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# CHILD PROTECTION POLICY FOR DIOCESAN SYSTEMIC SCHOOLS: ADDRESSING ALLEGATIONS OF INAPPROPRIATE BEHAVIOUR BY STAFF

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November 2014

## PURPOSE

All school communities in the Diocese of Broken Bay are committed to providing a safe and supportive environment for both students and staff. School communities have the right to expect that staff will remain professional in their interactions with children at all times by exercising appropriate duty of care and maintaining professional boundaries.

The purpose of this policy and the relevant sections of the associated Diocesan Schools System Child Protection Resource Manual is to establish a framework for the Diocesan Schools System to comply with the requirements of the NSW Ombudsman Act 1974 to address complaints about alleged inappropriate behaviour by staff towards children in a way that protects children and also respects the rights of staff to a procedurally fair and confidential process.

## POLICY FRAMEWORK

The DSS affirms principles central to the Church's teaching as expressed in the Pastoral Care and Wellbeing Framework. Accordingly this Policy:

- is inspired by the life and person of Jesus Christ and the teachings of the Church.
- is concerned to ensure the dignity and integral growth of every person.
- acknowledges the responsibility entrusted to all members of each Catholic school's community.
- seeks to promote healing, reconciliation, justice and liberation.

The DSS is responsible and accountable for promoting a culture in which employees are committed to ensuring the wellbeing, safety and protection of children. In particular employees are required to:

- Act in accordance with their duty of care towards children;
- Maintain professional boundaries with children.

The DSS achieves this by:

- Ensuring that DSS staff understand the legislated and general duty of care obligation to address allegations against staff or other individuals concerning children;
- Providing staff with training regarding professional conduct and the handling of allegations;
- Providing staff with clear instructions to follow when allegations are made;
- Ensuring that opportunities to prevent harm to children and to promote safety and wellbeing are identified and responded to at an individual and systemic level.

## POLICY CONTENT

### Addressing complaints about alleged inappropriate behaviour by staff towards children

Part 3A of the Ombudsman Act 1974 requires that designated government and non-government agencies (including non-government schools) must notify the NSW Ombudsman of any allegation of *reportable conduct* or a conviction related to *reportable conduct* involving an employee. These agencies are also required to properly investigate and respond to reportable allegations and convictions, and *exempt* allegations involving misconduct by an employee towards a child. For the purposes of this legislation, a child is a person under the age of 18 years.

The Catholic Schools Office (CSO) accepts that when a complaint of inappropriate conduct by an employee towards a student who is over 18 years of age is received, that

whilst the relevant child protection legislation does not apply, similar transparent and accountable enquiries and pastoral processes will be followed in response to such complaints.

The role of the NSW Ombudsman is to audit, oversight, monitor or review the employer's response to *reportable* or *exempt* allegations including intake decision-making, and appropriate risk assessment, risk management and appropriateness of findings. The DSS has responsibility for establishing, maintaining and disseminating appropriate policies and procedures for responding to allegations against employees including the equitable implementation of intake, intake assessment, and risk management processes.

### **Who is an employee in the child protection context?**

For the purposes of Part 3A Ombudsman Act 1974, the definition of employee is very broad. In keeping with the legislative definition, for the purposes of this policy, an employee includes paid employees, whether or not employed in connection with work that relates to children, and also includes any individual engaged to provide services to children in a school whether in a paid or voluntary capacity (for example, parent volunteers and members of the clergy who perform a task for a school are included in this definition of employee).

### **Head of Agency function**

The Bishop of the Diocese of Broken Bay is the Head of Agency in respect of all legislative responsibilities pursuant to Part 3A Ombudsman Act 1974 for the Catholic 'non-government designated agencies' within the Diocese. The CSO is one such agency. The CSO undertakes to establish all such policies, procedures, risk management strategies, professional development, and reporting mechanisms pertaining to the CSO and school communities of the DSS as are required to enable the Head of Agency to fulfil his legislative and pastoral responsibilities with respect to matters relating to proactive and responsive child protection practices.

### **Reporting Requirements**

The CSO has responsibility for establishing and maintaining appropriate procedures for responding to and recording allegations of reportable and exempt conduct by an employee towards a child. These procedures can be found in the Diocesan Schools System Child Protection Resource Manual.

### **Reportable conduct**

In relation to Part 3A Ombudsman Act 1974, an allegation of reportable conduct is one involving:

- (a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material), or
- (b) any assault, ill-treatment or neglect of a child, or
- (c) any behaviour that causes psychological harm to a child

whether or not, in any case, with the consent of the child.

### **Exempt conduct**

An allegation of reportable conduct may be exempt from notification to the NSW Ombudsman or the NSW Office of the Children's Guardian if it involves:

- (a) 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
- (b) 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
- (c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under Section 25CA.

### **Addressing complaints**

Complaints involving the alleged inappropriate conduct of an employee towards any child are addressed differently to other types of complaints in the school setting because of the legal requirements. A complaint of a child protection nature is any grievance raised by a person concerning the alleged behaviour or conduct of an employee towards any child.

If a concern relates to the alleged behaviour or conduct of an employee towards a child details of the concern must be forwarded to the principal who must promptly contact the CSO Child Protection Team for advice, legal assessment, history check, risk assessment and determination of investigation pathway.

In certain circumstances the complaint will also need to be forwarded to the Department of Family and Community Services (Community Services) or the NSW Police. After assessment, some complaints may be classified as 'not in jurisdiction'. This means that the matter does not need to be reported to the NSW Ombudsman. The reason for this is that one of the threshold requirements for notifying a matter to the NSW Ombudsman has not been met. These matters are referred back to the principal to manage at the school level.

