



# Catholic Schools Office

## Diocese of Lismore

### CHILD PROTECTION

### POLICY AND PROCEDURES

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# TABLE OF CONTENTS

## CHILD PROTECTION POLICY

<u>SECTION/DESCRIPTION</u>	<u>PAGE/S</u>
1 INTRODUCTION	3
2 STATEMENT OF PRINCIPLES	4
3 DEFINITIONS	4
4 LEGISLATIVE REQUIREMENTS	14
5 PREVENTION	15
6 REVIEW	16

## CHILD PROTECTION PROCEDURES

### CATHOLIC SCHOOLS OFFICE

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1 MANAGING COMPLAINTS AND ALLEGATIONS	17
2 MATTERS <u>NOT</u> NOTIFIABLE TO OMBUDSMAN	17 – 21
3 MATTERS NOTIFIABLE TO OMBUDSMAN AND COMMUNITY SERVICES	22 – 27
4 IMPORTANT CONSIDERATIONS	28 - 30

# DIOCESE OF LISMORE

## CHILD PROTECTION POLICY

### 1. INTRODUCTION

*Anyone who welcomes a little child like this in my name welcomes me. But anyone who is an obstacle to bring down one of these little ones who have faith in me would be better drowned in the depths of the sea with a great millstone round his neck.*

(Matthew 18:5 –7)

These words of Christ our Lord reveal a teaching that is both warm towards children but speaks with unusual sternness against anyone who would take advantage of their innocence. The passage provides for His Church the basis for that special place that children must have within our community. The severe words of warning also form a starting point from which the Church may proceed in devising a policy to ensure that the children to whom she ministers in her spiritual, educational and social works are protected from harm of any sort.

In our own day, when sadly the Church in some places has been beset by these very scandals, the late Pope John Paul spoke with a similar severity. “The abuse,” he said, “is by every standard wrong and rightly considered a crime by society; it is also an appalling sin in the eyes of God.” “In addressing the problem of abuse with clarity and determination, the Church will help society to understand and deal with the crisis in its midst . . . people need to know that there is no place in the priesthood or religious life for those who would harm the young.” — *Address to the Cardinals of the United States, 23 April, 2002.*

In the Church in Australia, determined efforts have been made at every level to identify and to deal with any person accused of doing harm to children. Carefully developed protocols, which are under regular review, are established for this purpose, and operate in every State and diocese.

This policy represents a particular aspect of the effort undertaken by the Diocese of Lismore to deal effectively with any offenders within its various entities. We are determined that this endeavour will continue in a structured and effective way. The Diocese is also committed to assist victims in every way possible and to bring healing to the suffering that has been caused.

On 1st July 2005 when this policy took effect, the Bishop assumed the responsibility as “Head of Agency” for all matters relating to child protection in the Diocese of Lismore and its related entities which fall under the Ombudsman’s Act. Training in processes to ensure a correct understanding of what constitutes reportable conduct and the manner in which the obligatory responses are to be made are part of that responsibility.

In pursuing these responsibilities the Diocese seeks to ensure that its children and young people are protected from all forms of reportable conduct behaviour. It supports child protection and all measures for the prevention of reportable conduct in the workplace. The Diocese also supports measures to ensure that its children and young people will be taught how to protect themselves, and to seek help if they are concerned about abuse.

## 2. STATEMENT OF PRINCIPLES

Within the Diocese of Lismore the procedures to be followed in handling allegations of reportable conduct are based on the following principles:

- All people are created in the image and likeness of God and are endowed, in their nature, with certain inalienable rights for their own good and that of humanity.
- Jesus Christ, through the Scriptures, Tradition and Teaching Authority of the Church instructs us about the dignity and infinite value of every human being, especially children and young persons.
- All children and young persons have the right to safety and to be protected from any kind of reportable conduct.
- Persons involved in situations where reportable conduct is alleged should be treated with sensitivity, dignity and respect.
- In any preventive and/or protective action related to reportable conduct alleged, the total well-being of the child is the primary concern.
- The value of the family unit is respected but not to the detriment of the well-being of the child
- All staff including support and authorized volunteers have an obligation to promptly inform a “Responsible Person” of alleged incidents of reportable conduct as well as serious matters concerning the welfare of children, who come under their sphere of responsibility.
- Information regarding allegations of reportable conduct shall be made available only to those personnel who have a genuine need to be informed. Personnel who have access to such information have the obligation to observe appropriate confidentiality in relation to this information.
- Personnel should not make any false or vexatious allegations that may infringe the good name of another person.

