Responding to Allegations against Employees in the Area of Child Protection

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FOREWORD

The Department of Education and Training (DET) has a responsibility to provide a safe educational environment for children and young people.

As an employer that responsibility includes responding to allegations of a child protection nature made against employees, including volunteers, with respect to children and young people.


While the amendments will not significantly change departmental investigative practices, they will reduce the proportion of lower risk matters that are reported to the NSW Ombudsman and the Commission for Children and Young People.

The amendments also make it clear that employees, particularly teachers, can take reasonable action to exercise effective classroom management and discipline. This includes actions such as reasonably restraining a student for the safety of that student or others, comforting a distressed student or raising their voices to restore order with a group of students.

DET has revised its procedures for responding to allegations of a child protection nature against employees, to reflect the legislative changes. This document replaces Handling Allegations against Department of Education and Training Employees in the Area of Child Protection (1 January 2003).

Reporting requirements to the Department of Community Services (DoCS) regarding possible risk of harm to students have not changed.

All child protection allegations against employees must still be notified to the Employee Performance and Conduct Unit (formerly CPID). The Unit will then determine which allegations must be reported to the NSW Ombudsman and which employment proceedings require a report to the Commission for Children and Young People.

This document makes it clear that employees are to be provided with support and treated fairly when such reports or investigations affect them directly or indirectly.

I thank the stakeholders who, at short notice, have provided advice and feedback about the revised procedures, in particular, the NSW Teachers Federation, the Public Service Association, the Federation of Parents and Citizens’ Associations, the principals’ groups and officers from DET.

Please make this document available to all employees and other relevant stakeholders.

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1. **Abstract**

This document sets out the procedures to be followed in response to allegations being made against employees of the Department of Education and Training (DET) in the area of child protection.

As an employer, DET is governed by child protection and employment legislation (see Section 13 for a list of this legislation). These procedures reflect DET’s legislative responsibilities and demonstrate its commitment to protect the safety and wellbeing of students and to support the work of employees working with children and young people in an educational setting.

2. **Applicability**

These procedures apply to all employees including volunteer workers of DET, Technical and Further Education NSW (TAFE) and Community and Migrant Education (CAME).

3. **Superseded documents**

This document replaces *Handling Allegations against Department of Education and Training Employees in the Area of Child Protection* (1 January 2003). That document was superseded as a result of the proclamation of the *Child Protection Legislation Amendment Act 2003*. This document reflects those amendments.

4. **Context**

4.1 The safety, welfare and wellbeing of children and young people are paramount and therefore consideration of these factors must be a key priority. When responding to allegations against employees, DET also has a responsibility to ensure its employees are treated fairly and the rights of each individual are respected during an investigation and any applicable disciplinary process.

4.2 These procedures:

- reflect the legislative requirements of DET to report to the Department of Community Services, the NSW Ombudsman, the Commission for Children and Young People and the Independent Commission Against Corruption;

- reflect the changes to reporting following proclamation of the *Child Protection Legislation Amendment Act 2003*; and

- support the *New South Wales Interagency Guidelines for Child Protection Intervention*, 2000 edition, including participation in joint actions with the Department of Community Services, NSW Health Department and Joint Investigation Response Teams (JIRTs).
4.3 The roles of the respective agencies are outlined below.

*Role of the Department of Community Services (DoCS)*

DoCS has the responsibility to receive and assess reports of a child protection nature, investigate those reports where there is a likelihood of risk of harm to a child or young person and act to maintain and monitor their safety. DoCS also provide and arrange support services for children, young people and their families.

The *Children and Young Persons (Care and Protection) Act* 1998 requires teachers to report to DoCS if they have concerns that a child or young person is at risk of harm.

The procedures for reporting to DoCS as outlined in the document *Protecting and Supporting Children and Young People, Revised Procedures*, December 2000, are also to be followed in circumstances where concerns about risk of harm relate to the actions of an employee.

*Role of the NSW Ombudsman (the Ombudsman)*

The Ombudsman is required to oversee and monitor investigations of a child protection nature against employees of designated agencies, including DET. This role ensures that employers are responding appropriately to allegations against employees, and that the process is effective, accountable and fair.

As required by the *Ombudsman Act* 1974, the Ombudsman must be notified of any reportable allegations involving employees of DET, subsequent actions of DET and the outcomes of these actions. The Employee Performance and Conduct Unit (EPAC) of DET will determine which allegations are reportable conduct and will report to the Ombudsman within 30 days (reportable conduct is defined in section 6.2).

Information about individual notifications made to the Ombudsman is not available to prospective employers or the general public.

*Role of the Commission for Children and Young People (CCYP)*

The CCYP is responsible for employment screening for child related employment. This screening helps employers in their selection of suitable staff.

The names of employees who have been the subject of completed employment proceedings will be reported to the CCYP unless the matter is determined to be not reportable conduct.

The CCYP keeps a database of relevant employment proceedings that has two categories. *Category one* is used in screening processes. *Category two* is not used in screening processes unless the conduct reported appears to be part of a pattern of relevant conduct by the employee.

Further information regarding the actions of CCYP can be found at Section 8. See also the CCYP internet site at [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au) for more information.
Role of the Independent Commission Against Corruption (ICAC)

ICAC must be notified of any matter that may concern corrupt conduct in accordance with section 11 of the Independent Commission Against Corruption Act 1988.

5. Policy statement

5.1 As an employer, DET has a responsibility to:

- ensure that all employees are aware of their obligations to report suspected risk of harm and of the procedure for doing so;

- ensure that all employees are aware of the indicators of child abuse and neglect of children and young people;

- provide support for employees in maintaining professional standards related to staff relationships with students, trainees and apprentices and in the recognition and reporting of suspected risk of harm;

- investigate allegations of a child protection nature specifically related to the actions of an employee and ensure appropriate action is taken in relation to the finding;

- advise employees under investigation for an allegation of a child protection nature, of support services that are available to them;

- ensure that procedural fairness, also known as natural justice, applies in situations where a decision is to be taken which could have a detrimental effect on the rights, interests or legitimate expectations of an individual;

- assist employees in implementing relevant curriculum and support strategies for students and in implementing other Departmental policy and procedures related to protecting children and young people from harm;

- conduct a national criminal records check that includes a Working with Children Check for new employees in child-related employment;

- request that students who propose to undertake a child-related work placement disclose they are not a prohibited person by completing a Prohibited Employment Declaration;

- ensure that people who are seeking child-related employment with DET disclose that they are not a prohibited person by completing a Prohibited Employment Declaration;

- report to the Ombudsman certain allegations or convictions of a child protection nature made against an employee; and

- report to the Commission for Children and Young People the names of employees for whom it has completed relevant employment proceedings.
5.2 This document explains the responsibilities and procedures of DET as an employer when an allegation has been made against an employee.

5.3 DET has also produced several documents on child protection which, taken together, provide a comprehensive policy framework addressing the responsibilities of employees. In particular, Protecting and Supporting Children and Young People – Revised Procedures (December 2000) is to be read in conjunction with this document. (All current child protection policies are available at the DET internet site at http://www.det.nsw.edu.au/policies/).

5.4 Role of the Employee Performance and Conduct Unit (EPAC)

DET will act to ensure that all allegations against DET employees in the area of child protection are notified to EPAC, accurately assessed and, where appropriate, investigated thoroughly and fairly. EPAC will also ensure that information about reportable allegations and reportable conduct are forwarded to the appropriate agencies.

EPAC develops best practice processes and systems to promote child protection in educational environments and to report and respond to allegations of a child protection nature against DET employees. It does this by developing strategies promoting child protection in educational environments, conducting investigations, taking disciplinary or other action where appropriate, and undertaking training.

