



TASMANIAN
CATHOLIC
education commission

POLICY (STRATEGIC) TAKING CARE

RELATED DOCUMENTS

Collaborative Caring
Code of Conduct
Archdiocesan Anti-Discrimination and Harassment Policy
Archdiocesan Financial Conduct Policy
Towards Healing

Adopted by:
St. Patrick's Catholic School Latrobe





TAKING CARE POLICY

A Policy for Managing Serious Allegations against Archdiocesan Personnel Employed in Catholic Schools

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Collaborative Caring
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RATIONALE

This Taking Care Policy document has been formulated to provide advice and direction for the management of serious allegations of misconduct. The spirit and intent of the Taking Care policy is to ensure that all parties affected by a serious allegation are treated with justice, integrity and compassion in accordance with the Catholic ethos and Gospel values.

Respect for the human person entails respect for the inviolable rights that flow from a person's dignity. All basic rights are prior to society and must be recognised by it. Failure to respect the dignity or rights of another person is contrary to the Gospel and destructive of human society.

Ecclesia in Oceania (2001, #27)

An allegation of serious misconduct may initially be addressed in an Archdiocesan or school-based policy (e.g. Collaborative Caring – child abuse and neglect; Anti-Discrimination and Harassment – harassment; Archdiocesan Financial Conduct Policy – misappropriation of funds). The specific policy should be considered in association with this policy. Where there is any inconsistency, this policy overrides those policies.

If an allegation is considered to be of a serious nature, with the possibility of:

1. impacting on the immediate welfare of children and staff,
2. resulting in a criminal investigation,

3. adversely affecting ongoing employment, or
4. affecting the reputation of the school,

then the provisions of the Taking Care policy apply. In particular, Taking Care provides advice and direction in managing personnel issues when serious allegations initially arise and at the conclusion of the investigative process.

Where a criminal investigation is likely to be conducted, sections of this policy will need to be considered but an investigation in accordance with this policy may not be appropriate.

The employer of staff at a school or college is ultimately responsible for dealing with allegations which fall within the ambit of this policy. The employer may delegate the management of allegations of serious misconduct to a Designated Officer and revoke that delegation as it sees fit.

The procedures outlined in this Taking Care policy assume the appropriate authority has been delegated to the Designated Officer. In implementing the Taking Care policy, all key stakeholders (e.g. Principals, Provincial Leaders, Governing Councils) should be involved in appropriate consultation and decision-making.

Overall, the Taking Care policy is designated to promote justice and respect the human dignity of all parties associated with any allegation of serious misconduct.

The virtue of justice, in the traditional definition, is the disposition of a person's will to render whatever is rightly due to others as fellow human beings. The various rules of justice – from procedural rules designed to ensure fair processes and decision making, to substantive statements of fundamental human rights – give concrete form to this just disposition towards others as persons of equal worth and dignity.

Being Human (2004, P. 28)

DEFINITIONS¹

Employer: In Association or Independent Colleges, the employer is the governing body or the Principal as designated by the relevant constitution. In Systemic schools the Director of Catholic Education is the employer.

Designated Officer means the person whom the employer has appointed to manage allegations of serious misconduct on its behalf.

Improper conduct is inappropriate language or behaviour which is unprofessional but which is not child abuse or discrimination and harassment².

Misconduct is a broad term that covers a variety of acts or omissions by an employee. It can be one incident or a number of incidents over time which cause the conduct to warrant consideration as to whether disciplinary action is justified including termination of employment. The types of conduct, which constitute misconduct or serious misconduct, depend on the facts and circumstances in each case. Some examples of misconduct are:

1. failure/refusal to follow school policies
2. inappropriate forms of electronic communication
3. poor timekeeping (evidenced over a period of time)
4. absenteeism without reasonable cause
5. temporary absence from place of work without authority
6. failure to advise supervisor of completion of job or delays
7. uncooperative attitude