## 3. DEFINITIONS

### Child

‘Child’ under the *Children and Young Persons (Care & Protection) Act 1998*, is defined as a person under the age of 16 years. Under the *Ombudsman Act 1974* and the *Child Protection (Working With Children) Act 2012*, a child is a person under the age of 18 years.

### Class or Kind Determination

Pursuant to s.25CA of the *Ombudsman Act 1974*, the Ombudsman has determined that the Catholic Schools Office (CSO), in the Diocese of Lismore, is an agency that has achieved a standard of investigation practice whereby only the reportable allegations specified below, against employees of that agency, need be notified to the Ombudsman under s.25C(1):

3.1 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 harm or injury to them.

If an allegation of physical assault, or a threat of a physical assault specified in 3.1(a) and 3.1(b) is reported to the Ombudsman as a reportable allegation, relevant documentation of the management by the CSO 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.

3.2 In relation to the class or kind of alleged conduct against the employees of the CSO exempted in 3.1 above from being reportable conduct, the CSO 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.

## **Confidentiality**

Confidentiality aims to preserve the dignity of the child/ren, the employee and other persons involved in an investigation.

Confidentiality also aims to ensure the investigation is not compromised and that relevant investigation documents are securely stored.

## **Conflict of interest**

Investigators should be objective and impartial, and be seen as such. One factor that can affect an investigator's neutrality is a conflict of interest between their role as an investigator and other personal or professional views or responsibilities. Investigators must declare to the Chancellor (or in his absence the Diocesan HR/WHS Manager) or the Director for Catholic Schools any conflict of interest from the initial notification of an investigation and a decision made as to whether an alternative investigator is to be utilized.

## Diocesan Investigators

For the purposes of this policy the following will be the normal Diocesan Investigators:-

The Chancellor of the Diocese	-	Diocese of Lismore,
The Human Resource Officer/WHS Manager	-	Diocese of Lismore,
The Human Resource Officer and	-	Catholic Schools Office Lismore
The Human Resource Officer	-	St Vincent's Hospital, Lismore.

Suitably qualified persons, selected by the Head of Agency, may be appointed to conduct or assist in investigations as required.

## Employee

An employee is any person who is employed by the agency, whether or not they are employed to work directly with children, as well as anyone from outside the agency who is engaged to provide services to children such as contractors, foster carers, volunteers, students on placement, instructors of religion.

## Employees' duty to report

Employees are required to bring to the attention of their Manager/Principal any potential, perceived or actual contraventions of any of the boundaries set out in the Diocese of Lismore's *Guidelines for Professional Conduct in the Protection of Children and Young People (Catholic Schools Office only)*, whether by themselves or colleagues. The requirement to report any possible contraventions is essential given the duty of care owed to students within the school environment. In addition, all employees are to notify any allegation of reportable conduct or reportable convictions of which they become aware of in accordance with current legislation and Diocesan policy.

## Findings of Misconduct involving children

A person has been the subject of a finding by a reporting body that the person engaged in the following conduct:

- a) Sexual misconduct committed against, with or in the presence of a child, including grooming of a child,
- b) Any serious physical assault of a child

## Head of agency

The head of agency is the Bishop of the Diocese of Lismore. **All** Complaints and allegations are to be registered with the Chancellor at the Chancery Office in the first instance.

## Ill-treatment

Ill-treatment captures those circumstances where a person treats a child or young person in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner.

The focus is on the alleged conduct rather than the actual effect of the conduct on the child or young person.

Ill-treatment can include disciplining or correcting a child in an unreasonable and seriously inappropriate or improper manner; making excessive and/or degrading demands of a child; hostile use of force towards a child; and/or a pattern of hostile or unreasonable and seriously inappropriate, degrading comments or behavior towards a child.

In making a determination regarding ill-treatment it may be important to consider relevant codes of conduct that outline the nature of professional conduct and practice by employees/workers which should occur when working with children/young people.

## **Investigation**

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

## **Mandatory Reporters**

NSW Mandatory Reporter Guide – is intended to assist mandatory reporters who have become concerned about possible abuse or neglect of a child/young person and must make a decision whether or not to report their concerns. The Mandatory Reporter Guide can be accessed at the following address:

[www.keepthemsafe.nsw.gov.au](http://www.keepthemsafe.nsw.gov.au)

## **Neglect**

Neglect includes either an action or inaction by a person who has care responsibilities towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.

### **Supervisory Neglect**

- an intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child; or
- an intentional or reckless failure to adequately supervise a child, or a significantly careless act or failure to act; that:
- involves a gross breach of professional standards, and
- has the potential to result in the death of, or significant harm to, a child.