To help teachers in particular identify appropriate practice in their interactions with students, a Guide for Teaching and Protecting Children and Young People is available at Appendix 5. The aim of this guide is to give clear, practical and non-prescriptive advice to teachers to support and assist their every day practice. A number of Legal Issues Bulletins produced by DET’s Legal Services Unit also give very useful advice.

6. Definitions

6.1 Commonly used titles used in this document are outlined below.

Child

For the purpose of these procedures, a child is a person under the age of 18 years. However, with respect to matters notifiable to DoCS, a child is defined as a person under the age of 16 years.

Young person

A child aged 16 or 17 years.

Children and young people include:

- children and young people enrolled in NSW government schools and pre schools;
children and young people enrolled in TAFE;

- young people enrolled in CAME;
- children and young people who are not enrolled but who access TAFE services;
- children and young people who are apprentices and trainees registered with DET;
- children and young people supervised by employees;
- children enrolled in TAFE Children’s Centres and those accessing playgroups and child minding services provided by TAFE and CAME;
- any other child or young person allegedly maltreated by an employee.

Duty officer

The EPAC officer responsible for providing advice and receiving reports of alleged breaches of discipline, by employees with respect to any child, young person or school student aged 18 years or older. Allegations may be notified to the duty officer verbally (by telephone) or in writing. Duty officers are nominated disclosure officers for the purposes of the Protected Disclosures Act 1994.

Employee

For the purpose of these procedures an employee is defined as any of the following persons:

- anyone employed by DET or TAFE NSW (including staff employed in CAME) who receives a payment summary for taxation purposes;

- any person engaged by DET or TAFE NSW, directly or indirectly, including but not limited to:
  - contractors, for example, special transport drivers, cleaners and maintenance contractors;
  - sub-contractors, for example, canteen managers;
  - volunteers, for example, parent helpers or SRE (scripture) teachers;
  - trainees, work experience and work placement participants (including school students);
  - clergy, ministers of religion and members of religious orders; and
  - TAFE or tertiary students training in schools.
**Notifier**

The person who notifies an allegation against an employee to EPAC.

**Support person**

A person over 18 years who accompanies a witness, complainant or respondent to a meeting or interview to provide support or advice. This may be a union representative.

**Nominated disclosure officer (NDO)**

A staff member of DET nominated to receive information from staff which may be protected disclosures and forward them to the Disclosures Coordinator (Director of Audit) or, in the case of child protection matters, to the Director of EPAC. Disclosures may be made by contacting an EPAC duty officer on (02) 9266 8070. EPAC duty officers are NDOs. Protected Disclosure status can only be provided to an employee making a disclosure directly to an NDO.

**Workplace manager**

A workplace manager is the person in charge of a work group. Examples of a workplace manager include; institute director, school education director, principal, executive officer, teacher-in-charge and state office director.

An executive officer is the designated member of staff in charge of an establishment, other than a school (whether under the title of College Director or Campus Manager, CAME Operational Manager or otherwise), and includes any person acting as the person in charge of the establishment. It also includes the Manager, Field Services and Skills Recognition. Where there is a TAFE-managed Children’s Centre on campus, the Early Childhood Director will be designated as executive officer for the Centre.

6.2 Common terms used throughout this document are clarified below.

**What is an allegation of a child protection nature?**

An allegation of misconduct of a child protection nature made against a DET employee towards a child or young person. Such conduct must be notified to EPAC.

**What is a reportable allegation?**

Reportable allegation means an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct. A reportable allegation must be reported to the Ombudsman by EPAC and may result in an employee’s name being forwarded to the CCYP following a completed employment proceeding.
What is reportable conduct?

Under the Child Protection Legislation Amendment Act 2003 reportable conduct means:

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

b) any assault, ill-treatment or neglect of a child, or

c) any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.

Examples of the types of conduct that may constitute reportable conduct include:

(a) Sexual offence

Any sexual offence committed against a child or young person may include sexual intercourse as defined in section 61 H (1) of the Crimes Act 1900, or acts of indecency and indecent assault.

Sexual misconduct

Sexual misconduct describes a range of behaviours or a pattern of behaviour aimed at the involvement of children in sexual acts. Some of these behaviours include:

- inappropriate conversations of a sexual nature;
- comments that express a desire to act in a sexual manner;
- unwarranted and inappropriate touching;
- sexual exhibitionism;
- personal correspondence (including electronic communication) with a child or young person in respect of the adult's sexual feelings for a child or young person;
- deliberate exposure of children and young people to sexual behaviour of others including display of pornography;
- possession of child pornography in the workplace.

Sexual misconduct can include ‘grooming behaviour’.

Grooming behaviour is a process whereby sexual offenders ‘condition’ and build rapport with children or young people in order to reduce their resistance to, and increase compliance with, sexual abuse. The grooming process can include such aspects as:
misleading children or young people by pretending to them that they are trustworthy – spending inappropriate special time with the child, inappropriately giving gifts, showing special favours to them but not with other children or young people, allowing the children or young people to overstep the rules etc.

• testing of boundaries – undressing in front of children or young people, allowing the children or young people to sit on the lap, talking about sex, ‘accidental’ touching of genitals etc.

Such behaviours may not be indicative of grooming if occurring in isolation. If however, there is a pattern of behaviour occurring, consideration needs to be given whether that behaviour is part of a grooming process.

Strategies such as mentoring, coaching or tutoring programs in schools often target students for the individual attention of a supportive, caring and compassionate nature from employees such as teachers. Appropriate conduct within these programs that is consistent with DET and school policies should not be confused with grooming behaviour.

(b) Ill-treatment

Ill treatment of a child or young person may occur when a person who has a legitimate authority to chastise or discipline a child or young person, such as a teacher, disciplines or corrects a child or young person in a manner that is not in accordance with DET or the school’s welfare and discipline policies.

Allegations of ill-treatment are not restricted to punishments involving physical contact, such as hitting. Any punishment administered by a person in authority that restricts a child or young person’s freedom or requires additional physical or mental activity by a child amounts to ill-treatment if it is excessive or otherwise inappropriate.

Assault against a child or young person

Using common law principles, assault in this context must include all three of the following elements:

• it is an act committed on or towards a child or young person,

and

• it involves either the application of force to a child or young person or an act that causes a child or young person to think that immediate force will be used upon them,

and

• it is either hostile or reckless (a reckless act is one where the person foresees the likelihood of inflicting injury or fear, and ignores the risk).
Actual physical harm does not have to occur in order for an assault to have taken place, i.e. the child or young person does not have to be injured.

Physical contact which is an inevitable part of everyday life does not amount to assault. For example, there may be occasions where it is appropriate to intervene in order to protect students. Reasonable action, in these circumstances, would not be deemed to be assault.

_Neglect_

Neglect occurs when a child or young person is harmed by the failure of a person who has care responsibilities towards a child, to provide basic physical and emotional necessities of life, including failure of such a person to provide or arrange for the provision of adequate and proper food, nursing, clothing, medical attention or lodging for a child or young person in that person’s care.

_(c) Behaviour that causes psychological harm_

Psychologically harmful behaviour is behaviour that causes demonstrated harm to a child or young person. A finding of psychological harm must establish three elements: inappropriate behaviour, harm, and a causal link between the behaviour and the harm.

Examples of psychological harm may include:

- targeted and sustained criticism, belittling, teasing;
- excessive or unreasonable demands;
- persistent hostility and severe verbal abuse, rejection and scapegoating;
- using inappropriate locations or social isolation as punishment.

_What conduct is not reportable to the Ombudsman or CCYP?_

Reportable conduct does not extend to:

- 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, or
- 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, or
- conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25C(4) of the Ombudsman Act 1974.