Serious misconduct is conduct of a nature that justifies termination of employment without notice. It may include a combination of a number of documented incidents of

¹ A number of other relevant definitions are included in Appendix One

² Generally complaints of this nature are managed by the school's published grievance procedures.

misconduct, a single offence frequently repeated or a single serious incident. The list below is indicative and does not include all acts that may constitute serious misconduct:

1. theft
2. fraud
3. assault
4. misappropriation of funds
5. threats to harm the school, students or employees
6. child abuse
7. repeated and unjustified criticism of the school or school management
8. accessing pornography at school
9. discrimination
10. serious harassment (including sexual harassment)
11. abusing or threatening a student or another employee
12. malicious damage to the employer's property
13. a wilful and serious breach of the employer's Code of Conduct, statutes or policies
14. wilful disobedience of a lawful and reasonable instruction given by a supervisor
15. repeated acts of misconduct for which the staff member has been counselled

POLICY

Taking Care is intended to:

1. provide protocols for the management of allegations of serious misconduct,
2. deal with allegations of serious misconduct involving illegal or criminal activity,
3. aid in the prevention of actions which might result in allegations of abuse of students or others involved in Catholic education by Catholic school personnel,
4. assist with the implementation of the Archdiocesan Anti-Discrimination and Harassment and Financial Conduct policies,
5. support the application of the *Code of Conduct*³ for employees in the Catholic Education Sector,
6. assist with the implementation of relevant school-based policies and procedures,
7. clarify the actions which should be taken in the event of allegations of serious misconduct to ensure fair and prompt investigation,
8. deal with serious breaches of contractual obligations to the employer or inappropriate use of the employer's property
9. ensure that all students and staff are safe within the Catholic Education Sector environment and that all adults, particularly teachers, are aware of and committed to the protection of all students within their care.

PRINCIPLES

1. The Catholic Education Sector is committed to working as ethical and moral agents to uphold the Catholic ethos and to protecting the wellbeing of every student and staff member within its care.

³ The Code of Conduct is currently in draft form.

2. Abuse of any kind (physical, sexual or psychological) of a student or staff member is completely unacceptable.
3. Any process requiring the investigation of an allegation will ensure principles of natural justice and due process are followed.
4. The Catholic Education Sector will abide by and follow all mandatory protocols and procedures as required by Government legislation⁴ and laid down by Archdiocesan policies⁵. Where applicable, criminal investigations take precedence over Archdiocesan processes.
5. The rights and future wellbeing of students and staff must be considered and protected during the course of investigating an allegation.
6. The interests of an accused staff member must be considered, especially the right to the presumption of innocence and confidentiality and the continuing obligations to provide pastoral care.
7. The management of cases should be prompt and avoid undue delay, so as to obtain a timely and effective resolution.
8. Cases will be managed with sensitivity and attention to pastoral care in accordance with the Catholic ethos the system represents.
9. Where applicable the philosophy and scope of this document will also apply to personnel acting in a voluntary capacity at a school.
10. Responsible senior Archdiocesan personnel will liaise closely with Principals and governing bodies in the management of cases of alleged serious misconduct.
11. Principals should take all reasonable steps to ensure that employees are aware of this policy and related documents.

⁴ See Appendix Two: Compliance with Australian Law

⁵ See Appendix Three: Compliance with other Policy Protocols

12. Principals should take all reasonable steps to ensure that the students and staff are aware of their right to make a complaint about any form of misconduct and how the complaint should be made.
13. In the event of a serious allegation being made against the Executive Director of Catholic Education, the Archbishop has delegated the Director of Human Resources to act as their agent in the management of such a complaint.