### **Carer Neglect**

- grossly inadequate care that involves depriving a child of the basic necessities of life; such as the provision of food and drink, clothing, critical medical care or treatment, or shelter.

### **Failure to protect from abuse**

- an obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child

### **Reckless acts (or failure to act)**

- a reckless act, or failure to act, that:
- involves a gross breach of professional standards, and
- has the potential to result in the death of, or significant harm to, a child.

An incident can constitute neglect if it contains any element within this definition.

## **Notifying Person**

The person making the allegation/complaint.

## **Physical assault**

An assault of a child includes any act by which a person intentionally inflicts unjustified use of physical force against a child. An assault can also occur if a person causes a child to reasonably fear that unjustified force will be used against them. Even if a person who inflicts, or causes the fear of, physical harm does not intend to inflict the harm or cause the fear, they may still have committed an assault if they acted recklessly (i.e. the person ought to have known that their actions would cause physical harm or the fear of such harm).

Assaults can include hitting, pushing, shoving, throwing objects, or making threats to physically harm a child.

It is important to consider the context in which physical force is used against a child to determine whether it constitutes an assault. For example, an assault has not taken place where there is use of reasonable force in the following examples:

- exercising appropriate control over a child
- disarming a child or young person seeking to harm themselves or others
- separating children or young people who are fighting
- moving a child or young person out of harm's way
- restraining a child or young person from causing intentional damage to property
- self defence or the defence of others

When considering whether the physical force used was reasonable, a range of variables should be taken into account, having regard to the circumstances of the case. Variables that may be relevant include matters such as the age, maturity, health or other characteristics of the child or children involved, and professional codes of conduct or standards that the worker is required to follow.

In addition the *Ombudsman Act 1974* specifically outlines certain conduct which does not need to be reported:

- 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
- 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

While every allegation of physical assault should be investigated, only findings that a serious physical assault occurred are reportable to the Office of the Children's Guardian for consideration in Working With Children Check assessments.

A physical assault is not serious where:

- it only involves minor force; and
- it did not and was not ever likely to result in serious injury

A physical assault is serious where:

- it results in the child being injured, beyond a type of injury like a minor scratch, bruise or graze; or
- it had the potential to result in a serious injury; or
- the injury suffered may be minor, but the assault is associated with aggravating circumstances (in this regard, aggravating circumstances might include associated inhumane or demeaning behavior by the employee, for example kicking a child, pulling a child by grabbing the child around the neck).

In considering whether a serious physical assault has occurred, reporting bodies whose work involves regular restraint of children should consider the context of events, including the child's age and vulnerability.

Generally, behavior that does not meet the standard of a serious physical assault does not become a serious physical assault by means of it being repeated. The only exception to this is where an employer has developed legitimate concerns for the safety of a child or children and intervened with a worker (e.g. warnings, counselling etc.) and the behavior is repeated.

### **Psychological harm**

Behaviour that causes psychological harm is conduct that is obviously or very clearly unreasonable and results in significant emotional harm or trauma to a child. There needs to be a proven causal link between the inappropriate behavior and the harm, and the harm must be more than transient.

For reportable conduct involving psychological harm, the following elements must be present:

- an obviously or very clearly unreasonable or serious act or series of acts that the employee knew or ought to have known was unacceptable, and
- evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behavior, distress, anxiety, physical symptoms of self-harm, and
- an alleged causal link between the employee's conduct and the psychological harm to the child.

Psychological harm can include the exacerbation or aggravation of an existing psychological condition, such as anxiety or depression.

### **Reportable allegation**

Reportable allegation means an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.

### **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 an offence involving child abuse material); or
- Any assault, ill-treatment or 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

Reportable conduct does not extend to:

- Conduct that is reasonable for the purpose of the discipline, management and 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 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;
- It needs to be noted that for all Early Childhood Education and Care (ECEC) services, an incident that is regarded as 'reportable conduct' must also be reported to the regulatory authority i.e. NSW Dept. of Education and Communities. Where it relates to a serious incident or a complaint alleging that the safety, health or well-being of a child/ren was or is compromised, this must be reported within 24hrs of the incident or the time that the person became aware of the incident; or
- Conduct of a Class or Kind exempted from being reportable conduct by the NSW Ombudsman under section 25CA of the Ombudsman Act.

### **Reportable Conviction**

This means any conviction of a person, in New South Wales or elsewhere, of an offence involving reportable conduct, and includes a finding by a court that a charge for such an offence is proven even though the court does not proceed to a conviction.

### **Reporting Person**

The person reporting the allegation/complaint.