**Note.** Examples of conduct that would not constitute *reportable conduct* include touching a child in order to attract a child’s attention, to guide a child or to comfort a distressed child; a school teacher raising their voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.

**In situations that are not clear, the workplace manager should discuss the matter with a duty officer from EPAC to clarify what action, if any, is required.**

Factors to be considered by EPAC when making a determination if a matter is reportable conduct include:

- age of the child
- maturity of the child
- health of the child
- other characteristics of the child
- context in which the alleged conduct occurred.

**What is the Class or Kind Determination with the Ombudsman?**

Section 25C of *The Ombudsman Act* 1974 permits the Ombudsman to determine that certain kinds of allegations or convictions are exempt from the reporting requirements applying to agencies.

The Ombudsman made a determination exempting certain kinds of less serious allegations of a physical nature from full reporting by DET under Section 25C of the Act. EPAC has the responsibility to determine which allegations that are notified to EPAC are exempt under this determination, to conduct an investigation and to keep confidential records about the matter for regular audit by the Ombudsman.

**What constitutes completed employment proceedings for referral to the CCYP?**

For the purposes of the CCYP legislation, an employment proceeding is considered completed once the employer has reached a point where an investigation of the matter has concluded. Such matters must be reported to the CCYP unless they are found to be false, misconceived or vexatious, or are not considered to be ‘reportable conduct’.
What is a protected disclosure?

A protected disclosure is an allegation of corruption, maladministration or serious and substantial waste, made voluntarily by a public official, about a public official or public authority, notified to a Nominated Disclosure Officer (see Internal Reporting of Protected Disclosures (April 2001)). An employee making a notification may request that the matter be treated as a protected disclosure. The DET has procedures to assist in protecting staff from detrimental action in reprisal for making a disclosure and will consider whether the matter meets the criteria for it to be treated as a protected disclosure.

What is the process for responding to allegations of misconduct or improper conduct against students over 18 years?

Allegations of misconduct or improper conduct by an employee against an adult student who is not a school student and who is aged 18 years or older are not dealt with by EPAC under these procedures. However, they must be reported and investigated as follows:

- If the matter is a serious breach of legislation, policy, procedures or contract, which, if proven would have a reasonable prospect of leading to criminal or disciplinary action, then under the procedures for Responding to Suggestions, Complaints and Allegations (23 April 2001), it must proceed to investigation. Allegations of a criminal nature are to be referred to the police. Expert assistance and advice can be obtained from EPAC ((02) 9266 8070) or the Director of Audit ((02) 9561 8913).

- If the matter is sufficiently serious to warrant disciplinary action, and involves a breach of trust (e.g. a misuse by a staff member of their position of influence over a student) then the matter is likely to be corrupt conduct and must be reported to either EPAC or Audit Directorate in order to fulfil the requirements of the Independent Commission Against Corruption Act 1988.
7. Procedures for dealing with allegations

7.1 What action is to be taken when there is an allegation of a child protection nature concerning an employee?¹

If there is an allegation (including an anonymous allegation) of a child protection nature against an employee involving:

- any child, or
- any young person, or
- any DET school student aged 18 years or older,

the following must occur:

- the workplace manager must be informed by an employee who is aware of an allegation of a child protection nature;
  
  OR
  
- if the allegation names the workplace manager, their supervisor must be informed;

- the allegation must be notified to EPAC by the workplace manager or their supervisor.

Many complaints about employee conduct are relatively minor, are not child protection matters and can be resolved in the workplace by the workplace manager using complaints and/or performance improvement processes. If there is any question as to whether or not any issue should be addressed using the procedures in this document, the workplace manager should ring EPAC for advice.

EPAC CONTACT DETAILS:
telephone (02) 9266 8070 or facsimile (02) 9266 8077

The workplace manager shall consider the following:

- where concerns about suspected risk of harm relate to the actions of an employee, the same procedures for reporting to DoCS are followed but an additional action is required. The workplace manager must notify EPAC and provide a copy of Form A (Report to DoCS) by facsimile.

- where concerns about suspected risk of harm relate to the actions of a workplace manager, employees should report these directly to the workplace manager’s supervisor, as well as to EPAC. It is the responsibility of the supervisor to follow the procedures to report to DoCS. The manager’s supervisor will forward a copy of Form A to EPAC by facsimile.

¹ See flowchart “Notification of Allegations of a Child Protection Nature about an Employee” at Appendix 2.
7.2 The role of the workplace manager when notifying to EPAC\(^2\).

The workplace manager must respond immediately and in a sensitive manner when they become aware of an allegation of a child protection nature against an employee.

In situations where an allegation has been made which if true is a serious breach of discipline, the workplace manager must consult with EPAC to determine what further information, if any, should be sought.

The workplace manager must not investigate the allegation or inform the employee but may clarify the allegation by seeking relevant information from the person making the allegation.

The workplace manager will record details of the allegation using the person's exact words to describe the allegation. In some matters written information such as critical incident reports may have been provided by the complainant or witnesses.

All necessary and reasonable steps are to be taken to ensure the identities of the persons who made the allegations, or who are the subject of the allegations, are treated confidentially. However, no guarantees of confidentiality should be given because the identity of those people who are involved in, or witnessed, the alleged conduct may need to be revealed to the employee who is the subject of the allegation to enable the effective investigation of the matter, or to enable procedural fairness during later disciplinary or legal action.

The workplace manager must notify EPAC of all allegations (including anonymous allegations) verbally or in writing within one working day of receipt of the allegation.

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<th>EPAC CONTACT DETAILS:</th>
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<td>telephone (02) 9266 8070 or facsimile (02) 9266 8077</td>
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7.3 What information is to be provided to EPAC when making a notification?

The following information (if available) is to be provided to EPAC:

- the nature and details of the allegation;
- any possible risks (to any children, young people, students, employees or DET);
- the contact details of the person conveying the allegation to EPAC;
- the name and contact details of the complainant;
- the names and ages and contact details of the children or young people affected by the alleged conduct;
- the names and addresses of the parents or caregivers of the children or young people involved;

\(^2\) Refer to the “Notification Checklist” at Appendix 1.
• the names of witnesses and how they may be contacted;
• the name, position and contact details of the employee against whom the allegation has been made;
• whether the employee already knows about the allegation and the circumstances under which they learned of the allegation (the employee is not to be informed of the allegation without the advice of EPAC);
• whether the matter has been, or is to be, reported to DoCS or Police and the outcome of their assessment of the matter, if known;
• whether there are any special circumstances such as language, culture or disability that may require special skills or provision of special assistance;
• any written accounts of the alleged incident, if available, including those from the complainant, children, young people or students involved, or employees involved;
• what counselling or other support has been arranged for all people involved, particularly any children, young people, students and the employee against whom the allegation has been made; and
• advice about whether support needs to be given to the families of students, other students indirectly involved, or any other members of the community.

7.4 How will EPAC deal with a notification against an employee?

The duty officer at EPAC will:

• assess the immediate risks associated with the allegation in conjunction with the workplace manager. This assessment includes:
  - assessment of the risk to any children, young people, students, employees or to DET;
  - assessment of the seriousness and nature of the allegation to determine the appropriate action required;
  - whether it is appropriate for the employee to remain on duty; and
  - assessment of support needs of all those involved.

• enquire if a report has been made to DoCS if the matter relates to a risk of harm;

• advise the person making the notification what action is to be taken in the short term to ensure the safety, welfare and wellbeing of all those involved, particularly emphasising the importance of confidentiality;

• discuss the process that will occur as a result of the notification;
7.5 How does EPAC respond to notifications?