REQUIRMENTS

In managing an allegation of serious misconduct, the following guidelines should be followed:

1. Allegations of serious misconduct will be managed by the Designated Officer, in association where applicable with the Principal, Executive Director of Catholic Education, Director of Human Resources and the Head of Policy and Executive Services.
2. Where the Principal is not the Designated Officer, the Principal, in association with the Designated Officer, plays an integral role in the management of an allegation, unless specific circumstances render such involvement inappropriate (e.g. if the Principal is a material witness or subject to an allegation).
3. Allegations be dealt with promptly.
4. Allegations of serious misconduct which amount to criminal conduct will be dealt with according to the laws of the State and Commonwealth.
5. Investigations should be thorough but restricted to minimise the number of interviews to which a student/staff member is subjected and to minimise any potentially negative impact of the investigative process on the individual or the community.

6. Any process requiring the investigation of an allegation will ensure principles of natural justice and due process are followed – that is each party must be given a fair opportunity to know the case against him/her and be heard.
7. All policies and procedures in schools will respect the rights of all involved while recognising that there is a particular duty of care to protect student rights.
8. Harm to the people involved is minimised by impartially, confidentiality, adherence to the published procedures which involve the appropriate authorities and provision of appropriate emotional support and pastoral care.
9. It is recognised that there may be occasions when malicious, exaggerated and false accusations are made. Those accused and found to have no case to answer after proper investigation will be supported in the re-establishment of their credibility in the eyes of colleagues and the community.
10. If allegations are found to have credibility the offender will be treated justly according to the law and to professional practices in Catholic schools.

Management of Allegations of Serious Misconduct:

Initial Allegation:

If an allegation⁶ of serious misconduct is made about a member of staff or volunteer or a senior student, the following course of action should be undertaken:

1. The person who becomes aware of the allegation should inform the Principal as soon as possible.
2. The Principal determines the appropriate response to the allegation taking into account school based and Archdiocesan policies and relevant legislation.
3. The Principal will need to determine whether the allegation is about improper conduct, misconduct or serious misconduct.

⁶ See Appendix Four: Managing Serious Allegations – Decision Making Flowchart

4. If the allegation is about improper conduct or misconduct, the policies and processes of the school or system will be followed (that is the school's Grievance Policy).
5. In determining whether an allegation may be serious misconduct the Principal should consider whether, it could:
 - 5.1 significantly impact on the immediate welfare of students or staff,
 - 5.2 result in a criminal investigation,
 - 5.3 adversely affect the ongoing employment of an employee,
 - 5.4 significantly affect the reputation of the school.
6. Where the Principal is not the Designated Officer, the Principal must notify the Designated Officer if an allegation of serious misconduct is made.
7. In relation to all allegations of criminal conduct, serious consideration should be given by the Designated Officer to reporting the matter to the police.
8. If an allegation of serious misconduct is made about the Principal, the person who becomes aware of the allegation should notify the chairperson of the school's governing body or the Executive Director of Catholic Education as the case may be as soon as possible.

Preliminary Response:

Upon becoming aware of an allegation of serious misconduct, all appropriate legislation and policies should be considered.

1. Risk Assessment:

An initial risk assessment should be conducted and a decision made about whether the employee should remain on active duty pending the outcome of any investigation or be suspended with or without pay.

Factors which should be considered during a risk assessment process would include:

1.1 the nature of the allegation (e.g. sexual assault, serious physical assault)

1.2 potential future risk to students

1.3 the currency of the allegation

1.4 the location of the alleged offence (i.e. current workplace or elsewhere)

1.5 access to the alleged victim and others relevant to the investigation

1.6 potential for a criminal investigation to be instigated

The risk assessment should be conducted by the Designated Officer, in association with the Principal (where applicable), Executive Director of Catholic Education, Director of Human Resources and Head of Policy and Executive Services. Legal and other professional advice should be sought as appropriate. Where appropriate, the governing body of the school will be advised and consulted.