### **Responsible persons**

A Parish Priest, a Principal of a Catholic School, Chief Executive Officer at St Vincent's Private Hospital, Parish Business Managers and any other Directors of Agencies and Departments initially responsible for the operation of that Agency or Department (e.g. Director of Child Care Centre).

### **Risk of significant harm**

What is significant is not minor or trivial and may reasonably be expected to produce a substantial and demonstrably adverse impact on a child or young person's safety, welfare or wellbeing

### **Sexual offences and sexual misconduct**

The term 'sexual offence' encompasses all criminal offences involving a sexual element that are 'committed against, with or in the presence of a child'.

These offences include (but are not limited to) the following:

- Indecent assault
- Sexual assault
- Aggravated sexual assault
- Sexual intercourse and attempted sexual intercourse
- Possession/dissemination/production of child pornography or child abuse material

- Using children to produce pornography
- Grooming or procuring children under the age of 16 years for unlawful sexual activity
- Deemed non-consensual sexual activity on the basis of special care relationships

All cases involving a sexual offence would also involve sexual misconduct.

## **Sexual Misconduct**

The term 'sexual misconduct' includes conduct that does not necessarily equate to a criminal offence.

For sexual misconduct to constitute reportable conduct, the alleged conduct must have been committed against, with or in the presence of a child.

There are three categories of sexual misconduct in addition to sexual offences:

- Crossing professional boundaries
- Sexually explicit comments and other overtly sexual behavior, and
- Grooming behavior

### **Crossing Professional Boundaries**

Sexual misconduct includes behavior that can reasonably be construed as involving an inappropriate and overly personal or intimate:

- Relationship with;
- Conduct towards; or
- Focus on;

A child or young person, or a group of children or young persons.

In the area of 'crossing professional boundaries', particular care should be exercised before making a finding of sexual misconduct. For example, an employee who, on an isolated occasion, 'crosses professional boundaries' in a manner that involves little more than poor judgement could not be said to have engaged in sexual misconduct. Also, in cases where an employee has 'crossed boundaries' in terms of their relationship with a child, if there is evidence which clearly shows that the employee did not seek to establish an improper relationship with the involved child, then this does not constitute sexual misconduct.

However, persistent less serious breaches of professional conduct in this area, or a single serious 'crossing of the boundaries' by the employee, may constitute sexual misconduct, particularly if the employee either knew, or ought to have known, that their behavior was unacceptable.

Codes of conduct that outline the nature of the professional boundaries, which should exist between employees and children/young people, can be particularly useful. For employees who either intentionally breach such codes or have demonstrated an inability to apply them appropriately, it may be necessary to provide more detailed written advice about what constitutes appropriate behavior.

### **Sexually explicit comments and other overtly sexual behavior**

Sexual misconduct includes a broad range of sexualized behavior with or towards children. While it is not possible to provide a complete and definitive list of unacceptable sexual conduct involving children, the following types of behavior give strong guidance:

- sexualized behavior with or towards a child (including sexual exhibitionism)
- inappropriate conversations of a sexual nature
- comments that express a desire to act in a sexual manner
- unwarranted and inappropriate touching involving a child
- personal correspondence and communications (including emails, social media and web forums) with a child or young person in relation to the adult's romantic, intimate or sexual feelings for a child or young person
- exposure of children and young people to sexual behavior of others including display of pornography
- watching children undress in circumstances where supervision is not required and it is clearly inappropriate

### **Grooming behavior**

Grooming or procuring a child under the age of 16 years for unlawful sexual activity is a sexual offence. However, Schedule 1(2) of the *Child Protection (Working With Children) Act 2012* also recognizes grooming as a form of sexual misconduct. As grooming is a sexual offence if the alleged victim is under 16 years old, caution should be exercised before reaching a grooming finding (particularly in cases where the behavior is directed towards a child under 16 years). As an alternative to grooming, in many cases it will be more appropriate to consider whether there has been a 'crossing of professional boundaries' and/or other more overt sexual behavior.

Furthermore, behavior should only be seen as 'grooming' where there is evidence of a pattern of conduct that is consistent with grooming the alleged victim for sexual activity, and that there is no other reasonable explanation for it. The types of behaviours that may lead to such a conclusion include (but are not limited to) the following:

Persuading a child or group of children that they have a 'special' relationship, for example by:

- Spending inappropriate special time with a child
- Inappropriately giving gifts
- Inappropriately showing special favours to them but not other children
- Inappropriately allowing the child to overstep rules
- Asking the child to keep this relationship to themselves

Testing boundaries, for example by:

- Undressing in front of a child
- Encouraging inappropriate physical contact (even where it is not overtly sexual)
- Talking about sex
- 'Accidental' intimate touching

Inappropriately extending a relationship outside of work (except where it may be appropriate – for example where there was a pre-existing friendship with the child's family or as part of normal social interactions in the community).