Essentially there are two processes applied to managing child protection complaints:

- (a) Low level complaints (typically exempt conduct) and those involving low risk are managed by the principal.
- (b) Complaints involving alleged conduct which is more serious (typically reportable conduct) or suggest a higher level of risk are investigated by the CSO Child Protection Team.

The investigation process will typically involve:

- interviewing the alleged victim and witnesses;
- gathering other relevant evidence;
- writing to the employee detailing the allegations and requesting a response;
- preparing an investigation report; and
- making findings on the outcome of the investigation.

At the end of an investigation, where there are sustained findings of sexual offence, sexual misconduct or serious physical assault, the employee's name will be notified to the Office of the Children's Guardian. The notification will trigger a risk assessment on the employee's Working with Children Check. Other possible outcomes of an investigation include:

- no further action,
- disciplinary action, or
- changes to policy and practice.

Employees have the following rights if a child protection complaint is being investigated:

- Procedural fairness including a timely, impartial and confidential investigation.
- No decision made until the staff member has an opportunity to know the details of the complaint and has an opportunity to respond fully.
- Information about the process, adequate and specific details to respond to the complaint, progress on the matter, reasonable notice regarding any meetings and information regarding the outcome and any findings.
- Support throughout the process by family, colleagues, union or legal representatives and an entitlement to free confidential counselling through the employee assistance program.
- Review of the outcome, by writing to the Director of Schools or contacting the NSW Ombudsman's Office or pursuing their rights through legal channels.

### **Responsibilities in respect of allegations of inappropriate behaviour by staff**

All DSS staff members have responsibilities in the area of child protection. Staff members holding certain roles have particular responsibilities at the DSS level. The responsibilities are as follows:

#### **Director of Schools**

- Ensure the child protection systems and operations in relation to addressing allegations against employees within the DSS comply with the relevant legislation; and
- Ensure that the Head of Agency responsibilities delegated by the Bishop of the Diocese of Broken Bay are met; and
- Authorise the investigation of allegations of reportable conduct specifically related to the actions of staff and ensure appropriate action is taken in relation to the findings and outcome of such investigations.

#### **Principals and School Consultants**

- Ensure that staff are aware of and understand the reporting procedures, professional standards, policies and procedures that inform and direct staff relationships with students and their families within diocesan systemic schools;
- Ensure school compliance with policies, procedures and professional standards;
- Ensure staff receive professional development in relation to developing appropriate relationships with students and information about their rights and responsibilities;
- Ensure that the correct procedures specified in the Child Protection Resource Manual for Diocesan Systemic Schools are followed in responding to any information, complaint or concern involving alleged inappropriate behaviour by a staff member towards any child or young person;
- Ensure any situation involving allegations of reportable conduct is treated with the utmost discretion, sensitivity and regard for the privacy and confidentiality of all persons involved;
- Lead schools in fostering a culture which is proactive in ensuring the protection of children including undertaking risk assessments.

#### **Child Protection Team**

- Establish and maintain appropriate procedures for dealing with allegations of reportable conduct;
- Report to the NSW Ombudsman and the Office of the Children's Guardian any reportable allegations and convictions made against staff members;

- Ensure appropriate investigations are conducted and recommendations made to the Director of Schools regarding appropriate findings and action;
- Develop and provide relevant professional learning to DSS staff;
- Conduct jurisdiction determinations for all matters reported to the Child Protection Team and decide upon the appropriate investigative pathway;
- Maintain appropriate records of investigations and store these records in secure confidential storage, separate from employee personnel files;
- Liaise with other agencies such as Family and Community Services, NSW Police, NSW Ombudsman and the Office of the Children's Guardian, as required;
- Exchange relevant information to progress investigation, assessments and case management as permitted by law;
- Collaborate and work cooperatively with other agencies in the Diocese of Broken Bay.
- Report to the CSO management team twice a year by school about numbers and types of allegations of inappropriate behaviour by staff including post-investigation compliance.

### **Teachers and other staff**

- Ensure that the correct procedures specified in the Child Protection Resource Manual for Diocesan Systemic Schools are followed in responding to any information, complaint or concern involving alleged inappropriate behaviour by a staff member towards any child;
- Be familiar and comply with the standards set out in the *Professional Guidelines for School Staff in their Relationships with Students*;
- Promote the safety, wellbeing and protection of children in the DSS.

## **RELATED LEGISLATION, POLICIES AND PROCEDURES**

Part 3A Ombudsman Act 1974

Children and Young Persons (Care and Protection) Act 1998

Child Protection (Working with Children) Act 2012

Child Protection (Working with Children) Regulation 2013

Behaviour Management and Student Discipline Policy

Child Protection Resource Manual for Diocesan Systemic Schools

Diocese of Broken Bay Child Protection Policy (2012)

National Safe School Framework (MCEECDYA, 2011)

NSW Ombudsman's Guidelines Child Protection in the Workplace (2004)

NSW Ombudsman Practice Update: Defining Reportable Conduct (2013)

NSW Ombudsman Practice Update: Making a Finding (2014)

Pastoral Care Policy for Diocesan Systemic Schools

Pastoral Care and Wellbeing Framework for Learning

Professional Guidelines for School Staff in their Relationships with Students

Recruitment and Selection of Teaching and Support Staff Guidelines (2014)

Registration Systems and Member Non-Government Schools (NSW) Manual  
(NSW Board of Studies, 2012)

**POLICY REVIEW**

A policy review is to be considered following any changes to the NSW Child Protection legislation or associated guidelines and not less frequently than every five years from the date of implementation of the policy.

**POLICY DATES**

Date of completion of formation and adoption:  
Date of next review:

November 2014  
November 2017

authorised by  
Fr Vincent R Casey  
Diocesan Administrator