2. Communication with the accused staff member:

2.1 The accused staff member will be advised:

2.1.1 that an allegation of serious misconduct has been made against him or her,

2.1.2 of the broad nature of the complaint (i.e. sexual misconduct, physical abuse) so he/she can discern the appropriate level of support required at the first meeting,

2.1.3 that the employee is required to meet with the Designated Officer and Principal (where applicable) in order to be informed of the nature of the allegation, and

- 2.1.4 that he or she may be accompanied by a support person at the meeting.
- 2.2 The accused staff member should be informed that the matter requires urgent attention and that the name of the support person should be divulged to avoid any potential conflict of interest. If practical, the accused staff member should be given a written letter stating the broad nature of the allegation and an appointed time and place for the proposed meeting.
- 2.3 The accused staff member will be informed of the allegation in person at a meeting chaired by the Designated Officer.
- 2.4 At the meeting the accused staff member will be informed of the specific allegation in writing.
- 2.5 The accused staff member must be informed that no initial response is expected and that he or she should consider the need to seek independent advice before responding to the allegation.
- 2.6 Detailed minutes should be taken of the meeting. A copy of the minutes should be supplied to the accused staff member who should be requested to sign a copy as an accurate record of the meeting, or propose amendments.
- 2.7 The Designated Officer should expressly state that no judgment has been made about the allegation and that the principles of natural justice and procedural fairness will be applied.
- 2.8 Information will be provided about how the allegation will be considered. The outcome may be a:
- 2.8.1 referral of the allegation to the police,
- 2.8.2 referral of the allegation to an independent investigation,
- 2.8.3 referral of the allegation to an internal investigation conducted by Senior TCEO or Archdiocesan Personnel.

- 2.9 The accused staff member should be informed that the Archdiocese is committed to advancing the completion of any investigation without undue delay.
- 2.10 The accused staff member and, where appropriate, associated family members should be informed that confidential counselling support is available through the Employee Assistance Program (EAP).
- 2.11 The Designated Officer should encourage the accused staff member to seek independent legal advice.
- 2.12 The conditions surrounding the stand-down provisions will be subject to ongoing review. Depending on the progress of the investigation, consideration may be given to exploring other non-child related duties or a suspension on reduced pay or without pay.
- 2.13 The accused staff member would be informed of the possible alternate outcomes of an investigatory process.

Final Review

At the conclusion of any police investigation, a further assessment should be conducted in relation to any allegation of serious misconduct by a staff member. It should be noted that, even if a matter does not proceed on the basis of a case not being established beyond 'reasonable doubt' in any policy investigation being finalised, there could potentially be the need for a second enquiry to be facilitated by the Designated Officer. The principles of natural justice and procedural fairness will continue to apply in the conduct of this investigation.

Investigation Outcomes:

At the conclusion of an independent investigation, the investigator will summarise the relevant materials and formulate recommendations for future action. The Designated Officer, in consultation with the Principal (where applicable), the Executive Director of Catholic Education, the Director of Human Resources and the Head of Policy and Executive

Services, will determine the appropriate course of action. Where appropriate, the relevant governing body could be consulted.

1. No case to answer:

In the event the investigation exonerates the employee, clear assurances will be given regarding the protection of the person's professional status. Offers will be made as to the availability of ongoing counselling and support if needed.

Where appropriate, discussions will be held regularly to support ongoing employment at a specific school, the potential for transfer to a new work environment will be considered and the potential for a mediated reconciliation process will be explored.

2. Complaint unproven through lack of sufficient evidence:

If the complaint is unproved through lack of sufficient evidence, then the ongoing monitoring of behaviour may become necessary.

A record of the incident and its outcomes will be kept.

3. Complaint proven:

If the complaint is proven one or more of the following outcomes may eventuate:

3.1 a reconciliation process is facilitated

3.2 a written apology if offered

3.3 an official warning is given

3.4 disciplinary action is taken (e.g. demotion)

3.5 counselling is required

3.6 notification of expected standards, a requirement to maintain these standards and a warning of the consequences of failure to maintain them is given

3.7 dismissal/expulsion

3.8 reference to outside agencies

If, at the conclusion of any stage of the investigatory process, an adverse finding is reached that may result in disciplinary action and, in particular, dismissal, the employee will be given notice of the potential outcome and given the opportunity to respond prior to any final decision being made.

