



Name of Policy	Child Protection
Policy Number	0003
Applies to	Whole College
Contact Person	College Principal



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Child Protection Policy

Our Legislative Requirements

Masada College is committed to compliance with the NSW Child Protection Legislation, general principles of duty of care, as well as other legislative obligations that impact upon the provision of safe and supportive school environments.

In this policy, Masada College is committed to the legislative requirements contained in the following Acts that relate to child protection in New South Wales:

- Part 3A Ombudsman Act 1974
- Part 7 Commission for Children and Young People Act 1998
- Child Protection (Prohibited Employment) Act 1998
- Children and Young Persons (Care and Protection) Act 1998
- The Child Protection Legislation Amendment Act 2003

The Head of Agency (HOA) at Masada College is the Principal and as such he/she has been delegated responsibility for reporting to the required external agencies (FaCs, Ombudsman, Commission for Children and Young People (CCYP)).

Any reporting to outside agencies must be the domain of the HOA or nominee. Any allegation **MUST** be reported to the HOA or nominee who is the only person who can initiate an investigation into the allegation.

Employee Screening and Duty of Disclosure

In order to prevent unsuitable people from working with children at Masada it's mandatory that employees provide their Working with Children Check.

A Prohibited Person is one convicted once of the following offences against a child in NSW:

- murder
- sexual offence
- indecency offence punishable by imprisonment of 12 months or more
- kidnapping
- offences connected with child prostitution
- possession or publication of child pornography

All staff have a duty of disclosure. They are required to report to the Principal any allegation of reportable conduct.



Any staff member who is the subject of an AVO or Reportable Conviction is required to inform the Principal immediately they are in receipt of such an Order or Conviction.

The amendments in 2003 to the Child Protection Act allows that in certain circumstances, employee behaviour will not be considered reportable conduct. Such behaviours include:

- Conduct that is reasonable for the purpose of discipline, management and care of students
- Use of physical force that is trivial or negligible
- Class or kind exemptions (under certain circumstances)

Risk Assessment

Upon the receipt of an allegation of child abuse against an employee, the Head of Agency is responsible for carrying out an initial risk assessment prior to the investigation of the allegation. The purpose of the risk assessment is to identify and minimize the risk:

- to a child or children who are alleged to have been victims of the abuse;
- to the employee against whom the allegation has been made;
- to other children with whom the employee may have contact;
- to the proper investigation of the allegation.

This may result, for example, in the employee being temporarily relieved of some duties, being required to avoid certain pupils or, in some special cases, being suspended from duty.

Any decision to take action as a result of a risk assessment is in no way an indication of the guilt of the employee concerned.

The factors which should be considered during the risk assessment include:

- the nature of the allegation;
- vulnerability of children;
- nature of the positions occupied by the employee;
- the level of supervision of the employee;
- disciplinary history of the employee;
- safety of the employee;
- any comments made by the employee.

Risk should be continually monitored throughout the investigation.



The Investigation

In conducting an investigation into allegations of child abuse, the Head of Agency should be guided by the following principles.

1. Conflict of Interest and Appointment of Investigator

All investigations must be conducted in an impartial, independent and objective manner and be open and transparent. The investigator must not show bias or favour to the alleged victim(s), the person who is the subject of the allegation, nor in outcomes which might affect the reputations of the particular agency.

In some instances the Head of Agency may call on an external expert to undertake the investigation. This may be the case when the agency determines that it does not have the expertise to satisfactorily conduct the investigation or in cases where a conflict of interest or bias may arise.

The mere perception of a conflict of interest by an accused person is not sufficient in itself to require the appointment of an external investigator. However, if there is a clear history of conflict between the proposed investigator and the employee it would be advisable for another investigator to be appointed.

2. Confidentiality

Heads of Agency and persons conducting investigations should maintain a high level of confidentiality throughout the investigation phase. Action for defamation could result in situations in which agencies have published allegations of child abuse against an employee. The person making the allegation also has a right to protection, and if appropriate, confidentiality. In a limited number of circumstances it may be inappropriate to advise the accused person of the identity of the person making the allegation.

