

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

Section	Welfare
Number	8a
Version	2
Page	1 of 11
Approved	ASC Council
Date	April 2010
Review	April 2013

1 Purpose

- 1.1 This document provides advice on the policy and procedures to be followed by 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 Anglican Schools Commission (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 ASC Child Protection Policy.

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 employer is responsible for the management of staff under his/her 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 employer 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 employer 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 of Child Protection (DCP), the Police Service, the Chief Executive Officer of the ASC and the Director of the Professional Standards Unit (PSU) of the Diocese of Perth.
- 2.8 The employer 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 Director of the PSU of the Diocese of Perth and seek advice from the PSU.

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 "Misconduct" is behaviour or conduct which does not meet the definition of "serious misconduct" (see below).

4.2.3 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.

4.2.4 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, including sexual touching either over or under clothing; oral sex; sexual penetration; possession of films, photographs, electronic material or videos of children involved in sexual activity; or physical intimacy associated with suggestions of a sexual nature;

Note: see 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 Diocese of Perth has 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 PSU for advice. (Tel.08 9325 7455)

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 he/she has been heard and that only those who must know about the allegation will be advised of it. The child should *also* be advised that he/she 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 he/she has 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, he/she has available a range of measures including counselling, formal warnings, ongoing review, demotion, dismissal or termination as per the ASC EBA 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 EBA or relevant Award may result.

6. Allegations against Employees of behaviour of a Sexual Nature

6.1 Definition

School and ASC employees are in a position of special trust and authority with respect to children. It is unacceptable and illegal for an employee to have any form of sexual contact with a student. Behaviour of a sexual nature encompasses kissing, fondling, encouraging sexual touching, oral sex, penetration of any kind, and photographing or possession of films, photographs, or videos of children involved in sexual activity.

6.2 Legal considerations

6.2.1 According to the Criminal Code, a child is not able to give consent to any activity of a sexual nature in any relationship involving an adult.

6.2.2 The Criminal Code defines a child as:

- (a) any boy or girl under the age of 18 years; and
- (b) in the absence of positive evidence as to age, any boy or girl apparently under the age of 18 years.

The Criminal Code provides severe penalties for sexual offences against children under the age of 16 years.

6.2.3 In relation to children between the ages of 16 and 18 years, it is a criminal offence under Section 322 of the Criminal Code Act 1913 (Amendment: Sexual Offences Act 1992) for a person

in authority to have a sexual relationship with a person under 18 years of age.

6.2.4 The law does not allow for the age of consent of 16 years to be a reasonable excuse where the person is in authority in regard to a child.

6.2.5 Under the terms of this policy, the ASC will regard it as serious misconduct for an employee to have a sexual relationship with a student over the age of 18 years when they are in a position of authority to the student.

6.2.6 **From January 2009 it has become mandatory for teachers to report reasonable beliefs about child sexual abuse. Note: see ASC Child Protection Policy Appendix D for details.**

7. Procedure

When an allegation of behaviour of a sexual nature involving a child, or student over whom they are in a position of authority, is made against an employee of the ASC, or there is a strong suspicion that sexual contact has occurred, the following procedures will apply:

7.1 If the person who receives or makes the allegation is not a teacher he/she shall advise the Principal of the School where the person is employed. If the allegation is against the Principal, the Chair of the School Council shall take over reporting responsibilities and shall advise the CEO of the ASC.

7.2 If the person who receives or makes the allegation is a teacher at the school, he/she is required to make the report to the Department of Child Protection Mandatory Reporting Centre although the Principal should be involved in prior discussion. The Principal shall then inform the CEO of the ASC that a report has been submitted.

7.3 If the alleged abuser is the Principal, the teacher should contact the Chair of the School Council prior to a report being made to the Police Service and the Department of Child Protection Mandatory Reporting Service. The Chair of the School Council shall advise the CEO of the ASC.

7.4 On receipt of an allegation from a person other than a teacher, the Principal shall contact the Police Child Abuse Unit (Tel. 08 9492 5444). A further call may be required to the local divisional office of the Department of Child Protection.

7.5 The Principal shall also report the matter to the Professional Standards Unit of the Diocese of Perth (Tel. 08 9325 7455) for their consideration and advice.

7.6 If after consultation with the PSU and the Police Child Abuse Unit, the Principal is satisfied that there are reasonable grounds to

support the allegation, the Principal is to inform the Chair of the School Council and the CEO of the ASC and the employee is to be removed from all contact with students. If the employee is suspended from duty, he/she will usually remain on full pay unless summarily dismissed.

- 7.7 The Principal will then seek advice from the PSU, and the Police Service and/or the Department of Child Protection as appropriate, on the appropriate action to take in respect of the alleged offender, the child, and the child's parent(s)/guardian(s).
- 7.8 The Principal will make a written report on all aspects of the matter as soon as possible and shall keep a written diary of subsequent events and actions.
- 7.9 It is the responsibility of the Police Service and the Department of Child Protection to notify the child's parent(s)/guardian(s) of the allegation and any proposed police action. The Principal shall not inform the parents of any allegation or action.
- 7.10 Where it appears that more than one child may have been the subject of abuse, co-ordinated action must be taken at the School level, in consultation throughout with the CEO of the ASC and the PSU.

Note: To ensure natural justice for both alleged offender and alleged victim, it is essential that confidentiality is maintained by all parties concerned from the time an allegation is made.

- 7.11 For 7.3 to 7.10 above, if the alleged abuser is the Principal, the Chair of the School Council shall undertake the steps outlined.

8. Judicial Processes

- 8.1 The Process to be followed when the Employee is charged
 - 8.1.1 An employee may be charged by arrest or by summons.
 - 8.1.2 An employee should advise the employer of the nature of the charge and the date of the first court appearance.
 - 8.1.3 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.
 - 8.1.4 Unless summarily dismissed (see earlier procedure and the provisions of the ASC EBA and relevant Awards) 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.
 - 8.1.5 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.

8.1.6 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).

8.2 Acquittal by a Court

8.2.1 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.

8.2.2 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).

8.2.3 In such an event, responsibility lies with the employer 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)

8.2.4 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", ie the civil standard of proof.

8.2.5 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.

8.2.6 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.

8.3 Conviction by a Court

8.3.1 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.

8.3.2 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. Please refer to section 8.2.5 in relation to the responsibilities of the Principal/employer to satisfy him/herself that an employee is a

fit and proper person to perform their duties.

- 8.3.3 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 (see sections 8.2.5 and 8.2.6).

9. Termination

- 9.1 Where the Principal/employer has determined that termination of an employee's services is appropriate, the procedures to be followed are laid down in the relevant Award, EBA or the employee's contract.
- 9.2 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) eg 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.

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.

5. 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 he/she is 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.
6. 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).
7. 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.