

SAFEGUARDING STUDENTS

**MINIMISING THE RISK OF SEXUAL MISCONDUCT
BY EDUCATION QUEENSLAND STAFF**

DECEMBER 2000

CJC Mission:

To promote integrity in the Queensland Public Sector
and an effective, fair and accessible criminal justice system.

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FOREWORD

This report presents the results of a CJC review of the policies and procedures operating in this State to safeguard vulnerable young people from sexual misconduct by state school employees.

During the course of the review it was readily apparent that the vast majority of Education Queensland employees behave honourably towards the students in their care and that a sizeable proportion of those who will be the subject of an allegation of sexual misconduct will be exonerated.

Furthermore, Education Queensland is aware of its responsibilities in this regard and has over the past few years implemented various strategies to reduce the risk of students being subjected to such behaviour. Most recently, on 13 November 2000, the Minister for Education, the Honourable Dean Wells MP, announced the establishment of a Taskforce to address the specific issue of 'inappropriate relationships between teachers and other school employees and students'.

The Taskforce will also look at improving staff training in the areas of ethical behaviour and appropriate conduct and, in particular, will review the Education Department's Code of Conduct, Child Protection Policy and investigation procedures. The Taskforce will consult with a reference group comprising representatives from the Queensland Teachers' Union and the Queensland Public Sector Union, as well as principals, teachers, parents and District Office personnel. The Taskforce will work closely with the CJC.

This is a very positive response to the issues that are at the centre of this report. The CJC will be offering whatever assistance it can to Education Queensland to ensure that the department's policies and procedures in relation to this matter are the best possible.

Although Education Queensland employees by and large honour the trust placed in them, our review has confirmed that some students have been subjected to inappropriate behaviour by some employees. It is important to acknowledge that when it does occur the consequences can be devastating for the students concerned. This has led us to the strongly held view that if policies and procedures, and the culture of schools, can be further improved to prevent children being the subject of such abuse in the future, then Education Queensland and other relevant agencies need to explore mechanisms for change, as a matter of urgency.

The CJC's recommendations will assist the Taskforce and Education Queensland to ensure that the public education system in Queensland offers maximum protection to its students. We are hopeful that the recommendations will influence the development of focused and effective policies and management practices in the private education system and in other organisations where employees are in close contact with children and young people.

The implementation of some of these recommendations will have financial and human resource implications. We urge the Government to ensure that Education Queensland, the Board of Teacher Registration and other relevant agencies are adequately resourced in this regard.

Brendan Butler SC
Chairperson
Criminal Justice Commission

ACKNOWLEDGMENTS

The CJC acknowledges the considerable assistance provided by officers of Education Queensland, the Board of Teacher Registration, the Queensland Teachers' Union and the Office of the Children's Commissioner in preparing this report.

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Burge Report

Winocur, Dr S. & Burge J. June 1998, *A Report of an Investigation into the Management of Inappropriate Student–Teacher Relationships and Associated Departmental Policy and Procedures*, Education Queensland, Brisbane.

Child

Any child up to and including 17 years of age.

CJC

Criminal Justice Commission

Education Queensland Employee

Most of the matters reviewed for this report relate to the behaviour of teachers employed by Education Queensland. There were also a number of matters relating to the behaviour of other employees of Education Queensland. An attempt has been made in this report to use the terms ‘teacher’ and ‘Education Queensland employee’ in the appropriate contexts — with the latter term encompassing both teachers and other types of employees. Except in relation to the CJC’s recommendations on reporting allegations of inappropriate behaviour, the term ‘employee’ is restricted to an employee who works in an Education Queensland school. It does not extend, for example, to an employee who works in a District Office or in the department’s head office.

‘I’ notice

A notice put on an employee’s file indicating that the person should not be employed by Education Queensland in the future.

Liaison Officer

Education Queensland officer who liaises with the CJC.

Ontario Report

Robins, the Hon. S.L. 2000, *Protecting Our Students: A Review to Identify and Prevent Sexual Misconduct in Ontario Schools*, Ontario Ministry of the Attorney-General, Ontario, Canada.

QCC

Queensland Crime Commission

QPS

Queensland Police Service

Taskforce

Established in November 2000 by the Minister for Education to review Education Queensland’s Code of Conduct, Child Protection Policy and investigation procedures.

Teacher

Teachers employed by Education Queensland.

Student

Student of any age in the state school system.