See Appendix 2 – Flowchart – Steps in the Investigative Process

Steps in Investigative Process

A proper investigation usually requires that an employee against whom an allegation has been made, be told promptly the substance of the allegation and be given the right to reply to the allegation.

If FaCS or police are investigating the allegation, advice should be received from them about when to inform the employee about details of the allegation. Otherwise, the decision of when to inform the employee will depend on the protection of notifiers and witnesses, the quality of evidence to be obtained and the possibility of prejudicing the conduct of the investigation.



Where possible employees should be given advance notice of an interview with the Head of Agency or an appointed investigator, details of the allegation (sufficient to allow the employee to respond) and be advised that they may have a witness at the interview.

While it is desirable for an employee to be given reasonable notice before being required to respond to an allegation, what constitutes reasonable notice will depend on the circumstances of the situation.

Employees may wish to have someone support them during the interview process. The support person may be a friend on staff or the chapter representative. However, such a person is there for support only and as witness to the proceedings, and not as an advocate or to take an active role in the proceedings.

A record should be kept of the meeting; this could be made by a tape recording, a full written record or short minutes. The form of record may be dependent on the seriousness of the allegation.

Listed below are fundamental steps in the investigative process. These may need to be varied on occasions to meet particular circumstances. The employer should normally:

- a) clarify the allegation and determine that it is an allegation of child abuse;
- b) make appropriate notifications to FaCS, police, Ombudsman;
- c) carry out a risk assessment
- d) collect all available relevant information (ensure full documentation);
- e) interview all relevant witnesses (ensure all interviews are adequately recorded);
- f) make the employee fully aware of the allegations;
- g) possibly give the employee access to relevant documents on which the employer is relying, unless such documentation needs to be kept confidential;
- h) interview the person who is the subject of the allegations (ensure procedural fairness);
- i) consider all the evidence and make a preliminary finding as to whether the allegation is sustained or not sustained.

See Appendix 3 – Flowchart – Determining if an allegation is a reportable allegation

Findings



At the conclusion of the investigation, the investigator will make a preliminary finding on the balance of probabilities that:

1. the allegation was false; or
2. the allegation was vexatious, that is, was made without substance and with the intent of being malicious or to cause distress to the person against whom the allegation was made; or
3. the allegation was misconceived, that is, whilst the allegation was made in good faith it was either without substance or a misunderstanding on behalf of the person making the allegation occurred or the incident would not reasonably be considered as child abuse (irrespective of the definition), sexual misconduct or an act of violence; or
4. the allegation was not sustained; or
5. the allegation was not one of child abuse, but might constitute a breach of professional behaviour or judgement which requires further professional disciplinary action; or
6. the allegation was sustained and the matter required disciplinary action.

A finding of 'not sustained' means that the investigator considers that there is insufficient evidence to determine that the alleged event occurred, on the balance of probabilities.

The employee should be told of the preliminary finding and given an opportunity to respond including, if they wish, in writing.

Disciplinary Proceedings

For the purpose of this recommended protocol disciplinary proceedings are defined as the action taken as a consequence of the findings arising out of the investigation. When conducting disciplinary proceedings the employer should have regard to procedural fairness. This will usually involve:

- giving the employee details of the finding;
- informing the employee of the possible action the employer may take; and
- giving the employee a right to respond including, if they wish, in writing.

When the investigation has been completed

The employee is entitled to ask the Ombudsman to review the investigation and findings if the employee believes the investigation was unfair, biased, incomplete or suffered some other deficiency giving rise to an incorrect finding.

The employee must be advised if the employer has notified completed disciplinary proceedings to the Commission for Children and Young People.



If the completed disciplinary proceedings are notified to the Commission for Children and Young People, the employee is entitled to inspect the employer file in accordance with Freedom of Information Principles, subject to any exemptions which may apply under that Act.

