

# GUIDESHEET FOR STAFF MEMBERS

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*Information for employees who  
are the subject of a child protection complaint*





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## Introduction

When a complaint of a child protection nature is made against a staff member in a school, the CSO is governed by child protection legislation in terms of how the complaint is to be handled. These types of complaints need to be managed differently to general complaints occurring in the school environment.

As an employer, the Catholic Schools Office (CSO) is committed both to protecting the safety and wellbeing of children and young people as well as respecting the rights and needs of our employees. The process for managing child protection complaints balances both of these commitments.

The purpose of this brochure is to outline how child protection complaints are dealt with by the CSO.

## What is a complaint of a child protection nature?

In the Catholic school context, a complaint of a child protection nature must involve an 'employee'. In practical terms this means:

- any person employed by the CSO eg teachers, teachers aides, support staff, principals; and
- any paid or unpaid person engaged to provide services to children in schools including parent volunteers, clergy, tutors and contractors.

A complaint of a child protection nature is any grievance, complaint, allegation or concern raised by a person regarding the alleged inappropriate behaviour or conduct of an employee towards any child or young person.

The alleged conduct may occur within or outside of the school context. It may be directed at any child or young person (not just a student) and it might involve behaviour that is defined as 'reportable conduct'.

## What is 'reportable conduct'?

Under Part 3A of the *Ombudsman Act 1974*, reportable conduct means:

- a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), 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.



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Allegations of 'reportable conduct' must be notified to the NSW Ombudsman. **The vast majority of matters arising in the school environment are not reportable to the Ombudsman.**

### **What matters are exempt from the reporting requirement?**

Matters which are exempt from reporting include:

- i) 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;
- ii) 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;
- iii) conduct of a class or kind exempted from being reportable conduct by the Ombudsman (see Child Protection Resource Manual, Section 6, Annexure 6-6).

### **How are child protection complaints handled?**

Regardless of whether a complaint has to be reported to the Ombudsman, the legislation requires that it be looked into and documented at some level.

Part of the Ombudsman's role is to oversight how employers handle complaints of a child protection nature to ensure that they are reported, documented and managed appropriately. This includes ensuring that the rights of the employee against whom the complaint is made are respected.

To ensure appropriate handling, all complaints of a child protection nature made against staff members must be forwarded to the CSO's child protection team. The office of the child protection team is a confidential repository for all information concerning child protection complaints. The child protection team assesses all child protection complaints. This includes:

- determining whether the matter involves 'reportable conduct';
- considering the level of seriousness of the matter and assessing the level of risk; and
- on the basis of the above determining the appropriate path for handling the complaint.

### **What are the paths for handling child protection complaints?**

There are two processes for handling a child protection complaint:

- investigation by the child protection team; or
- less formal handling of the matter by the principal at the school level.



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As a guiding principle, complaints are handled at the lowest possible level. Complaints which are less serious and involve low risk are handled by the principal. Complaints which are considered more serious or involve higher risk or complexity are investigated by the child protection team.

### **Matters handled by the principal (Principal Assisted Matters)**

Once the child protection team has assessed the complaint, the principal looks into the concern which includes speaking to all parties involved and obtaining an account from the staff member. The child protection team is responsible for assisting the principal with advice and support regarding the process. Once all the relevant information has been collected it is forwarded to the child protection team and a decision regarding the outcome is made by the Diocesan Child Protection Manager.

### **Child protection team investigation**

The investigation process is more formal, complex and thorough and it usually takes longer to complete than a matter handled by the principal. The child protection team gathers information from witnesses and the staff member concerned and prepares recommendations for the Director of Schools who determines an appropriate outcome.

For detailed information concerning both processes see Child Protection Resource Manual, Section 6, Annexures 1 and 2.

### **Synopsis of process**

Whichever process is followed, the basic steps in reaching an outcome are as follows:

1. complaint forwarded to child protection team by principal
2. complaint assessed by child protection team
3. either principal or child protection team formulates plan and considers risk
4. staff member advised complaint has been made (if they are not already aware)
5. information is gathered which includes interviewing students concerned and any witnesses
6. staff member informed in writing of details of the complaint
7. staff member provides response at an interview or in writing
8. preliminary report is prepared recommending an outcome
9. if recommended outcome is not adverse, the matter is finalised and the staff member is informed of the outcome



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10. if recommended outcome is adverse the staff member will be informed and will be given an opportunity to make any further submissions after which time the outcome will be finally determined and the matter finalised.
  11. if necessary, reports are made to the Ombudsman and the Office of the Children's Guardian (OCG).

### **What are my rights in the process?**

Being the subject of a complaint can be stressful. It is important that staff members are aware of their rights in the process:

- *procedural fairness*: staff are entitled to have a timely, impartial and confidential investigation as well as an opportunity to be heard. No decision is made until the staff member has had an opportunity to know the details of the complaint and to respond fully. The staff member is also given an additional opportunity to respond to any adverse finding
- *right to information*: the staff member has a right to be provided with information about the process, adequate and specific details to respond to the complaint, information about the progress of the matter, reasonable notice regarding meetings/interviews and information regarding the outcome and any findings, particularly adverse findings.
- *right to support*: the staff member has a right to be supported throughout the process including a support person at any meetings. Support may include the principal, family members, union representative and legal representation.
- *counselling*: Staff and their families are entitled to free and confidential counselling support through the employee assistance program.
- *right of review*: staff may request a review of the process by writing to the Director of Schools and requesting a review. Staff members are also entitled to contact the Ombudsman's office and request a review of the matter by the Ombudsman. Staff are also entitled to pursue their industrial rights through legal channels

### **What are my responsibilities?**

During the process staff members are expected to:

- maintain confidentiality
- maintain professionalism which includes remaining respectful and courteous to anyone who is directly involved (or they suspect may be involved) in the process.



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## What are the possible outcomes?

At the conclusion of the process a finding is made in relation to the alleged behaviour of the staff member. Findings are made on the balance of probabilities as either:

- sustained (behaviour occurred and was reportable conduct)
- not sustained (alleged conduct is reportable but there is insufficient evidence to establish whether the alleged conduct occurred)
- false (compelling evidence that the alleged behaviour did not occur)
- vexatious (the allegation was made without substance and with the intent of being malicious or to cause distress to the person against whom the allegation was made)
- misconceived (even though the allegation was made in good faith, it was based on a misunderstanding of what actually occurred and the behaviour was appropriate)
- not reportable conduct (the alleged behaviour did not amount to report conduct)

Consideration is given to whether the matter must be reported to the OCG. The OCG maintains a database of completed matters where there may be some risk if the person concerned applies for child-related employment in the future. Relatively few matters are reported to the OCG as certain thresholds and exemptions apply. Of those matters reported, some will trigger a risk assessment when the person applies for another position in child related employment. Others will not trigger a risk assessment unless there are other relevant records for that person (eg relevant criminal history). A report to OCG does not mean that a person will automatically be excluded from further child-related employment.

When a matter is finalised consideration is also given to the most appropriate way of addressing/resolving the matter. A range of measures can be implemented including informal counselling, targeted professional development, mentoring, supervision, or in serious cases, disciplinary action.

For further detailed information regarding the handling of child protection complaints see section 6 of the Child Protection Resource Manual or contact the child protection team on ph: 9847 0610, 9847 0616, 98470620 or 9847 0618.





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