EXECUTIVE SUMMARY

Context

This report is the result of a review of Education Queensland policies and procedures relating to the reporting and investigation of allegations of sexual misconduct by Education Queensland employees towards students. The review was initiated in response to heightened public concern about this type of misconduct.

What this report does and does not do

The report focuses on strategies for minimising the risk of sexual misconduct by Education Queensland employees. The recommendations made here will provide assistance to bodies that review the adequacy of policies and procedures in any organisation in which employees are in a position of trust and power over vulnerable people.

This report does **not**:

- provide details on investigations into sexual misconduct of *particular* Education Queensland employees, other than by way of illustrating the need for improved policies and procedures to prevent such behaviour in the future
- examine the adequacy of community-wide child-protection strategies as this is the responsibility of the Department of Families, Youth and Community Care, Queensland, the Queensland Crime Commission, the Children's Commissioner, and the Queensland Police Service
- deal with inappropriate sexual behaviour towards students in non-state schools (the CJC's limited jurisdiction precludes an examination of employees of private schools)
- deal with other types of inappropriate behaviour (except in so far as the recommendations may be relevant to other forms of misconduct).

The extent of the problem

The vast majority of Education Queensland employees behave as they should towards students. The number of complaints that the CJC receives alleging sexual misconduct has averaged below 30 a year. There are over 45,000 employees and 468,000 students in the Queensland public education sector. This indicates a low overall risk of a student being exposed to inappropriate sexual behaviour by teachers or other staff, even allowing for the likelihood of this type of misconduct being under-reported.

At the same time, it is important not to understate the seriousness of the problem. Although the *prevalence* of sexual misconduct may be low, when it does occur the *consequences* can be devastating for the students concerned, the school and the local community (and sometimes for the employees as well). In addition, the publicity that incidents of this type generate has the potential to undermine community confidence in the ability of Education Queensland to provide a safe environment for young people. For these reasons, it is essential that all reasonable measures are in place to protect students against the risk of being exposed to this type of behaviour.

Where to from here: strategies for addressing the problem

The CJC acknowledges that Education Queensland takes the issue of sexual misconduct by employees towards students very seriously and has implemented (or is in the process of implementing) a variety of initiatives to address this problem. However, this review has identified several areas where further action is warranted. In particular:

- Education Queensland employees should be given clearer guidance about what constitutes inappropriate sexual behaviour, and the consequences of engaging in such behaviour. This will necessitate revising and strengthening the department's Code of Conduct, and ensuring that it is promoted widely among employees and the general community.

- Measures need to be taken to increase the likelihood that inappropriate behaviour by staff towards students will come to official attention. These steps should include:
 - raising awareness of the issue among staff and students
 - ensuring that support structures are in place in all Queensland schools for students who may wish to, and who do disclose, alleged sexual misconduct
 - clarifying the reporting responsibilities of principals and other employees.
- The internal investigative capacity of Education Queensland needs to be enhanced. Options that should be considered by the department include forming a specialist investigative team, employing appropriately qualified external investigators, or building up the investigative skills of selected employees. In addition, Education Queensland, in consultation with relevant agencies, should prepare and adopt written protocols on the conduct of investigations which reflect ‘best practice’ in this area.
- Screening processes need to be tightened, to further reduce the risk of unsuitable people being employed by Education Queensland. Strategies for achieving this include:
 - reviewing the grounds on which the Board of Teacher Registration can reject an application for registration as a teacher or revoke an existing registration
 - instituting a system of thorough referee checks on all applicants for registration and for employment
 - expanding the range of criminal history checks undertaken by the Board
 - improving the management of information within Education Queensland
 - exploring ways of increasing the level of information sharing between Education Queensland, the Board of Teacher Registration, the Queensland Police Service, the CJC and the Queensland Crime Commission.

List of recommendations

CHAPTER 3 DEFINING INAPPROPRIATE BEHAVIOUR

Recommendation 3.1

That Education Queensland’s Code of Conduct define, with examples, ‘inappropriate sexual conduct towards students’.