Options for responding to a notification include:

- if the matter does not constitute a child protection allegation against an employee, refer the matter back to the workplace manager for action with no further EPAC involvement; or
- oversee the local management of the matter in consultation with the workplace manager (See Procedures for the Local Management of Less Serious Allegations in the Area of Child Protection Against DET Employees 18 March 2003); or
- allocate the matter for investigation by EPAC.

7.6 Using a Local Management Response under EPAC’s oversight.

Local management may be used when EPAC determines that a low risk allegation against an employee in the area of child protection can be dealt with at the local level with EPAC oversight.

Prior to determining whether a matter is suitable for local management EPAC will discuss this with the workplace manager to determine whether local management is appropriate. Local management will only proceed if the workplace manager and the employee agree to the matter being dealt with by the local manager. If there is not agreement by both parties, the matter will generally proceed to an investigation. In some circumstances an alternative local manager may be sought.

The Procedures for the Local Management of Less Serious Allegations in the Area of Child Protection Against DET Employees 18 March 2003 provide assistance to the local manager through direct advice from an EPAC investigator, guidelines, a checklist of required action and forms to document the outcomes of this process. The procedures also explain what completed documentation is provided to the employee.
All documentation is returned to EPAC at the completion of the process. EPAC makes the final determination about the completion of the matter and conveys that information to the local manager who will inform the employee and other relevant parties.

These procedures allow management of less serious allegations at the local level in a timely manner. It should be noted that such matters will be reported to the Ombudsman if they constitute a reportable allegation or reportable conduct and if required, the employee’s name will be reported to the CCYP.

7.7 Using an EPAC investigation response.  

In those cases where either DoCS or NSW Police are investigating, DET is usually required to wait for those agencies to complete their investigation before commencing its own. In some cases a departmental investigation will take place in conjunction with DoCS and/or the NSW Police. Interagency liaison will occur to ensure that there is an appropriate response to meet the needs of all parties without undue delay. However, the time taken to complete an investigation and finalise a matter is, at times, outside the control of the DET. Information provided at this stage may depend on the view of those agencies.

Within DET, the investigator, in consultation with EPAC senior officers, determines what information will be provided to persons involved in the matter during the course of the investigation. This includes information provided to the employee against whom the allegation has been made.

The employee is informed about an investigation and whether the allegation has been reported to the Ombudsman as soon as practical. The employee must be informed of the content of allegations that may result in action being taken against them and given the opportunity to respond in writing or at interview. This should occur as soon as it is clear what the issues are.

During an EPAC investigation, applications from the employee for long service leave, leave without pay, separation from the DET, participation in teacher exchange, or the issue of a record of employment will be considered on a case by case basis.

Similarly, during an EPAC investigation, applications for promotion, transfer and for permanent, temporary or casual employment will be considered on a case by case basis.

The employee will be informed if EPAC has recommended that any such application is to be held pending the outcome of an investigation. EPAC has rarely been required to intervene in such matters or requests.

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4 Refer to the flowchart “EPAC Investigation and Reporting Process” at Appendix 4.
7.8 What happens during an EPAC investigation?

Step 1: Initial action

a) The initial risk assessments will be reviewed to manage the safety of all those involved in the allegation including the employee, any children, young people or students;

b) an investigation plan will be developed.

Step 2: Interviews (if appropriate)

Alleged victims or potential witnesses will be advised that they may be required in the future to provide evidence in a disciplinary inquiry, court, Industrial Relations Commission or the Government and Related Employees Appeals Tribunal should the matter proceed to that stage.

a) If a child or young person is to be interviewed attempts will be made to choose a venue for interviews that is neutral and friendly to the child or young person with few or no interruptions or distractions;

b) parental permission will be sought prior to the interview;

c) procedural information will be provided to ensure witnesses understand the implications of providing information to the investigator;

d) questions relating to the allegation such as “who”, “what”, “when”, “where” and “how” will provide the basis of the interview;

e) a support person may be present. This may be a union representative;

f) the support person at the interview will be briefed by the investigator regarding their role and the nature of the interview;

g) face to face interviews will be held in isolation from other witnesses;

h) an audio recording device will generally be used to record the interview and a copy of the record or transcript offered. However, this is subject to permission being given by the interviewee for an electronic record. In the cases where interviewees do not give such permission, notes will be taken;5

i) statements may be prepared by EPAC for the witness to sign following an interview even when an electronic record is made. If a statement is prepared, a copy will be offered to the witness;

j) in exceptional circumstances (for example where an important witness is overseas) telephone interviews may be required. The person being interviewed will be informed in advance of a telephone interview.

5 If any party initially declines the offer of a copy of a statement or transcript, they may subsequently request that a copy be provided to them.
Step 3: Collection of additional evidence

a) Documentary evidence such as photographs, emails, and workplace or DET records may be obtained;
b) a site inspection may be carried out;
c) expert evidence such as technical and forensic advice may be sought;
d) an investigation may, where relevant, include an interview of the employee connected with the allegation or incident and/or taking a statement from the employee. Employees will be informed of their rights prior to the interview being conducted.

Step 4: Analysis of the evidence

a) The evidence collected will be analysed; and
b) the allegations will be specified as clearly as possible.

Step 5: Putting the allegation(s) to the employee

The allegation(s) will be put in writing to the employee. They will be given a period of time of no less than 14 days in which to respond. This allows the employee to get appropriate support and advice. This may be from their union. The employee may respond in writing or orally at an interview.

Step 6: Conducting an interview at which an employee responds to the allegation(s)

a) If an employee agrees to be interviewed, a suitable location for the interview will be negotiated in terms of privacy, confidentiality and minimal disruptions;
b) the employee may have a support person of their choice present and the investigator will explain the support person’s role. Section 10 outlines the support person’s role. The support person may be a member of the employee’s trade union (see Appendix 6 for contact details of trade unions);
c) the employee will be informed of their rights, information about the investigation process, DET policies and expectations of the employee;
d) a record of the interview is made from an electronic record or notes taken during the interview. The interviewer will only electronically record the interview if the permission of the employee is given;
e) any documents that are shown to the employee will be clearly identified and preserved;
f) the employee will be offered a copy of the record of interview;
g) in matters where the person is permanently employed under the Public Sector Employment and Management Act 2002 any disciplinary interview will be conducted in accordance with procedures as outlined in the Premier’s Department’s Commentary and Guidelines on Conduct and Performance Provisions - Part 2.7 of the Public Sector Employment And Management Act 2002.

Step 7: Action following the response to the written allegations by the employee or where the employee does not respond to the allegations in the specified time.

a) If the employee does not respond to the written allegations in the specified time, the investigator will attempt to contact the employee or their designated representative. Applications for an extension of time will be considered. If no response is forthcoming or if the employee states that they do not intend to respond, it will be deemed that the allegations have been denied;

b) The investigator analyses the response, seeks legal advice regarding the matter if required, and prepares an investigation report that recommends:

- further analysis or investigation; or
- that the matter be finalised without disciplinary action as there is no case for the employee to answer, or there is insufficient information to support the allegation, or disciplinary action is not warranted in the circumstances; or
- that there is sufficient material/information for the Director of EPAC to consider disciplinary action.

