

# Allegations of Misconduct against Employees in ASC Schools & Guidelines for the Interviewing of Students by Police

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## 1. Purpose

- 1.1. The Anglican Schools Commission (ASC) is committed to child safety and has developed this policy to assist Schools in response to allegations of misconduct made against persons employed in those Schools.
- 1.2. The policy and procedures apply to all persons employed in ASC schools and not only to teachers. They encompass allegations of misconduct involving students and others in ASC schools.
- 1.3. The policy is not limited to alleged offences or actions occurring within School hours or on School property, but extends to include misconduct by employees generally where it affects their ability to effectively carry out their duties in the School.
- 1.4. The policies and procedures acknowledge both the special responsibility of School employees towards the children in their care and the importance of respecting the dignity of employees and their civil rights.
- 1.5. This policy and procedures document should be read in conjunction with the following state specific policies:

### Western Australia (WA)

- Child Safe Policy – WA
- Mandatory Reporting of Child Sexual Abuse Policy and Procedures – WA
- Reporting of Abuse and Neglect Policy and Procedures – WA

### New South Wales (NSW)

- Child Protection Policy – NSW
- Mandatory Reporting of Children at risk of Significant Harm Policy and Procedures – NSW
- Reporting of Allegations of Reportable Conduct Policy and Procedures – NSW

### Victoria (VIC)

- Child Safe Policy – VIC
- Mandatory Reporting of Child Sexual Abuse or Physical Injury Policy and Procedures – VIC
- Reporting of Abuse and Neglect Policy and Procedures – VIC

## 2. Principles

The following principles underlie the policy and procedures:

- 2.1 All adults have a responsibility to care for children, to protect their welfare, and to protect them from abuse.
- 2.2 All children have the right to an education in a safe environment, free from abusive relationships.
- 2.3 All employees have the right to a healthy, safe work environment, and to be protected from abuse within the School and from the public at large.
- 2.4 The Principal is responsible for the management of staff under their control and to investigate adequately allegations of misconduct made against School employees.

- 2.5 Allegations against staff should be dealt with promptly and with due regard for the rights of the staff member concerned, and the reputation of the School and the ASC.
- 2.6 While the possibility of a malicious, false or exaggerated allegation is acknowledged, the Principal has no choice but to investigate promptly and objectively all allegations of misconduct and to refer matters, where appropriate, to the relevant civil and legal authorities.
- 2.7 Where allegations of misconduct relate to students of the School and other minors, the Principal has a particular duty of care and a responsibility to deal with the allegations in a way designed to ensure that harm to the child(ren) is minimised. To this end, confidentiality should be observed and the name of the child should not be revealed except to the:
- Department for Child Protection and Family Support (WA);
  - Community Services (NSW);
  - Department of Health and Human Services Child Protection (VIC);
  - Police Service;
  - Chief Executive Officer of the ASC;
  - Director of the Professional Standards Unit (PSU) of the Diocese of Perth (if applicable);
  - Director of the Professional Standards Unit (PSU) of the Diocese of Melbourne (if applicable).
- 2.8 The Principal will ensure that adequate support, counselling and assistance is offered to employees and/or students as appropriate.
- 2.9 Prior to taking action, the Principal shall consult with the Chair of the School Council, the CEO of the ASC and other appropriately qualified persons as appropriate.
- 2.10 The Principal shall also report the matter to the relevant:
- Director of the PSU of the Diocese of Perth and seek advice from the PSU; or
  - Director of the Professional Standards Unit (PSU) of the Diocese of Melbourne.

### **3. The Rights of the Employee**

- 3.1 Employees against whom allegations are made are entitled to all reasonable care and consideration, due process and the presumption of innocence. Human beings do make mistakes and errors of judgement which they regret; they do show remorse and seek forgiveness, and they do repent.

Without condoning or excusing misconduct, it is appropriate to offer Christian love and support for those accused of inappropriate and illegal conduct, and to show compassion to them.

