allegation/s will be sought, within a reasonable time after the interview
3. **Collects** relevant information to assist with reaching a finding. This may take the form of interviewing and taking statements from witnesses.
4. **Conducts** a further interview with the *employee* if necessary, (employee may have a 'support person' present).
 - 4.1 to put any further allegation/s arising in the investigation – provided in writing
 - 4.2 to obtain any further clarification
 - 4.3 To receive any further response to the allegation/s
5. **Makes** preliminary finding/s and recommendation/s. Where possible, this is usually after the final interview/response from the employee (referred to in Number 4 above).

The employee is:

- 5.1 **advised** of the proposed finding/s and recommendation/s; and
- 5.2 **invited** to respond to the finding/s and recommendation/s. The Investigation Team records the employee's response in the investigation report.
6. **Provides** a report of the investigation to the Executive Director – advising of the findings and recommendation/s.

NOTE: There are specific circumstances that may require the Investigator to defer from the general practice. The Employee will be given the option to respond to the allegation/s in writing if she/he does not wish to respond through an interview.

EXPLANATION OF TERMINOLOGY

Employee: An employee of the CEO/School – including staff and people on practical training.

A person engaged by the CEO/School to provide services to children e.g. volunteers, contractors.

Reportable

Allegation: A reportable allegation is either:
i. an allegation of reportable conduct, OR
ii. an allegation of misconduct that may involve reportable conduct

Reportable

Conviction: A conviction (including a finding of guilt without the court proceeding to a conviction) in NSW elsewhere, of an offence involving reportable conduct.

Allegation: An assertion, with or without proof, or a declaration.

Child: Aged less than 18 years

Reportable Conduct includes:

- **Sexual Offence** – any sexual offense with or in the presence of a child, including sexual threats imposed on a child.
- **Sexual Misconduct** – a range of behaviours or a pattern of behaviour (including ‘grooming’) aimed at children as a precursor to sexual abuse, also includes sexual misconduct in the presence of children.
- **Physical Assault** – assault or non-accidental injury and/or harm. Physical assault is a hostile or reckless act towards a child, or threat of use of force. Actual harm does not have to have occurred in order for an assault to have occurred.
- **Psychologically harmful behaviour** – resulting in significant emotional harm or trauma.
- **Neglect** – harm due to the failure to provide basic physical or emotional needs or medical aid.
- **Ill Treatment** – disciplining or punishment of a child that is excessive or otherwise inappropriate.

Exemptions to Reporting: Reportable Conduct DOES NOT EXTEND TO:

** (a) conduct that is reasonable for the discipline, management or care of children, having regard to the characteristics of the children and to relevant codes of conduct or professional standards.

** (b) 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 records under the workplace employment procedures.

** (c) conduct of a class or kind exempted by the Ombudsman under Sec 25C(A)