7.9 What happens following an investigation finalised with no disciplinary action?

The employee will be advised in writing that:

- the matter is finalised and what the outcome is;
- the case management system has been updated to indicate this outcome;
- all documents relating to the investigation and its outcome will remain as a confidential file, a completely separate volume of the employee's personnel file that will be held under restricted access in EPAC according to the provisions of the State Records Act 1998;
- if the matter was a reportable allegation, a copy of all documentation related to the allegation and its outcome will be forwarded to the Ombudsman for review;
- if their name has been reported to the CCYP and the implications of that report;
- the workplace manager has been provided with a copy of the letter to the employee to make it clear that the matter has been finalised;
- the employee may provide any further information or comment that they would like to have placed on their confidential file or seek an interview with an officer of EPAC;
• the relevant complainants and/or parents or caregivers will be notified of the outcome, however the name of the employee will not be provided in any correspondence to them;

• a copy of a letter sent to the complainant and the parents or caregivers involved will be sent to the employee. The copies of these letters will not disclose identifying information about the recipients;

• the workplace manager will be advised of the outcome of the investigation, asked to return to EPAC any original documents held about the investigation or to destroy all copies of documents pertaining to the investigation of the allegations, and will be required to certify this has occurred;

• the employee should retain a copy of the outcome of the investigation; and

• advice, support and counselling is available to the employee and contact details will be provided.

When the employee has been transferred to alternative duties or suspended from duty during the investigation, EPAC will negotiate for the employee to return to their workplace. In some circumstances a transfer or an alternative placement may be negotiated in consultation with EPAC.

If an employee wishes to have the outcome of a finalised investigation reviewed by DET, they should write to the Director of EPAC stating the reasons for this request. If the Director approves the request an officer who has not been involved in the investigation, and who is at the same level or higher to the original decision maker, will be asked to review the matter. This officer will tender their findings and decision to the Director of EPAC who may accept, vary or reject the decision. The outcome of the review will be provided to the employee in writing. When an outcome is changed following review other relevant parties will also be advised.

Any party to the investigation, including the employee or the alleged victim, may complain to the Ombudsman if they are dissatisfied about action taken by the DET.

**Note:**

If the matter involves a special transport driver or escort, EPAC will advise the Leader Student Special Transport of DET of the actions to be taken.

If the matter involves a contract cleaner EPAC will provide advice to the Government Services Unit of the Department of Commerce detailing the actions to be taken. The Government Services Unit will report to EPAC the action that has been taken with respect to the cleaner.

If the matter involves a volunteer and there is a need to limit the volunteer’s access to school students, EPAC will determine what action will be taken and will advise the volunteer.

The workplace manager will also be advised of the proposed action.
8. When will an employee’s name be referred to the CCYP?

Section 39 of the *Commission for Children and Young People Act* 1998 requires all employers, including DET, to report to the Commission for Children and Young People (CCYP) the name and other relevant identifying particulars of any employee against whom relevant employment proceedings have been completed since 3 July 1995.

The date for reporting relates to the timeframe within which the matter was investigated and finalised, not the timeframe within which the conduct may have occurred. This means that the names of employees against whom allegations of conduct that occurred many years earlier but were investigated after July 1995 must be reported.

A determination by EPAC as to whether or not a report of an employee’s name is required is usually made when an investigation is completed.

8.1 What are relevant employment proceedings?

Relevant employment proceedings are those where an employer has investigated a matter and has found:

- Reportable conduct; or
- an act of violence committed by an employee in the course of employment and in the presence of a child

has occurred, or there is some evidence that it occurred even if inconclusive. (If an employee resigns or retires prior to completion of a relevant employment proceeding, the legislation requires their name to be reported to CCYP if the allegations relate to the above 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
- 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.

Examples of conduct that is reportable to the CCYP are provided in Section 6.2. *The Working with Children Check Guidelines* produced by the CCYP provide detailed information about the circumstances in which an employee’s name must be reported.
8.2 What matters should not be reported to CCYP?

Matters that should not be reported to the CCYP by EPAC include:

- incidents that are not reportable conduct or an act of violence;
- allegations that are demonstrated to be false;
- allegations that are vexatious;
- allegations that are misconceived (even though the allegation was made in good faith the person making the allegation misunderstood what actually occurred);
- incidents that are found to be reasonable for discipline, management or care of a child or young person; and
- incidents involving teaching staff where the behaviour has been assessed to constitute “inappropriate professional behaviour”.

The CCYP has entered into a Class or Kind Agreement with DET that relates to teachers, principals, teachers in promotion positions and teachers’ aides. The Agreement does not cover other classes of employees within DET and TAFE NSW.

This Agreement is designed to recognise:

- the unique nature of the teacher-student relationship;
- the high volume of interactions between teachers and students;
- the pre-requisite for university qualifications;
- ongoing professional standards for teaching through an Institute of Teachers; and
- the external and independent oversight of teacher employers.

An incident involving inappropriate physical contact may have occurred between a teacher and a student and the behaviour of the teacher may not have met professional standards, but may not have caused physical harm to the student. In such circumstances, EPAC may determine that the incident constitutes “inappropriate professional behaviour” and the employee’s name would not be reported to CCYP. An example of such behaviour may be throwing a light object at a child or young person.

8.3 Why are names reported to CCYP?

The CCYP has a key child protection role to monitor child-related employment screening in NSW and to conduct employment screening activities.
When a person applies for child-related employment such as teaching in schools, a Working with Children Check is conducted to help DET determine their suitability for such work. Such checks include relevant criminal records, apprehended violence orders made for the protection of a child and relevant employment proceedings.

When reporting a name to the CCYP, the employer must determine whether the relevant employment proceeding is a Category One or Category Two employment proceeding.

**Category One** matters will trigger a risk assessment if that person applies for future child-related employment.

Employers should report as Category One all relevant employment proceedings where the enquiries found:

- reportable conduct; or
- an act of violence; or
- some evidence that reportable conduct or an act of violence occurred however the finding is inconclusive and the employer thinks that the conduct should be considered in any future risk assessment.

**Category Two** matters will not trigger a risk assessment if that person applies for future child-related employment, but will be considered if there are other relevant records for that person (for example criminal records).

Employers should report as Category Two all relevant employment proceedings where:

- the enquiries found some evidence that reportable conduct or an act of violence occurred, however the finding is inconclusive; and
- the employer thinks that the conduct of the employee should not be considered in future risk assessments.

Employees are advised in writing of any report of their name to the CCYP.

8.4 **Access to information relevant to reports to the CCYP.**

Any person for whom relevant employment proceedings have been undertaken is entitled under the Freedom of Information Act 1989, to access any documents of DET which contain relevant employment proceedings information about them. There is no fee attached to this request.
9. The disciplinary process

9.1 Legislation under which disciplinary action occurs for permanent employees:

- Teaching Services Act 1980 and the Education Teaching Service Regulation 2001
- Education (School Administrative and Support Staff) Act 1987
- Public Sector Employment and Management Act 2002
- Technical and Further Education Commission Act 1990

9.2 Treatment of contractors, sub contractors and volunteers

Although not subject to specific employment legislation and disciplinary schemes, contractors, volunteers or other persons associated with DET sites may have contracts or services terminated, or access to DET sites or involvement in DET activities restricted or terminated. This includes termination of special transport contracts.

9.3 Treatment of temporary and casual employees

Temporary and casual employees are not generally charged with breaches of discipline because of the finite nature of their employment. However, in circumstances which, if admitted or proven, could result in a penalty of dismissal, the employment can be terminated and the employee’s name could be placed on the confidential list of people who are not to be engaged in any capacity in NSW government schools or TAFE institutes without reference to the Director of Staffing Services of DET. An employee would be invited to make a submission prior to this course of action being initiated.

9.4 Disciplinary action other than charging the employee

In some circumstances the Director of EPAC will approve recommendations to finalise matters by taking disciplinary action that does not involve charging the employee with a breach of discipline. These matters involve circumstances where the Director of EPAC determines that there is sufficient evidence that a breach of discipline may have occurred. It is also determined that remedial action by giving a clear message to an employee about proper conduct is warranted and more appropriate than laying a disciplinary charge. The workplace manager may also be asked to monitor specific aspects of the employee’s conduct for a defined period.