Notification to the Commission for Children and Young People (CCYP)

The Commission for Children and Young People Act requires all completed investigations into allegations of child abuse to be reported to it. It is an offence under the Act to fail to report unless the allegation is found to be either:

- false (the alleged conduct did not occur);
- vexatious (without substance, malicious intent);
- misconceived (not reasonably be considered to be child abuse).

In the findings listed above only findings 4 and 6 need to be reported to the CCYP.

See Appendix 4 – Flowchart – Process of making a finding



The rights of the Employee against whom allegations have been made

As part of the investigative process and in keeping with procedural fairness the following should occur:

- Strategies should be put in place to protect the person who made the allegation
- The employee should be told of the substance of the allegation with as much detail as possible as quickly as possible
- The employee should respond only when as much information as possible has been gathered. The employee is then in a position to respond to the specifics of the allegation
- The employee has the right to a verbal and/or written reply to the allegation(s)
- Know the outcome of an initial risk assessment undertaken when the complaint is first made
- Know the outcome of a risk assessment undertaken once the investigation is completed
- The employer should include a response statement in reply to any proposed adverse comments to be included in the report from the employer
- It is necessary to provide the employee only with the substance of the allegations, not necessarily all available evidence or full copy of the fact
- The employee does not need to know who made the allegation
- An employee can nominate a representative to attend meetings or receive correspondence but the representative cannot substitute for the employee at interviews
- An employee can have a support person at any interview. This person may be a union representative who would support the employee and ensure fairness as well as being a witness
- An employee on medically supported sick leave may refuse to attend the interview and the interview must be delayed until the employee returns to work. This will have no negative effect on the proceedings and should be clearly explained to the employee and clearly recorded
- The employee has the right to complain to the Ombudsman if they are unhappy with the conduct of the agency investigation



Prevention Strategies

Masada College takes reasonable steps aimed at raising the awareness of students, staff and the community regarding child protection issues. Masada College is committed to a proactive approach to all aspects of creating a 'safe and supportive school environment' and, with respect to the child protection legislation will:

- Provide all staff with a Code of Conduct for the Care and Protection of Children
- Develop procedures and support materials in accordance with the child protection legislation to facilitate the implementation of all child protection responsibilities in the school community
- Provide information and training in best practices to members of the school communities relevant to their respective roles and responsibilities in creating safe and supportive school environments
- Support and monitor relevant curriculum implementation in schools, particularly in PDHPE, Jewish Studies and our Pastoral Care programs
- Provide information and training in the associated areas of confidentiality, privacy, and freedom of information to relevant employees
- Masada's Code of Conduct for the Care and Protection of Children provides guidelines to support staff to avoid putting themselves in situations that may lead to allegations
- New staff's induction packages and all staff's annual documentation packages include Code of Conduct and Child Protection Policy
- Staff are regularly inserviced and/or in staff meeting references are made to Child Protection issues
- Parents are encouraged to report any issues of concern to the Principal



Appendix 1

Key terms

Allegation: An allegation against an employee might involve behaviour that is reportable conduct or behaviour that is exempt from notification to the Ombudsman but is required to be investigated by the agency.

Child: Includes all children and young people up to the age of 18 years.

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

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

Exempt behaviours: Allegations against employees, that are exempt from notification to the Ombudsman, are:

- a) Conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards
- b) The use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- c) Conduct of a class or kind exempted from being reportable conduct by the Ombudsman under s.25CA.

Head of Agency: The Head of Agency is usually the chief executive officer or other principal officer of the agency. The regulations may specify the person who is to be regarded as the head of a particular agency for the purposes of this definition. The agency policy should clearly specify who is considered to be the organisation's 'Head of Agency' for the purposes of the Ombudsman Act.

Internal investigation of an allegation: This involves a process where an agency:

- Gathers all relevant facts
- Makes a decision as to whether an allegation is sustained or not
- Provides information to assist any relevant employment proceedings.



Reportable allegation: An allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct and must include:

- Identification of a person who is a current employee of the agency
- An alleged offence or description of offending behaviour that meets the definition of reportable conduct
- A person who was a child at the time of the alleged offence or behaviour described.

All allegations of reportable conduct must be reported to the Ombudsman.