- 3.2 Accordingly, employees against whom allegations are made should be made aware of their rights, and should be assured of their entitlement to procedural fairness and due process. Where appropriate, they should be encouraged to seek legal and other expert advice.
- 3.3 The identity of the alleged victim and the alleged perpetrator, and the nature of the alleged offence should not be made public by the school authorities. An employee against whom an allegation is made should be advised as soon as possible of the nature of the allegation by the appropriate authorities.

### **4 Definitions**

- 4.1 Person employed by the school:

Includes: Persons employed by the School, regardless of position occupied, hours of duty or whether employed full-time, part-time, casually or sessionally.

Excludes persons employed by individuals or entities other than the school. This includes:

- Independent contractors who may provide tuition or other services for remuneration but who are self-employed.

- Coaches and tutors, unless employed by the School.
- Volunteers, helpers, and the like.

Note: If an allegation is made against someone who is involved with the School but is not employed by the School, the matter is to be referred to the Police Service and Department of Child Protection as appropriate.

Termination of the School's association or relationship with persons who are not employees is a matter for the Principal or another authorised person.

## 4.2 **Serious Misconduct**

4.2.1 "Misconduct" is defined as behaviour or conduct of a member of staff which, in the Principal's opinion, may adversely affect their ability to carry out effectively their duties in the School and/or which is likely to bring the School into disrepute.

4.2.2 The term "serious misconduct" is defined as unlawful and/or improper conduct by an employee of such a serious nature that after due process accorded to the staff member concerned his/her contract of employment may be terminated summarily.

4.2.3 The following examples of serious misconduct are illustrative only and are not meant to be exhaustive:

- Criminal charges have been laid which, upon conviction, may result in more than 12 months' imprisonment;
- Sexual abuse is when a child has been exposed or subjected to sexual behaviours that are exploitative and/or inappropriate to his/her age and developmental level. Examples include sexual penetration, inappropriate touching, and exposure to sexual acts or pornographic materials.

**Note:** refer to Section 6 for special reporting procedures

- Sharing or disclosing printed or electronic material with explicit sexual images and/or references;
- Physical abuse including action by the employee causing physical injury or harm to another, or the use of corporal punishment;
- Emotional abuse, behaviour or demeanour by the employee towards another which is calculated to cause them emotional or social harm or which is likely to delay or impair their physical, social, emotional or intellectual development, including terrorising, isolating or constant belittling of another.
- Repetition of acts of misconduct making evident a wilful intention by a staff member to repudiate his/her contract of employment.

## 4.3 **Allegation**

An allegation may be defined as:

- Information received from a third party that misconduct may have occurred;
- Observation of events which suggest that misconduct may have occurred; or
- Direct disclosure from an individual that indicates misconduct may have occurred.

## 4.4 **Professional Standards Unit**

The Professional Standards Unit (PSU) of the Dioceses of Perth and Melbourne have been established to investigate allegations of improper conduct against employees of the Anglican Church and its agencies and will ensure fairness and due process in any investigation. Employees may contact the Director of the relevant PSU for advice.