Inappropriate personal communication (including emails, telephone calls, text messaging, social media and web forums) that explores sexual feelings or intimate personal feelings with a child.

An adult requesting that a child keep any aspect of their relationship secret or using tactics to keep any aspect of the relationship secret, would generally increase the likelihood that grooming is occurring.

## Subject Person

The person about whom the allegation/complaint has been made.

## Working with Children Check

All Parish entities and Schools are to ensure that either the Working with Children Check (WWCC) number or the Application Number is verified prior to the employee commencing child-related work.

## 4. LEGISLATIVE REQUIREMENTS

### Internal investigation of an allegation of reportable conduct

This involves a process where the Diocese of Lismore carries out an assessment of a reportable conduct allegation against a subject person to:

- Gather all relevant facts.
- Where able, provide the subject person the opportunity to respond to the allegation.
- Make a finding on the balance of probabilities.
- Provide the subject person the opportunity to respond to the finding.
- Inform the subject person of their right to apply to view the investigation file.

This document is written in light of New South Wales legislation pertaining to the following Acts:

ACT	KEY AGENCY ISSUE
<i>Ombudsman Act 1974</i>	All government agencies, public authorities and certain designated non-government agencies in NSW are required to respond to allegations or convictions of reportable conduct against an employee and to notify the Ombudsman.
<i>Child Protection (Working with Children) Act 2012</i>	To protect children by not permitting certain persons to engage in child-related work and requiring persons engaged in child-related work to have working with children clearances
<i>Children and Young Persons (Care and Protection) Act 1998</i>	Employees are required to report to the “Helpline” of Community Services any children and young persons whom they suspect to be at “risk of significant harm”.
<i>Government Information (Public Access) Act 2009</i>	Authorises and encourages the proactive release of information by NSW agencies and gives employees a legally enforceable

	right to access information unless there is an overriding public interest against releasing that information.
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## 5. PREVENTION

Child protection is a broad responsibility and involves more than responding once an allegation has been made. It involves minimizing the possibility of reportable conduct occurring in the first place. The Diocese of Lismore is totally opposed to any form of reportable conduct practices and supports child protection and prevention in the workplace.

Strategies that can be utilized by the Diocese of Lismore to prevent reportable conduct practices could include:

- Developing and reviewing strategies to minimize reportable conduct occurring e.g. conducting child protection induction sessions for new and beginning teachers to the Diocese of Lismore and encouraging individual School Principals to ensure Child Protection input forms a regular part of staff meetings.
- Requiring Clerics, Religious and employees to sign off their acknowledgement and understanding of the child protection policy.
- Ensuring the policy is current, dated and includes a date it will be reviewed.
- Having guidelines e.g. Guidelines for Professional Conduct that define appropriate and inappropriate behaviour (See Attachment A).
- Clearly defining each person's Vocation or role within the organization.
- Implementing thorough Vocational training/Incardination or employment procedure strategies that identify people who are not suitable to work with children. e.g. reference checking, background checking and detailed questioning at interviews (See Attachment (B), (C), (H) & (I)).
- Providing information to families and the community on the child protection strategies that have been adopted by the Diocese of Lismore e.g. included in Parish and/or school handbooks.
- Training for Clerics, Religious and employees to promote best practices and to ensure a safe environment for children and employees.
- Raising awareness in the general community about child protection by displaying brochures, posters and school newsletters.

## 6. REVIEW

This policy will be reviewed from time to time in line with legislative changes and the requirements of the Diocese of Lismore. This policy was last reviewed on 2<sup>nd</sup> December 2015.

Dated this 7th day of December, 2015

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Most Rev G H Jarrett D D

*Bishop of Lismore*

# CHILD PROTECTION PROCEDURES

## MANAGING COMPLAINTS AND ALLEGATIONS

Within the Diocese of Lismore all allegations are managed centrally by the Head of Agency, utilizing the Chancery, the Catholic Schools Office and St Vincent's Hospital. The procedures, although similar in many respects, are tailored to meet the particular needs of agencies in this three-fold approach.

Parish and St. Vincent's Hospital Procedures are outlined elsewhere. The Catholic Schools Office will follow the process outlined below.

Allegations are managed under the following two categories:

1. Allegations which are not notifiable to the Ombudsman.
2. Allegations of reportable conduct notifiable to the Ombudsman and Community Services.