3.1.1 That the Code of Conduct specifically prohibit employees from engaging in ‘sexual misconduct’.

3.1.2 That ‘sexual misconduct’ be defined as including:

- conduct towards a student that would constitute a criminal offence of a sexual nature (including offences not involving physical contact with the student but that may affect the student, such as the commission of an offence under the *Classification of Publications Act 1991*) — a list of possible sexual offences should be referenced in the Code of Conduct (see appendix B of this report)
- conduct towards any other person that would constitute a criminal offence of a sexual nature if the fact that the employee has engaged in the conduct might tend to affect the personal integrity or security of students or the integrity and security of the school environment
- conduct in the nature of ‘sexual harassment’ towards students by reference to the term as used in section 119 of the *Anti-Discrimination Act 1991*
- any other sexual conduct directed towards or involving:
 - a student under the age of 18 years irrespective of whether the employee and the student are at the same school
 - a student 18 years of age or older which could reasonably be regarded as providing a student with an academic or other school-related advantage, or the impression that such an advantage may be forthcoming.

3.1.3 That the Code of Conduct also prohibit behaviour that, to the reasonable observer, would suggest sexual misconduct or the possibility of it.

3.1.4 That Education Queensland seek advice on the need for an amendment to the Anti-Discrimination Act before implementing recommendations prohibiting lawful sexual relationships between employees and students 18 years of age or older.

Recommendation 3.2

That the Code of Conduct make clear that a breach of the Code can by itself be grounds for disciplinary proceedings and that prohibited behaviour can result in dismissal or (depending on all the circumstances of a case) some lesser disciplinary outcome.

Recommendation 3.3

That the Code of Conduct refer to Education Queensland's Child Protection Policy (see appendix C) as the appropriate specific policy document relating to allegations of sexual misconduct by employees towards students.

3.3.1 That the Code of Conduct emphasise that a breach of the Child Protection Policy will be regarded, for disciplinary purposes, as a breach of the Code of Conduct.

3.3.2 That, to avoid any possible confusion on the part of employees who are expected to be guided by the Code of Conduct and by the Child Protection Policy, the documents should be rewritten simultaneously and in such a way that their provisions are complementary. The documents should be in plain English with every effort made to avoid ambiguity and vagueness.

Recommendation 3.4

That appropriate examples of each type of prohibited behaviour should be set out in the Child Protection Policy. These examples should be formulated in consultation with employees, representatives of students, the Board of Teacher Registration and the Queensland Teachers' Union.

Recommendation 3.5

That the Code of Conduct include a strong commitment to the training of employees on the Code and associated policies and should be promoted widely by Education Queensland among employees and the general community.

Recommendation 3.6

That the Code of Conduct inform employees of mechanisms for seeking advice on the operation of the Code and associated policies, including the Code's definition of appropriate behaviour, and on difficult or potentially difficult circumstances in which employees may find themselves.

Recommendation 3.7

That the Code of Conduct and associated policies be regularly reviewed and updated. The commitment to review should be stated in the Code.

Recommendation 3.8

That the Child Protection Policy be rewritten so that:

- its focus is clearly on the care and safety of students
- it outlines the accountabilities for various staff members in an organised fashion and is internally consistent
- it clearly and fully states the procedures for handling allegations that a child has been harmed
- it indicates the possible consequences to the employee for breaching a requirement of the Policy
- the department's response to 'harm' caused to a child is not limited to 'significant' harm.

Recommendation 3.9

That Education Queensland adopt a comprehensive documented training program for all new employees and continuing employees in the Code of Conduct and associated policies.

3.9.1 That training be included at induction.

3.9.2 That training be conducted regularly.

3.9.3 That the effectiveness and content of the training be reviewed regularly.

Recommendation 3.10

That the responsible Minister consider requiring all courses leading to qualifications as a teacher in Queensland to include a compulsory component on the legal and ethical issues relating to the teaching profession. That component should be completed, if at all practicable, before the student teacher's first practicum.

CHAPTER 4 REPORTING ALLEGATIONS

Recommendation 4.1

That the Child Protection Policy provide that an employee (including an Education Queensland employee not working in a school) is under a duty to report, as soon as practicable, any suspicion that a fellow employee has behaved in such a way that amounts to 'sexual misconduct' or in a way that would suggest sexual misconduct or the possibility of it. This would include, for example, allegations or information acquired in confidence or second-hand.

4.1.1 That the Child Protection Policy provide that an employee's duty to report is ongoing. Where there are additional grounds to suspect inappropriate behaviour, a further report must be made.

4.1.2 That the Child Protection Policy emphasise that if an employee is under a duty to report an allegation and fails to report or pass on the allegation, the employee be subjected to disciplinary proceedings.

Recommendation 4.2

That the Child Protection Policy provide that employees (including guidance officers) are to report allegations of sexual misconduct to the principal or, if the principal is the subject of the allegation, to the Manager, Education Services, at the District Office.