## 5 Procedures

**Note:** refer to Section 6 for procedures regarding allegations of behaviour of a sexual nature.

- 5.1 When information is received from a third party that misconduct may have occurred, the person to whom the allegation is made shall document the allegation and their response and request the third party to write a statement, signed by the third party.
- 5.2 Where the person to whom an allegation is made is not the Principal of the School, the matter shall be reported to the Principal (or in the event that the allegation involves the Principal, the report shall be made to the Chair of the School Council who shall inform the CEO of the ASC).
- 5.3 Should an allegation be the result of observation of events which suggest that misconduct may have occurred or be the result of direct disclosure, the observer of the events or the person to whom the disclosure is made shall write, date and sign the statement him/herself.
- 5.4 Should the allegation take the form of a disclosure from a child, the child should be advised that they have been heard and that only those who must know about the allegation will be advised of it. The child should *also* be advised that they will be supported and protected while the allegation is being investigated and, if proven, continue to be supported and protected. The child should be told that they have done the right thing in bringing the allegation to someone in authority.
- 5.5 Those to whom the allegation is made should observe confidentiality throughout, ensuring that there is no broadening of discussion about the allegation, other than to those to whom information is required to be given officially.
- 5.6 The Principal should document the details of any allegation of misconduct as reported to him/her, where possible prior to discussion with relevant authorities.
- 5.7 The outcome of any subsequent investigation of an allegation is to be recorded and placed on top of the file established in relation to the matter, including outcomes which establish that the allegation was unfounded, malicious or vexatious.
- 5.8 Where the Principal forms the opinion after due consideration that an employee's conduct or action constitutes misconduct, they have available a range of measures including counselling, formal warnings, ongoing review, demotion, dismissal or termination as per the ASC's collective bargaining agreements (Anglican Schools Commission Incorporated Western Australian Agreement (WA), Support Staff EBA (WA), Anglican Schools Commission Incorporated Victorian Agreement (VIC) or the Multi-Enterprise Agreement (MEA) (NSW)) or relevant Award as appropriate.
- 5.9 Where the Principal forms the opinion, after due consideration, that an employee's conduct or action constitutes serious misconduct, summary dismissal or termination according to the provisions of the ASC's collective bargaining agreements or relevant Award may result.

## 6 Allegations against Employees of behaviour of a Sexual Nature

- 6.1 Refer to the following state specific policies regarding the procedure to follow when addressing allegations of behaviour of a sexual nature:

### **Western Australia (WA)**

- Child Safe Policy - WA
- Mandatory Reporting of Child Sexual Abuse Policy and Procedures - WA
- Reporting of Abuse and Neglect Policy and Procedures – WA

### **New South Wales (NSW)**

- Child Protection Policy – NSW

- Mandatory Reporting of Children at risk of Significant Harm Policy and Procedures – NSW
- Reporting of Allegations of Reportable Conduct Policy and Procedures – NSW

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- Reporting of Abuse and Neglect Policy and Procedures – VIC

## **7 Judicial Processes**

### **7.1 The Process to be followed when the Employee is charged:**

- 7.1.1 An employee may be charged by arrest or by summons.
- 7.1.2 An employee should advise the Principal of the nature of the charge and the date of the first court appearance.
- 7.1.3 On receipt of information that an employee has been charged, the Principal is required to make a judgment about whether or not to suspend from duty or dismiss the employee.
- 7.1.4 Unless summarily dismissed (see earlier procedure and the provisions of the ASC's collective bargaining agreements and relevant Award) an employee usually remains on full pay, unless there are exceptional circumstances, in which case the Chair of the School Council and the CEO of the ASC shall be consulted.
- 7.1.5 Where an employee is suspended, with or without pay, it is appropriate to undertake a periodic review of the situation to determine whether events have occurred which may lead the Principal to vary his/her original decision in relation to suspension.
- 7.1.6 Where an employee is charged by police, the police may wish to interview students at the School. Separate guidelines have been developed by the ASC to cover "police requests to interview students" (see attachment 1).

### **7.2 Acquittal by a Court**

- 7.2.1 A person who has been charged may be acquitted in one of three ways:
  - (a) by the decision of a magistrate, judge or jury that they are not guilty;
  - (b) by the decision of a court that there is no case to answer; or
  - (c) by the decision of the Prosecution to withdraw the charges against the person.
- 7.2.2 Ordinarily, an employee acquitted by a court will resume their normal duties in their normal position. However, the decision of a court to acquit an employee charged with a criminal offence may not necessarily result in his/her employment resuming (see 5.8 and 5.9).
- 7.2.3 In such an event, responsibility lies with the Principal to examine the situation thoroughly and to determine whether it is appropriate in the circumstances for the employee to resume his/her normal duties.(see 5.8 and 5.9)
- 7.2.4 In criminal proceedings, the burden of proof is "beyond any reasonable doubt" whereas in employment law, the burden of proof is "on the balance of probabilities", i.e. the civil standard of proof.
- 7.2.5 The Principal is entitled to satisfy him/herself that an employee is a fit and proper person to perform their duties. Thus, the Principal may conclude that the employee's services should be terminated or that the employee should not be reinstated (notwithstanding his/her acquittal) taking into account all the circumstances, including the likely effect on the employee.