## CATHOLIC SCHOOLS 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 *Ombudsman Act 1974*, the Ombudsman has determined that the Catholic Schools Office (CSO), in the Diocese of Lismore, is an agency that has achieved a standard of investigation practice whereby only the reportable allegations against employees of the CSO specified below, against employees of that agency, 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 CSO 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 CSO exempted (listed above) from being reportable allegations, the CSO 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 (Attachment D) information from the person/s reporting the complaint against the subject person 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 Human Resources Officer on confidential fax no.(02) 6622 5703.

### **A - Step 2. Confer with Catholic Schools Office**

The Responsible Person confers with the Human Resources Officer at the Catholic Schools Office and together they determine the next steps to be taken including an assessment on whether the matter is to be managed as a complaint of non-reportable conduct rather than reportable conduct notifiable to the Ombudsman’s office.

In making this assessment they also 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 Community Services as required by the Children and Young Persons (Care and Protection) Act 1998. If they are unsure whether to report to Community Services they seek advice from the Head of Agency, complete the mandatory reporter guide on the Keep Them Safe website or from Community Services by ringing the Community Services Helpline on 133627.

### **A - Step 3. Initial child protection information details form**

If it is determined the allegation is not notifiable to the Ombudsman's Office, the Human Resources Officer completes the Exemption Notification Form (Attachment D) and forwards it to the HOA.

### **A - Step 4. Planning the process**

The Human Resources Officer 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 conducted by the Responsible Person in conjunction with the Human Resources Officer and the subject person.

### **A - Step 5. Contact the child’s parent /carer**

The Human Resources Officer contacts the child’s parent/carer to:

- a) Advise them of the receipt of the complaint and seek approval to speak with the child (in the presence of parent/carer) and the time and place of that meeting is arranged.
- b) Explain the investigation process to be followed.
- c) Ensure the child is supported including the availability of counselling if required through ACCESS phone 1800 818 728.
- d) Explain the need for confidentiality.
- e) Advise them they will be informed when the matter is finalised.
- f) Confirm the above in writing (if parental consent is granted for an interview).

#### **A - Step 6. Contact the subject person**

The Human Resources Officer makes contact with the subject person to:

- a) Inform them an allegation of non-reportable conduct has been received and provide them with details of the allegation.
- b) Arrange a time to meet with the subject person to provide them with an opportunity to respond. The meeting needs to be as soon as possible. Alternatively the subject person may choose to respond in writing.
- c) Advise the subject person who will be conducting the enquiry into the allegation. In general this will be the Human Resources Officer or other designated officer.
- d) Inform the subject person they may choose to have a support person present at the meeting. If the subject person elects to have a Union organiser at the meeting, the Human Resources Officer may elect to have another CSO Officer accompany him/her at the meeting.

The subject person receives this advice in writing.

#### **A - Step 7. Managing the investigation process**

In managing the investigation process (step 5) consideration is given to issues such as:

- preserving the employees dignity
- obtaining statements from witnesses as promptly as possible
- maintaining confidentiality
- procedural fairness

The process may include:

#### **Meeting with subject person about the allegation**

At the meeting with the subject person, the Human Resources Officer

- a) Clarifies any issue/s regarding the procedure to be followed;
- b) Informs the subject person of the allegation that has been made providing as much detail as possible - the allegation has been provided in writing;
- c) Offers the subject person the opportunity for a break in the meeting to allow him/her time to consider the allegation;
- d) Invites the subject person to respond and records the response - the subject 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 subject person has adequate support including the offer of ACCESS phone 1800 818 728 Employee Assistance Program and, if the subject person wishes, a support person at the school who can assist them through the process;
- h) Informs the subject person of the process that will be followed including an anticipated time line.

### **Confirming the subject person's response**

At the conclusion of the interview or soon after the interview, the Human Resources Officer provides the subject person with a copy of the record of interview and invites the subject person to verify or amend the record. The subject person is asked to initial any amendments, initial each page and date and sign the record of interview and return it to the Human Resources Officer.

If the subject person acknowledges the complaint is true in its entirety, there may be no need to interview other persons.

### **Interviewing witnesses and gathering information**

The Human Resources Officer proceeds to gather relevant information, including obtaining information from relevant persons identified by both the notifier and the subject person.

The information may be gathered from written statements, interviews and review of relevant documents and records. All records of interviews and statements should 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 8. Finding**

When all information has been gathered the Human Resources Officer 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

### **A - Step 9. Review of Risk Assessment**

The Responsible Person and Human Resources Officer review initial risk assessment.