Reportable conduct:

- 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.



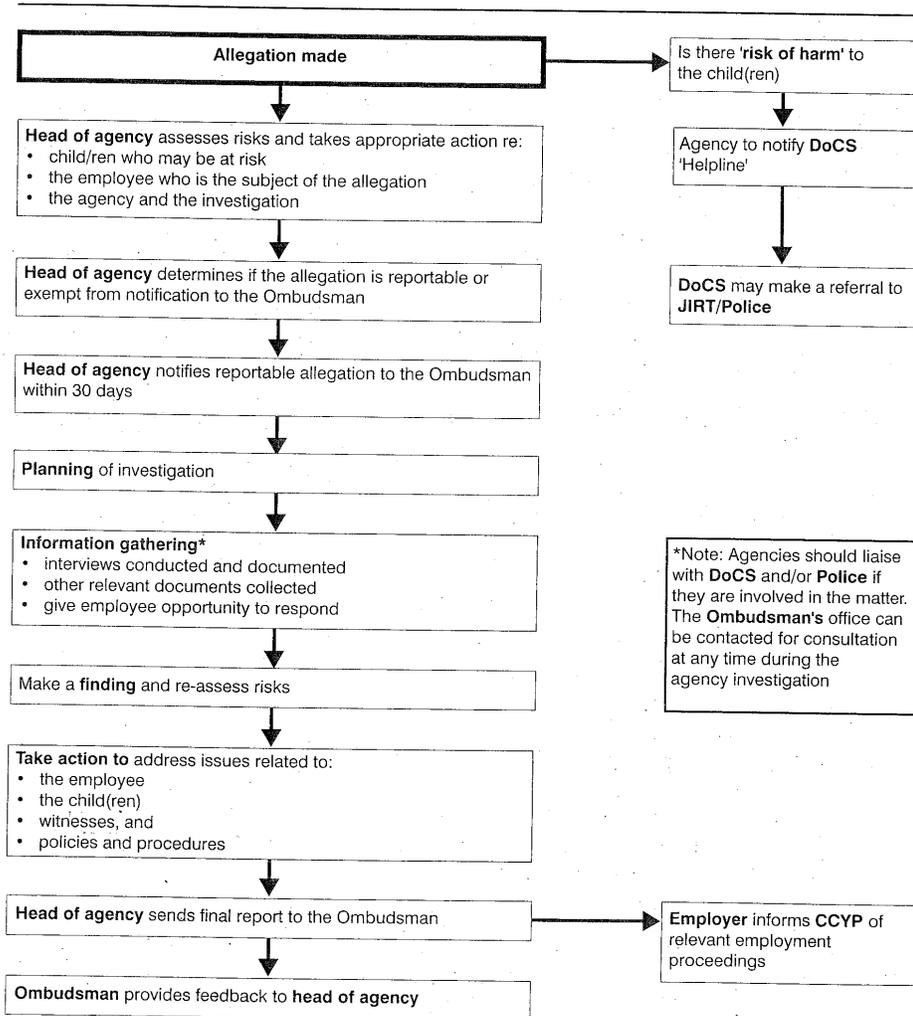
Appendix 2

Part 5: Investigative processes

5.13 Flow chart – Steps in the investigative process

The following flow chart provides an overview of the key elements (highlighted in 5.12) to consider when responding to and investigating a reportable allegation against an employee and notifying the Ombudsman.