Recommendation 4.3

That the Child Protection Policy inform employees, including principals, of the option to also report allegations direct to:

- the CJC, if they believe that the matter involves official misconduct
- the Queensland Police Service, if they are of the view that a criminal offence may have been committed
- the Department of Families, Youth and Community Care, Queensland, if they believe the child is at risk.

Recommendation 4.4

That the Child Protection Policy require principals and all other employees who have received an allegation involving inappropriate behaviour by an employee against a student to document the allegation and the action taken in response to the allegation fully and as soon as practicable after the allegation is made.

Recommendation 4.5

That the Child Protection Policy require principals to refer all allegations to the Education Queensland CJC Liaison Officer, whether or not they believe that the matter involves a criminal offence or official misconduct. The Liaison Officer should keep a record of all allegations received against employees, irrespective of the manner in which the allegations were reported.

Recommendation 4.6

That the Child Protection Policy emphasise the protections and support offered to employees who report allegations internally, including protection from liability and retribution.

Recommendation 4.7

That Education Queensland implement appropriate mechanisms to ensure that all students in primary and high schools are aware that they can talk to understanding adults about any employee behaviour that concerns them and that they will be listened to in a non-judgmental way.

Recommendation 4.8

That Education Queensland policy ensure that support structures are in place in all schools in Queensland for students who may wish to, and who do, disclose alleged sexual misconduct.

Recommendation 4.9

That Education Queensland policy implement the Burge Report recommendations that the department:

- incorporate into principal and district officer induction and ongoing training proactive methodologies for managing rumour and the investigation of rumour where possible
- explore and establish an acceptable method of recording the actions taken on rumour and/or the investigation of rumour, and instigate it as part of training when available.

CHAPTER 5 INVESTIGATING ALLEGATIONS**Recommendation 5.1**

That Education Queensland prepare and adopt a comprehensive documented policy, based upon best practice, for the internal investigation of allegations involving sexual misconduct by employees towards students (see also recommendation 5.5).

Recommendation 5.2

That the policy referred to in 5.1 cover:

- how and when internal investigations are to be conducted (see also recommendation 5.5)
- by whom the investigations should be conducted (see recommendation 5.3)
- the interaction of Education Queensland investigators with the Queensland Police Service in its investigation of the same allegations, and with other agencies conducting related investigations
- what records are to be kept of the investigation, where those records are to be kept and who has access to the records
- regular audits and reviews of the investigation policy and of the conduct and outcome of investigations
- who is to conduct the audits and reviews, and how often
- professional support to students and employees referred to in the allegation.

Recommendation 5.3

That Education Queensland consider strategies for enhancing the investigative abilities of the department. This should include consideration of whether investigations into particular types of allegations should be conducted by:

- employees who have been trained in appropriate investigation techniques but who are not dedicated solely to the investigation of allegations (see recommendation 5.4)
- a specialist investigative team within the department
- an appropriately qualified police officer seconded to the department
- appropriately qualified and experienced external investigators or agencies contracted to the department for the purpose of an investigation
- investigators drawn from a pool of investigators including any of the above.

Recommendation 5.4

That Education Queensland, in consultation with relevant agencies, prepare and adopt written protocols relating to investigations. The protocols should cover the respective roles of relevant parties including, for example, Education Queensland, the CJC, the school principal, the District Office, the police and the parents. Matters to be covered

should include:

- factors affecting the timing of the investigation and preliminary interviews
- factors affecting location of interviews
- factors affecting whether parents will be contacted prior to any interviews, or at all
- interviewing techniques that enhance or detract from the accuracy, reliability and completeness of the student's account
- special needs of students with disabilities
- the obligation to contact relevant agencies if the student-complainant transfers to another school
- the exchange of information between relevant agencies such as the police and the department (see also recommendation 8.1)
- the status of any internal investigation, pending an ongoing CJC or police investigation or criminal charges
- a caution against interviewing student-complainants or the suspected employee by school officials and an articulation of the dangers associated with conducting a concurrent investigation with the Queensland Police Service or an investigation related to an investigation by another agency
- when a support person will be permitted to remain with a student-complainant during any interviews
- when a suspected employee should be notified that an allegation has been made against him or her
- at what stage of the investigation the suspected employee should be given an opportunity to respond to the allegations and what information should be provided to that party and/or his or her counsel to enable the employee to respond to the allegations.