### **A - Step 10. Finding letter to subject person**

The Human Resources Officer advises the subject person in writing of:

- a) The preliminary 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 preliminary finding and disciplinary action

- d) The final finding from the investigation
- e) The matter will not be reported to the OCG as Misconduct (either sexual misconduct or serious physical assault)
- f) The requirement for all documentation to be stored securely by the Catholic Schools Office for monitoring by the NSW Ombudsman
- g) The need for confidentiality
- h) The offer of counseling through ACCESS phone 1800 818 728
- i) The right to apply for access to the investigation file under *Government Information (Public Access) Act 2009* and/or Enterprise Agreement

#### **A - Step 11. Storage of Investigation File**

The original copy of the file is secured in confidential files in the Human Resources Officer's office separate to personnel files.

#### **A - Step 12. Report to HOA**

The Human Resources Officer advises the Head of Agency of the finding. The HOA is provided with copies of final letters to the subject person and notifier.

#### **A - Step 13. Advice to notifier and/or child's parents/carer**

The Human Resources Officer advises the notifier and/or the child's parents/carer by written notification that the matter has been finalised and provides them with the opportunity to contact the Catholic Schools Office for further information if required.

#### **A - Step 14. Dispute Resolution**

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

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

## **2) Allegations of reportable conduct notifiable to the Ombudsman and Community Services**

MATTERS NOTIFIABLE TO THE OMBUDSMAN AND COMMUNITY SERVICES ARE 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 agency's 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 Any allegations of neglect amounting to – supervisory neglect, carer neglect, failure to protect from abuse, or reckless acts.
- 2.8 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 where a person treats a child or young person in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner.

## **PROCESS "B" – ALLEGATIONS OF REPORTABLE CONDUCT NOTIFIABLE TO THE OMBUDSMAN (AND POSSIBLE COMMUNITY SERVICES)**

### **B - Step 1. Record allegation**

The 'Responsible Person' (normally the Principal) records in writing information from the person/s reporting the complaint against the subject person 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 Human Resources Officer on confidential fax no (02) 6622 5703.

## **B - Step 2. Confer with Catholic Schools Office**

The Responsible Person confers with the Human Resources Officer at the Catholic Schools Office and together they determine the next steps to be taken including assessing whether the allegation is 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 Community Services as required by the *Children and Young Persons (Care and Protection) Act 1998*. If they are unsure whether to report to Community Services they seek advice from the Head of Agency, complete the mandatory reporter guide (Attachment K) on the Keep Them Safe website or from Community Services by ringing the Community Services Helpline on 133627.

## **B - Step 3. If report is made to Community Services**

If a report is made to Community Services and Community Services advise they will be investigating the matter, liaise with them in relation to conducting a concurrent investigation. If Community Services investigates an employee of the Lismore Catholic schools system, the Human Resources Officer (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 Community Services).

## **B - Step 4. Initial child protection information details form**

If it is determined the allegation is notifiable to the Ombudsman's Office, the Human Resources Officer completes Part A of the Ombudsman Notification Form (Attachment B) and forwards to the Ombudsman within 30 days of receiving notification of the allegation and notifies the HOA.

## **B - Step 5. Planning the process**

The Human Resources Officer 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 risk assessment conducted by the Responsible Person in conjunction with the Human Resources Officer and the subject person.

## **B - Step 6. Contact the child's parent /carer**

The Human Resources Officer contacts the child's parent/carer to:

- a) Advise them of the receipt of the allegation and seek approval to speak with the child (in the presence of parent/carer) and time and place of that meeting.
- b) Explain the investigation process to be followed.
- c) Inform them that the allegation has been reported to Community Services and the Ombudsman's Office
- d) Ensure the child is supported including the availability of counselling if required through ACCESS phone 1800 818 728.
- e) Explain the need for confidentiality.
- f) Advise that they will be informed when the matter is finalised.

- g) Confirm the above in writing (if parental consent is granted for the meeting).

### **B - Step 7. Contact the subject person**

The Human Resources Officer makes contact with the subject person to:

- a) Inform them an allegation has been received, that it is notifiable to the Ombudsman's Office and Community Services 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 subject person to provide them with an opportunity to respond. The meeting needs to be as soon as possible. Alternatively the subject person may respond in writing.
- c) Advise the subject person the details of the person who will be conducting the enquiry into the allegation. In general this will be the Human Resources Officer or other designated officer.
- d) Inform the subject person they may choose to have a support person present at the meeting. If the subject person elects to have a Union organiser at the meeting, the Human Resources Officer may elect to have another CSO Officer accompany him/her at the meeting.