7.2.6 In such a situation, prior to taking action to terminate or not reinstate an employee, the Principal shall consult with the Chair of the School Council and the CEO of the ASC.

### **7.3 Conviction by a Court**

7.3.1 A conviction in a court on a matter within the definition of "serious misconduct" (see section 4.2) will result in the summary dismissal of the employee.

7.3.2 Where an employee is convicted of an offence which does not fall within the definition of "serious misconduct", the conviction may still result in the dismissal of the employee.

7.3.3 Where a charge is found to be proven but there is no convictions, i.e. where the court exercises its discretion not to record a conviction (the term "dismissed" or "no penalty" or "spent conviction order" may be used by the court in these cases), the Principal will take that decision into account in deciding whether dismissal, termination or reinstatement is appropriate.

## **8 Termination**

8.1 Where the Principal has determined that termination of an employee's services is appropriate, the procedures to be followed are laid down in the relevant Award, collective bargaining agreements or the employee's contract.

8.2 If the Principal is uncertain of the procedure to follow or it is not clearly stated in the relevant Award or contract, the Principal is to consult the Chair of the School Council and the CEO of the ASC.

## Police Request to Interview Students – Guidelines

### Preamble

Occasionally, members of the Police Service may seek permission to interview a student at school or off campus during school hours. The following guidelines have been drawn up to assist Principals and senior staff to respond appropriately to such requests.

Although it is expected that school personnel will cooperate with members of the Police Service in the proper exercise of their policing responsibilities and powers, school personnel are encouraged to take a critical view of requests to interview students at school or during school hours.

In particular, your attention is drawn to the opportunity for malicious or vexatious complaints to be made to the Police by non-custodial parents and others.

In considering any request by members of the Police Service to interview a student at school or off-campus during school hours, the Principal should have regard to the presumption of innocence and the best interests of the student.

If in doubt as to the propriety of an interview taking place at school or off-campus during school hours, the Principal should decline the request and refer the Police to the student's parent(s) or legal guardian.

1. If a member of the Police Service seeks permission to interview a student at the school (or to take a student away from the school during regular school hours) the Principal or the most senior available staff member must be advised.
2. The Principal should first determine whether it is appropriate for the interview to take place at the school or away from school during regular school hours. School staff may not obstruct police in the execution of their duties but should consider the urgency of the matter, the nature of any alleged offences, and the appropriateness of the interview taking place on school premises or away from school during school hours.
3. The matter about which police wish to interview a student may be such that it is **not** appropriate for the school to first contact the student's parent(s) e.g. in cases of suspected abuse involving the parent(s).
4. In all cases where it is appropriate to first contact the parent(s), all reasonable efforts should be made to do so. If the parents(s) cannot be contacted and the Principal agrees that it is appropriate for the interview to take place at the school or off campus, a senior member of the school staff **must** be present throughout the whole interview.
5. The staff member attending should be appropriate to the circumstances (taking into account the nature of the matter, the age and gender of the student) and should be a person with whom the student is familiar and/or in whom the student has confidence. The staff member should indicate their willingness to participate/assist in this way.
6. Where a student is being interviewed in relation to an alleged offence by the student, the staff member may terminate the interview if for any reason the student indicates, by words or actions, that they are unwilling to continue the interview. Members of the Police Service are permitted to interview suspects as long as the interview is voluntary, and the suspect is not threatened, intimidated or offered inducements to participate in or continue the interview.
7. The staff member is there to give support to the student, not to assist the Police in their enquiries (although a staff member may not obstruct the police in the proper exercise of their duties).
8. As soon as possible after the interview, the staff member should make a detailed file note of the interview, particularly as to the student's demeanour and willingness to be interviewed. The staff member may be summonsed to give evidence in subsequent legal proceedings. A copy of the file note should be forwarded to the Principal immediately following its drafting.