The aim of such a process is to take remedial action in response to the behaviour that led to an allegation being made.

This process for permanent teachers is specified in Clause 14 (2) of the Education Teaching Service Regulation 2001 (Teaching Services Act 1980) and the procedures that have been approved by the Director-General of Education and Training under that clause.

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6 If the employee is a permanent employee the Education (School Administrative and Support Staff) Regulation 2003 specifies that alleged breaches of discipline will be dealt with the same way as Teaching Service employees are dealt with under the Teaching Services Act 1980.

7 The TAFE Disciplinary Determination 1996 sets out the disciplinary process to be followed for TAFE educational employees.
The process to be followed for persons employed on a permanent basis under the *Public Sector Employment and Management Act, 2002* is set out under clause 2.7 of that Act.

Matters dealt with in this manner are not recorded on an employee’s personnel file, but kept as a confidential investigation file and will be retained, as required by the *State Records Act, 1998* under restricted access in EPAC.

9.5 *Disciplinary action by laying charges*\(^8\)

Where an employee is to be charged with a breach of discipline the Director of EPAC will:

- refer all material to a legal practitioner for the notice of charge to be drawn up for a breach of discipline under the relevant act;
- organise for the notice of charge to be served on the employee.

The employee has fourteen days to respond in writing to the charges. In some circumstances, an extension may be granted.

9.5.1 *What happens when the employee does not admit the notice of charge?*

Where the employee, other than a person employed under the *Public Sector Employment and Management Act 2002*, does not admit the charge, a prescribed officer, or senior officer in the case of a TAFE employee, will be appointed to deal with the matter. The employee, or their legal representative will have the opportunity to submit whether the matter should be dealt with by written submission or by oral enquiry.

In matters where the employee is employed under the *Public Sector Employment and Management Act 2002* the Director-General or delegate will conduct a disciplinary inquiry in accordance with the Act.

9.5.2 *What happens where the charge is not proven?*

The case is finalised and all parties are advised accordingly.

9.5.3 *What happens when the charge is proven, or the employee admits the charge?*

If the charges are admitted or found proven, an opportunity is provided to the employee to make a submission as to the appropriate penalty.

Employment history including prior disciplinary matters may be taken into account when determining the appropriate penalty.

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\(^8\) The management of public sector performance and conduct is specified at *Part 2.7* of the *Public Sector Employment and Management Act 2002*. 

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In circumstances where an employee’s services are terminated, it may be necessary to recommend the placement of the name of the employee on the confidential list of people who are not to be engaged in any capacity in NSW government schools or TAFE institutes without reference to the Director of Staffing Services of DET. An employee can request at any time a review to determine whether their name should be removed from the list by contacting the Director of Staffing Services.

Where an employee is charged with or found guilty of a serious criminal offence the DET will determine appropriate investigative or disciplinary action after considering the outcome of the criminal charges. The Director-General, Department of Education and Training may impose one of the penalties set out in the legislation listed at section 9.1.

9.5.4 Appeals

An employee can appeal a penalty. Advice on the process for disciplinary appeals can be sought from a relevant trade union or an external legal practitioner.

10. Support

10.1 Role of the support person

The support person must be over 18 years. The support person can be a representative of a union.

The role of a support person is to provide support and assistance to the child, young person or employee at an interview or meeting.

The person conducting the meeting or interview must ensure that the support person is advised that their role is one of support, and that strict confidentiality must be maintained.

The role of a support person is a voluntary one and an employee requested to undertake this role has a right to decline. Also they must not accept the role if they are aware of any conflict of interest concerning the allegations, or if they have information relevant to the investigation.

The support person does not have the role of an advocate.

The form of support and assistance may vary according to the circumstances of the interview. This support and assistance could include any or all of the following:

- the taking of notes;
- provision of advice on rights/entitlements;
- suggesting a temporary pause of the interview to assist the person; and
- seeking further advice.
Where the support person attends with a child, young person or employee at an investigation interview, what takes place at the interview becomes part of the investigation and must remain confidential, unless otherwise required by law. Employees and others who attend interviews as a support person may, at their discretion, make a written record of the interview. The support person should be aware that they, and/or their notes, may subsequently be required in court or disciplinary proceedings.

10.2 How is the employee who is the subject of the allegation supported?

Employees who are the subject of an allegation are able to obtain support and advice from principals or executive officers at their worksite, staff support officers and TAFE workers’ compensation and/or rehabilitation co-ordinators.

Employees are entitled to support through the Employee Assistance Program (EAP). Employees can access support from EPAC counsellors. Employees who seek support from EPAC counsellors should note that there are limits to confidentiality and this will be explained to them when they seek support. EAP counsellors could be subpoenaed to a court proceeding.

Casual staff should check their entitlement to EAP with the appropriate staff support officer and, if not entitled, should apply through EPAC for access to the EAP.

Support is also available from relevant trade union representatives (see Appendix 6 for contact details).

An employee who is the subject of an allegation can take a support person to an interview or meeting.

Additional support material to assist employees in understanding the help that is available to them from DET and other agencies can be obtained from EPAC counsellors.

10.3 What support is available for alleged victims and witnesses?

Children or young people who are victims or witnesses in a matter that relates to an employee need sensitive, ongoing support at the DET workplace from the time that the matter is raised. Every effort must be made to ensure that all children or young people in this situation are treated fairly and with respect.

Workplace managers must ensure that children and young people are informed of:

- their right to be treated fairly and without discrimination or intimidation;
- their right to choose not to be interviewed or give a statement;
- their entitlement to support;
- the support services available to them, both from the DET and other agencies.
This support may involve an EPAC counsellor, a counsellor associated with the DET workplace or an alternative DET employee with whom the child or young person feels comfortable and who is available and willing to provide on-going support until the matter is finalised. Children and young people can also request assistance from DoCS (telephone 132 111). Support for children and young people will be arranged in close consultation with them and wherever possible, their parent/s or caregivers.

When interviews are to be conducted with children or young people at school or TAFE college, EPAC may request the workplace manager to make arrangements for interviews on its behalf and in these cases will give advice about the information to be provided to the child or young person.

In summary, workplace managers need to:

- advise the child or young person that they may choose not to be interviewed at school, TAFE college or another DET site;
- advise the child or young person that they can have a support person in the interview;
- where the interview is to go ahead at school or TAFE college, plan a satisfactory location and arrangements in consultation with EPAC. All attempts must be made to choose a venue for interviews that is neutral to the child or young person.

Children or young people may not be comfortable to have members of staff present during interviews, particularly where the staff occupy positions that children and young people would identify as being authority figures. As far as possible, workplace managers should ensure that children and young people feel comfortable with their support person.

If children or young people attend a DET disciplinary inquiry, support may be provided by a DET employee and may include:

- meeting with the children or young people and their parents or caregivers;
- attending formal meetings that the children or young people, parents or caregivers are required to attend;
- attending the inquiry with the children or young people, parents or caregivers; and
- liaising with the children or young person’s school or institute to ensure pre-inquiry or post-inquiry support.

If a child or young person is required to appear before a court in criminal proceedings it is the responsibility of the Office of the Director of Public Prosecutions to ensure that the child or young person is appropriately prepared to appear as a witness. In this circumstance they can be referred to the Witness Assistance Service of the Office of the Director of Public Prosecutions. The service includes preparing the child or young person and other witnesses to testify, providing court support and debriefing, assessment and referral to other services and facilitating liaison between victims, witnesses and the prosecution lawyers.
Employees who assist at the notification stage may also require support from workplace managers, unions and departmental sources including EPAC counsellors.