Having considered all appropriate information, responses and advice, the Designated Officer, in consultation with the Principal (where applicable), Executive Director of Catholic Education, Director of Human Resources and Head of Policy and Executive Services will make the final decisions on the course of action to be followed. Responsibility for the final decision making outcomes will rest with the Designated Officer.

In the event of a dismissal for serious misconduct, the Designated Officer, in consultation with the Principal (where applicable) will follow all statutory obligations including notifying the Teachers Registration Board.

4. Complaint proven to be false or malicious:

If the complaint is proven to be false or malicious, support is given to the person who has been falsely accused and one or more of the following may be applied to the person who made the complaint:

4.1 a reconciliation process is offered and facilitated

4.2 counselling is given

4.3 a written apology is required

4.4 an official warning is given

4.5 disciplinary action is taken

4.6 dismissal

4.7 referral to outside agencies

A record of the incident and its outcomes will be kept.

Concluding Processes:

1. All documentation relating to the case will be held in a high security filing system within the Tasmanian Catholic Education Office or College Office as appropriate.
2. As per privacy conventions, as employee would be entitled to access his/her personnel file under appropriate protocols.
3. Where any school personnel, including a volunteer, student, staff member or Principal has an allegation of child abuse made against him/her, it is the responsibility of the Designated Officer to notify the Executive Director of the Towards Healing Professional Standards Office for the Archdiocese of Hobart.

REFERENCES

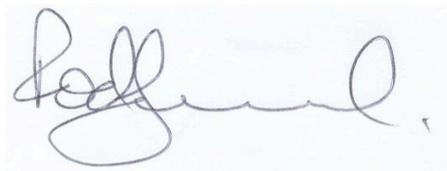
Being Human (2004): A Reflection Paper Commissioned by the Australian Catholic Bishops Conference
Ecclesia in Oceania (2001): The Church in Oceania

FORMS

Nil

APPENDICES

- APPENDIX 1: Other Relevant Definitions
- APPENDIX 2: Compliance with Australian Law
- APPENDIX 3: Compliance with other Policy Protocols
- APPENDIX 4: Managing Serious Allegations – Decision Making Flowchart



SIGNED: _____
TCEC Chairperson

DATE: _____ 02.02.06 _____

Adopted by School:

SIGNED: _____
Principal

DATE: _____

Approved by:	TCEC
Issuing Group:	Policy and Executive Support Services
Implementation Date:	1 December 2005
Supersedes Policy Dated:	N/A
Revision Date:	1 January 2009
TCEO Contact Officer:	Manager: Secondary Curriculum and Education Policy

APPENDIX 1

OTHER RELEVANT DEFINITIONS

Emotional abuse encompasses a range of behaviours that harm a child. It is behaviours by a person responsible for the child which can destroy the confidence of a child resulting in significant emotional deprivation or trauma. Children sustain emotional harm from all types of abuse.

Physical abuse refers to non-accidental injury to a child by a person responsible for the child. There are situations when physical contact between staff and students is both lawful and appropriate, such as providing instruction in physical tasks, preventing injury to the student or others and providing support and first aid in the case of distress or injury. Guidelines concerning what constitutes appropriate physical contact may vary with the age of the student.

Sexual abuse occurs when a child has been exposed or subjected to sexual behaviours or acts which are exploitative and/or inappropriate to the child's age and developmental level. In some cases a fine line exists between what is and what is not sexual abuse. In these cases careful consideration of the contextual element of the power relationship is essential, including the respective ages and developmental level of those involved and the nature of the relationship.