The subject person receives this advice in writing.

### **B - Step 8. Managing the investigation process**

In planning the investigation process (step 5) consideration is given to issues such as

- preserving the employees dignity
- obtaining statements from witnesses as promptly as possible
- maintaining confidentiality
- procedural fairness

The process may include:

**Meeting with subject person about the allegation (This meeting may also occur after complainants and witnesses have been interviewed)**

At the meeting with the subject person, the Human Resources Officer

- a) Clarifies any issue/s regarding the procedure to be followed;
- b) Informs the subject person of the allegation that has been made providing as much detail as possible - the complaint has been provided in writing;
- c) Offers the subject person the opportunity for a break in the meeting to allow him/her time to consider the complaint;
- d) Invites the subject 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 subject person has adequate support including the offer of ACCESS phone 1800 818 728 Employee Assistance Program and, if the staff member wishes, a support person at the school who can assist them through the process;
- h) Informs the subject person of the process that will be followed including an anticipated time line.

### **Confirming the subject person's response**

At the conclusion of the interview or soon after the interview, the Human Resources Officer provides the subject person with a copy of the record of interview and invites the subject person to verify or amend the record. The subject person is invited to initial any amendments, initial each page and date and sign the record of interview and return it to the Human Resources Officer.

If the subject person acknowledges the complaint is true in its entirety, there may be no need to interview other persons.

### **Interviewing witnesses and gathering information**

The Human Resources Officer proceeds to gather relevant information, including obtaining information from relevant persons identified by both the notifier and the subject person.

The information may be gathered from written statements, interviews and review of relevant documents and records. All records of interviews and statements should 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 Human Resources Officer 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. Review of Risk Assessment**

The Responsible Person and Human Resources Officer review initial risk assessment

## **B - Step 11. Finding letter to subject person**

The Human Resources Officer advises the subject person in writing of:

- a) The preliminary 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 preliminary finding and disciplinary action
- d) The final finding for the investigation
- e) Whether the matter will be reported to the OCG as Misconduct (either sexual misconduct or serious physical assault)
- f) Explain that the child protection notification form and a copy of the investigation file will be forwarded to the Ombudsman's Office
- g) The requirement for the file to be stored confidentially by the Catholic Schools Office for monitoring by the NSW Ombudsman
- h) The need for confidentiality
- i) The offer of counselling through ACCESS phone 1800 818 728
- j) The right to apply for access to the investigation file under *Government Information (Public Access) Act 2009* and/or Enterprise Agreement

#### **B - Step 12. Report to the Ombudsman**

The Human Resources Officer assembles a copy of all material relevant to the case, including Part B Notification Form (Attachment G) and forwards it to the Ombudsman's Office as well as notifying the Head of Agency.

The original copy of the file is secured in confidential files in the office of the Human Resources Officer separate to personnel files.

#### **B - Step 13. Head of Agency and Ombudsman Review**

The Bishop as Head of Agency monitors the investigation process throughout and advises the Catholic Schools Office of any further action or documentation required. The Ombudsman's Office oversees the conduct of the investigation and in some circumstances may monitor or conduct the actual investigation.

#### **B - Step 14. Advice to Notifier and/or child's Parents/Carer**

The Human Resources Officer advises the notifier and/or the child's parents/carers that the matter has been finalised and refers them to the HOA and the Ombudsman's Office for further information if required.

#### **B - Step 15. Dispute Resolution**

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

An application for review can be made to the Bishop of Lismore as Head of Agency. 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 ACCESS phone 1800 818 728.

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 Human Resources Officer 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.

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 allegation/s at the conclusion of the process.

If, following an allegation, there is a concern that a child may be at risk of significant harm from the subject person, the subject person may be asked to take paid leave during the investigation process.

## **Support for subject person**

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 subject person 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 subject person's support person or the subject person 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 subject person may seek professional counselling through ACCESS Employee Assistance Program phone 1800 818 728.
- d) Advice and support from the NSW/ACT Independent Education Union on 1800467943

## **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 ACCESS Employee Assistance Program phone 1800 818 728 if required.

## **Investigation Process**

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

Section B of the initial child protection information form (Attachment D) assists the person investigating to plan the investigation process. Consider the following:

- 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 subject person 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 invited 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.

## **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 all documentation is filed confidentially in the office of the Human Resources Officer and separate from personnel files.

### **In conclusion**

It is important that the person managing the case, usually the Human Resources Officer 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 subject person and the person who raised the allegation some weeks after the process has been finalized to identify and address any unresolved issues or concerns.