10.4 Victims of Crime Bureau

The Victims of Crime Bureau is a government initiative that provides a critical link between victims of crime and service providers throughout NSW.

The Victims of Crime Bureau provides or coordinates a wide range of services for victims of crime including:

- providing, in conjunction with the Sydney City Mission, a state-wide 24 hour Victims Support Line which offers telephone counselling, support, information and referral service to victims of crime; and
- providing information to victims of crime about support services and counselling and compensation application procedures.

Contact details for the Victims of Crime Bureau can be found at Appendix 6.

11. Responsibilities

All workplace managers must ensure these procedures are readily accessible to all employees and are incorporated into the initial child protection training provided at induction and annual child protection updates for all employees.

12. Monitoring, evaluation and reporting requirements

The Ombudsman regularly audits DET’s compliance with the Ombudsman Act 1974. They also monitor compliance with the Commission for Children and Young People Act 1998.

Monthly reports are also generated indicating:

- number of matters subject to investigation
- number of matters completed to date
- number of employees placed on alternative duties.

The EPAC Case Management System allows monitoring of:

- timeliness of investigations
- timeliness of local management matters.
13. Associated documents and forms

13.1 Legislation relevant to child protection:
- The Ombudsman Act 1974
- Commission for Children and Young People Act 1998
- Child Protection Legislation Amendment Act 2003
- Child Protection (Offenders Registration) Act 2000
- The Protected Disclosures Act 1994
- Independent Commission Against Corruption Act 1988
- Children and Young Persons (Care and Protection) Act 1998
- Privacy and Personal Information Protection Act 1998
- Occupational Health and Safety Act 2000
- Occupational Health and Safety Regulation 2001

13.2 Relevant legislation concerning the disciplinary process for DET employees includes:
- Teaching Services Act 1980
- Education Teaching Service Regulation 2001
- Education (School Administrative and Support Staff) Act 1987
- Education (School Administrative and Support Staff) Regulation 2003
- TAFE Commission Act 1990
- TAFE Commission Disciplinary Determination 1996
- Public Sector Employment and Management Act 2002
- Public Sector Employment and Management (General) Regulation 1996

13.3 Related DET policies
- Code of Conduct
- Professional Responsibilities of Teachers
- Leading and Managing a School
- Protecting and Supporting Children and Young People – Revised Procedures (December 2000)
- Policy for Protecting Children and Young People (7 May 2001)
- Internal Reporting Of Protected Disclosures (23 April 2001)
- Responding to Suggestions, Complaints and Allegations (23 April 2001)
- Procedures for the Local Management of Less Serious Allegations in the Area of Child Protection Against DET Employees 2003
- Revised Procedures for Reporting Concerns about Suspected Risk of Harm to Children and Young People - Memorandum 00/496 (S.385) to all DET staff
- Introduction of Changed Procedures for Reporting Risk of Harm to Children and Young People from 18 December 2000 – Memorandum 01/00049 to Principals
- Introduction of Changed Procedures for Reporting Risk of Harm to Children and Young People from 18 December 2000 – Memorandum 01/00048 to Institute Directors, Director Community and Migrant Education, Executive Officers and TAFE counsellors and AMES educational counsellors
13.4 Other NSW government agencies related policies:

- *NSW Government Personnel Handbook*
- *The Working with Children Check Guidelines*
- *Commentary and Guidelines on Conduct and Performance provisions*, Part 2.7 of the *Public Sector Employment and Management Act 2002*

14. **For further information**

Any enquiries concerning these procedures are to be directed to EPAC on telephone number (02) 9266 8070 or facsimile number (02) 9266 8077.
15. Appendices

Appendix 1 – Notification Checklist

(For notification to EPAC about an allegation of a child protection nature against an employee and action to be taken by the workplace manager).

☐ Workplace manager to record details about an allegation of a child protection nature against an employee, upon receipt of the advice. Such information is to be treated with the utmost confidentiality.

☐ Report to DoCS using Form A if the child or young person is at risk of harm.

☐ Notify EPAC on telephone (02) 9266 8070 providing all available information including contact details for students, parents, employees and any witnesses.

☐ Advise relevant parties of the notification to EPAC and remind them of the need for confidentiality, in particular, parents or carers of children directly affected by the allegation(s).

NOTE: The employee is not to be informed of the allegation by the workplace manager.

☐ Obtain advice from EPAC on what action will occur.

ACTION

☐ The workplace manager resolves the matter by using appropriate action such as complaints process or performance management procedures.

OR

☐ Follow local management action (see checklist within the Procedures for the Local Management of Less Serious Allegations in the Area of Child Protection Against DET Employees).

OR

☐ Co-operate with EPAC regarding investigation process.

AND

☐ Return all documentation to EPAC at the completion of the local management or EPAC investigation process.
Appendix 2 - Flowchart
Notification of Allegations of a Child Protection Nature about an Employee

Workplace manager informed of the allegation.

Is it of child protection nature about an employee?

YES

For all matters notify EPAC - telephone (02) 9266 8070

NO

Workplace manager to resolve.

If it is a risk of harm or criminal matter, report to DoCS and/or NSW Police.

YES

ENQUIRY. No action by EPAC. Referred back to workplace to resolve.

Is it a matter for EPAC?

NO

YES

Delegated to workplace manager for local management. See “Local Management Process” flow chart.

Investigation by EPAC required. See flow chart “EPAC Investigation Process”.

Is it a reportable allegation? EPAC to submit report to the Ombudsman if required.

OR
Appendix 3 - Flowchart

Local Management Process

- Returned to EPAC for consideration for appropriate action - refer to flow chart “EPAC Investigation Process”.

- EPAC allocates matter for local management.
  - Approved by Regional Director or delegate for local management?
    - NO
      - Approval of workplace manager for local management?
        - NO
          - Workplace manager seeks agreement of employee for local management.
        - YES
          - Complainant/parent/student advised of process.
    - YES
      - Information collected.
      - Employee provided an opportunity to respond to allegation(s).
      - Workplace manager makes and documents decision and returns all documents to EPAC.

- EPAC determines final outcome.
  - Advice provided to workplace manager who advises employee and other parties.

NOTE:
If the allegation is reportable, documents are sent to the Ombudsman and if necessary, the name of the employee reported to the CCYP.
Appendix 4 - Flowchart
EPAC Investigation and Reporting Process

Allocation of matter for EPAC investigation.

Develop investigation plan
- Analyse information
- Organise interviews
- Notify relevant parties

Conduct fact finding investigation.

Put allegations to employee.

Analyse all information. Recommend outcome.

If there is no basis to put allegations to the employee, finalise matter with no further action.

Further action required?

Director, EPAC to decide whether to proceed to disciplinary action?

Disciplinary action under relevant legislation or employment arrangement.

YES

NO

Report to the Ombudsman.

The Ombudsman assesses EPAC action.

Is it reportable to the Ombudsman?

YES

NO

Is it reportable to CCYP?

YES

EPAC to report name and advise employee.

NO

Matter finalised.

Is it reportable to CCYP?
Appendix 5 – A Guide for Teaching and Protecting Children and Young People

The following information will help teachers identify appropriate professional practice in their conduct with students. The material below is not exhaustive but is provided as a guide to common situations.