Flow chart – Steps in the investigative process



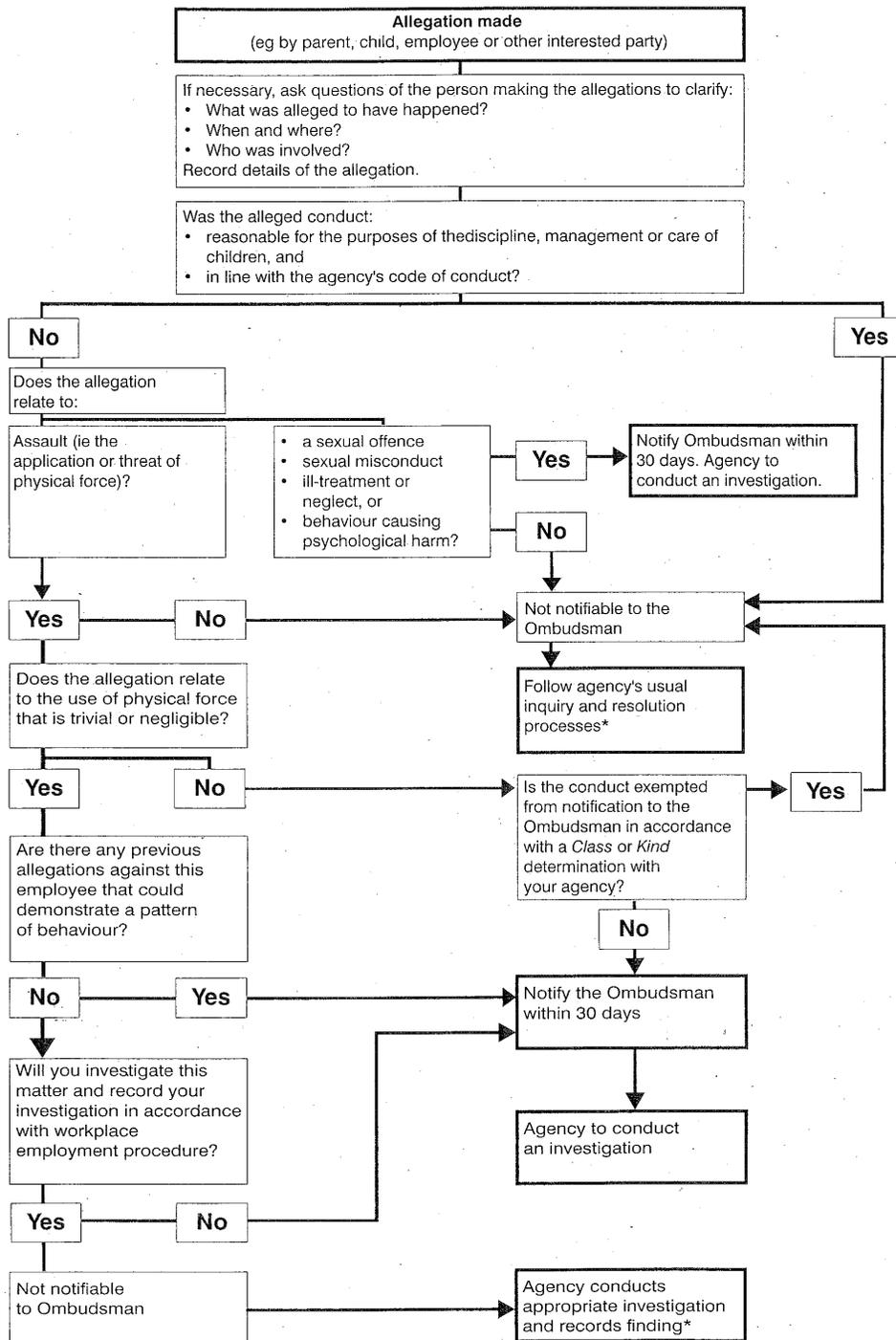
Note: See 3.3 for more information on determining if an allegation is reportable to the Ombudsman, 5.12 for information on steps in the investigative process, and 5.16 for information on procedural fairness and 5.19 for information on making a finding.



Appendix 3

Part 3: Allegations against employees

Flow Chart - Determining if an allegation is a reportable allegation



*If the agency discovers that the alleged conduct is more serious than initially assessed and is reportable conduct, then the Ombudsman must be notified as soon as possible.



Appendix 4

Part 5: Investigative processes

5.19.4.1 Flow chart – Process of making a finding

The flow chart provides an overview of the processes involved in making a finding following an investigation of a reportable allegation against an employee.

Note: See 5.19 for more information on making a finding.

Flow Chart - Process of making a finding