Bullying is repeated, unreasonable behaviour directed by one individual towards another. Bullying is an abuse of power as distinct from authority and should not be confused with legitimate comment and advice (including relevant negative comment and feedback) delivered in a reasonable manner from a Principal or supervisor on work performance and/or work-related behaviour.

Discrimination occurs when someone is treated unfavourably because of one of his/her personal characteristics. It may involve offensive comments or expressing negative stereotypes of particular groups, judging someone because of his/her beliefs, origins, appearance or sex rather than his/her work performance, or undermining a person's authority or work performance because of a dislike of one of his/her personal characteristics.

Harassment is unwelcome, uninvited, unreciprocated and usually repeated behaviour that causes another person to feel offended, humiliated, intimidated, hurt, insulted, frightened or ridiculed. It may be the result of belonging to a particular group – e.g. race, gender, religious, disability, sexuality and it may include:

1. offensive, abusive, belittling, threatening or manipulative behaviour
2. offensive physical contact or coercive behaviour which is intended to be derogatory or intimidating
3. insulting or threatening gestures
4. persistent following or stalking within or outside the workplace
5. bullying

Sexual harassment is any unwelcome and uninvited comment, attention, contact or behaviour of a sexual nature, that an individual or witness finds humiliating, offensive, intimidating or compromising. It can be verbal, physical, written or visual.

Sexual harassment may include:

1. physical contact such as patting, pinching, touching, hugging, grabbing, embracing, kissing
2. leering or unnecessary familiarity
3. personally offensive verbal comments
4. gender-based insults or taunting
5. sexual or smutty jokes
6. sexually explicit conversations

7. inferences to sexual morality
8. offensive hand or body gestures
9. the distribution or display of offensive pictures or written material
10. repeated unwelcome requests for social outing or dates
11. offensive comments about a person's physical appearance, dress or private life
12. jokes, intrusive questioning, messages or telephone calls of a sexual nature
13. direct propositioning or subtle pressure for sexual favours
14. indecent exposure, sexual assault or rape

Victimisation occurs when a person is threatened, harassed, harmed or subjected to any form of detriment. In relation to sexual harassment a person must not victimise another person because that person:

1. makes, or intends to make a complaint,
2. gave, or intends to give, evidence or information in relation to a complaint,
3. supports a person who has made a complaint, or intends to support a person who has made a complaint.

APPENDIX 2

COMPLIANCE WITH AUSTRALIA LAW

Commonwealth Law:

All personnel in Catholic schools should be aware of the laws relating to these matters. They should know and understand the legal principles and their school's guidelines and policies regarding physical contact between staff and students.

The protection of human rights in Australia has become a subject of concern and legislative action in both Federal and State Parliaments in the last 20 years. Thus there is now a complex legislative scheme consisting of Commonwealth and State laws including:

Commonwealth Laws:

Racial Discrimination Act 1975

Sex Discrimination Act 1984

Human Rights and Equal Opportunity Commission Act 1986

Disability Discrimination Act 1992

Workplace Relations Act 1996

Tasmanian Law:

Anti-Discrimination Act 1998

Children, Young Persons and their Families Act 1997

Family Violence Act 2004

Education Act 1994 Amendment (which outlaws the use of corporal punishment)

APPENDIX 3

COMPLIANCE WITH OTHER POLICY PROTOCOLS

The Taking Care policy is designed to specifically address allegations of serious misconduct against Archdiocesan employees and volunteers. Other policy protocols guide action with regards to broader allegations of abuse as noted below:

Under the Children, Young Persons and Their Families Act 1997, Teachers, Principals, Teacher Assistants, Ancillary staff, Librarians, Administrative staff and any other CEO/school employee or volunteer are prescribed persons and therefore mandated reporters of child abuse and neglect. The processes for fulfilling the obligations imposed by this Act are laid out in the document Collaborative Caring and reference should be made to this.

APPENDIX 4

MANAGING SERIOUS ALLEGATIONS – Decision Making Flowchart