**Good or acceptable practice**

1. *School and classroom culture*

- Develop school and classroom routines or structures that have clear boundaries of acceptable and professional student/teacher interaction;
- Implement Department and school guidelines that help prepare and plan such educational activities as excursions. Professional behaviour and supervision levels need to respond to the age of students and the educational context;
- Know the school’s student welfare and discipline policies and use behaviour reinforcement strategies that follow these policies;
- Develop a non-confrontational behaviour management style;
- Respond to provocative behaviour by students, parents or members of the school community in a non-confrontational, calm manner to help defuse difficult situations. Seek support from colleagues or supervisors where needed. In extreme situations the principal can call police to protect staff and students. Strategies including the use of *Inclosed Lands Protection Act* 1901 and obtaining Apprehended Violence Protection Orders can also be used.

2. *Care and discipline of children*

- Report and document incidents involving physical restraint of students or violence involving students. This provides important information if an allegation is made about the related conduct of a staff member;
- Actively supervise students when on playground duty;
- Clearly instruct and carefully supervise students operating equipment;
- Provide correctional feedback on student work in a constructive way;
- When confiscating personal items, such as mobile phones or hats, ask students to hand them to you. Only take items directly from students in circumstances where concern exists for the safety of the student or others and your own safety is not jeopardised by this action;
- When playing physical sport with children, consider the physiques of students, along with the relative ages and stages of development of all participants.

3. *Teacher-student relationships*

- Participate in social contact with a student only after obtaining informed consent of the student and the parent (and principal where appropriate); such contact includes meetings, sporting events, phone calls or electronic communications, e.g., emails and text messages;
- When acting as a student’s mentor, develop a relationship with clear professional boundaries that cannot be misinterpreted as a personal, rather than a professional, interest in the student;
- If a student develops a ‘crush’ on you, inform a supervisor, so independent, sensitive advice and support are available;
- Praise and recognise all students when appropriate, so they all feel fairly treated;
- Physically contact students in a way that makes them comfortable, e.g., shaking hands, a congratulatory pat on the back, or with very young students by gently guiding them or holding their hand for reassurance or encouragement;
• When students, particularly very young children, are hurt and seek comfort, it is appropriate to provide reassurance by putting an arm around them;
• Be alert to cues from students about how comfortable they are in your proximity and respect individual needs for personal space. If teachers physically contact students in class demonstrations, such as PE or drama lessons, explain the activity involved and what you will do;
• Be aware of cultural norms that may influence interpretation of your behaviour towards students.

4. Interaction with students with identified needs

• Be especially sensitive interacting with students who may have poor ‘boundaries’ for appropriate behaviour after being traumatised by physical, emotional or sexual abuse, because they may misinterpret your actions;
• Schools for Specific Purposes and those in Juvenile Justice Centres have particular requirements for child protection, due to the needs of students. Therefore, careful training, planning, programming, documenting and reporting will help protect students from neglect or abuse, and staff from complaints or allegations. Awareness by all staff, including non-teaching staff, and where appropriate parents or caregivers, of appropriate strategies and their purpose with individual students is desirable and this will usually be gained in the development of individual management programs.

Poor or unacceptable practice

1. School and classroom culture

• Excluding students from a lesson or activity, then leaving them unsupervised in corridors, classrooms or storerooms;
• Leaving a class unattended or dismissing students early from a lesson so that they are unsupervised;
• Not reporting concerns about risk of harm to a child or misconduct of a staff member towards a student;
• Attempting to physically prevent a student from entering or leaving a classroom, unless there is a concern for the safety of the student, other students or staff;
• Closing doors or windows to rooms without checking students are safely out of the way;
• Pursuing a student who is attempting to run away unless that student is in immediate danger or is likely to harm another person;
• Shouting angrily at students to intimidate them;
• Commenting to or about students on the basis of disability, gender, sexuality, cultural or racial stereotypes.

2. Care and discipline of children

• Public disciplining or humiliating a student as punishment or as an example to other students;
• Throwing an object, such as a duster, chalk, ball or book, at a student to get their attention;
• Threatening students with physical punishment;
• Corporal punishment, such as hitting, smacking or caning, of students is prohibited;
• Providing inadequate supervision for students while on duty during excursions;
• Not appropriately responding to or referring clear requests from students for medical or first aid attention;
• Arranging activities or meetings alone with a student that are not within school guidelines or that are without the informed approval of a supervisor and, if appropriate, the parent or caregiver;
• Targeting students unfairly for criticism or prejudging complaints from other staff or students about their behaviour based on past conduct.

3. **Teacher-student relationships**

• Teasing students or unfairly withholding praise from them;
• Putting your arms around students while instructing them on the computer;
• Developing a practice of cheek kissing as a greeting or for congratulating students;
• Repeatedly and unnecessarily touching students on the back, shoulders, arms or legs;
• Allowing a student to sit on your lap;
• Undressing in front of a student, e.g., in PE or Activity Centre change rooms;
• Giving gifts or money to students as a reward or incentive for good behaviour or as a gesture of friendship;
• Conversing about sexual matters unrelated to a syllabus;
• Telling jokes of a sexual nature;
• Making sexually suggestive remarks or actions, obscene gestures or showing inappropriate videos;
• Deliberately exposing a student to the sexual behaviour of others, including access to pornography.

*Practices in the following three bullet points are prohibited (and may also be criminal acts):*

• Teachers must not have sexual relationships with students. It is irrelevant whether the relationship is homosexual or heterosexual, consensual or non-consensual or condoned by parents or caregivers (the ages of the students or staff members involved are also irrelevant);
• Teachers must not give students alcohol or other drugs (except prescribed medication in accordance with department and school policy), or encourage or condone the use of alcohol or other drugs by students;
• Possessing, computer downloading or distribution of child pornography.

4. **Interaction with students with identified needs**

• Using unnecessary force to make physical contact with a student as a prompt for a verbal instruction or to force compliance;
• Failing to implement strategies negotiated and outlined in individual student management programs;
• Using physical contact to contain confrontational behaviour of students of all ages (particularly those with identified behaviour or conduct disorders) unless there is a concern for the safety of the student, other students or staff.
### Appendix 6 – Further Information and Support

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<th>Employee Performance and Conduct Unit</th>
<th>Phone</th>
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<tr>
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<td>(02) 9266 8070</td>
<td>(02) 9266 8077</td>
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| School Education Area staff including;                  |                  |                  |
| School Education Directors                             |                  |                  |
| Staff Support Officers                                 |                  |                  |
| Student Welfare Consultants                            |                  |                  |
| Student Services Officers                              |                  |                  |

| Employee Assistance Programs                           | Please contact the provider servicing your school education area. |                  |

| **Department of Community Services**                    |                  |                  |
| Helpline                                               | 132 111          | (02) 9633 7666   |
| Central Office Sydney                                  | (02) 9716 2222   | (02) 9716 2999   |

| **Unions**                                             |                  |                  |
| Public Service Association                             | (02) 9290 1555 or freecall 1800 467 932 | (02) 9262 1623   |
| Teachers Federation                                     | (02) 9217 2100 or 1300 654 369          | (02) 9217 2470   |
| Australian Workers Union                                | (02) 9897 3644   | (02) 9897 1481   |
| Liquor, Hospitality and Miscellaneous Workers Union     | (02) 8204 7204 or freecall 1800 805 027 | (02) 9281 4850   |
| Construction, Forestry, Mining and Energy Union (CFMEU)| (02) 9267 3393   | (02) 9267 3198   |
| Health and Research Employees Association               | (02) 9264 4999 or freecall 1800 631 505 | (02) 9223 3100   |

| **Other Support Available**                            |                  |                  |
| Witness Assistance Service (Department of Public Prosecution) | (02) 9285 8949 or 1800 814 534 (for calls from outside metropolitan area) | (02) 9285 2528   |

| Victims of Crime Bureau                                  | (02) 9374 3000 or freecall 1800 633 063 | (02) 9374 3020   |