CHAPTER 6 RESPONSES TO ALLEGATIONS

Recommendation 6.1

That Education Queensland prepare and adopt a written policy aimed at:

- ensuring the immediate and future safety of students alleged to have been the subject of sexual misconduct by an employee of Education Queensland, and
- the future safety of other students

pending the outcome of any investigation into the allegations against the employee.

6.1.1 That the policy include options to transfer and suspend an employee.

6.1.2 That the transfer of an employee under investigation for sexual misconduct towards students be considered only after taking into account the nature of the allegations and conducting a full assessment of the risk posed to students at the proposed new school.

Recommendation 6.2

That Education Queensland prepare and adopt a written policy aimed at ensuring that all allegations made against an employee are recorded and maintained as a history against which new allegations can be considered.

Recommendation 6.3

That Education Queensland prepare and adopt a written policy aimed at ensuring that whenever an employee moves to a new school, the principal of the new school has access to the full history of allegations made against the employee and of investigation outcomes. The policy should also address access to, and the confidentiality of, such information.

Recommendation 6.4

That section 50(3) of the *Education (Teacher Registration) Act 1988* should be amended to extend the period within which the Board of Teacher Registration can conduct an inquiry into a person who was, but is no longer, registered as a teacher, from one to two years since the registration ended.

CHAPTER 7 SCREENING

Recommendation 7.1

That the Board of Teacher Registration consider additional mechanisms for ensuring the 'good character' of people applying for registration and of people who continue to be registered. Possible mechanisms include:

- requesting criminal-history checks on any teacher who has been the subject of an allegation relating to sexual misconduct towards a student, whether or not the person was registered as a teacher prior to the end of 1997, and irrespective of the date of the alleged incident
- instituting a system of thorough referee checks on all applicants for registration as teachers in Queensland.

Recommendation 7.2

That the responsible Minister consider more specific legislative criteria to guide the Board of Teacher Registration in making its determinations of 'good character'. The preparation of comprehensive guidance and precedent materials should also be considered.

Recommendation 7.3

That Education Queensland prepare and adopt written guidelines for ascertaining the suitability of applicants for all positions involving regular contact with students, including teaching positions. Those guidelines might include, in addition to a satisfactory criminal-history check on the applicant, satisfactory referee checks.

CHAPTER 8 LEGAL ISSUES

Recommendation 8.1

That the CJC, Education Queensland, the Board of Teacher Registration, the Queensland Police Service, the Queensland Teachers' Union, the Queensland Crime Commission and Crown Law jointly consider the legal and ethical factors currently preventing the sharing of information on Education Queensland employees between relevant agencies with the view to making recommendations to the relevant Ministers on the following:

- What type of information (concerning an employee of Education Queensland, or an applicant for employment with Education Queensland, or an applicant for registration as a teacher) in the hands of relevant agencies should be made available to other agencies who share a concern about the safety of students?
- What legislative amendments would be required to enable that information to be shared?
- What restrictions should be imposed on access to such information?
- Who should have access to the information?
- How can the information be used by the various agencies?
- Whether a central database should be established to include relevant information from all agencies and, if so, where should the database be kept and what restrictions should be imposed on access to the database?

Recommendation 8.2

That Education Queensland develop strategies to enhance the mutual understanding between relevant investigative/disciplinary agencies and organisations representing interest groups, of the jurisdiction, policies and procedures of each of the agencies. One strategy, for example, may be to hold regular forums.

Recommendation 8.3

That the *Public Service Act 1996* be amended to provide an extension of power to allow disciplinary findings to be made after resignation in appropriate cases.

Recommendation 8.4

That the jurisdiction of the Misconduct Tribunals be extended to enable them:

- to hear and determine disciplinary charges of 'official misconduct' made against a person, irrespective of whether the person has resigned or retired from a unit of public administration.

- if a charge of official misconduct against a former public servant is found proved under section 25 of the *Misconduct Tribunals Act 1997*, to make a declaration that, if the person had continued to be employed by the unit of public administration, the person should have been:
 - dismissed; or
 - reduced in rank or salary level.

Recommendation 8.5

That any proposal for extending the CJC's jurisdiction to pursue disciplinary charges against former public servants proceed on the basis that the power would be available at the CJC's discretion, and would only be pursued where particular circumstances warranted such action.

INTRODUCTION

The vast majority of teachers have earned the trust bestowed upon them by students and the community. Teaching is, after all, the noblest of professions. Teachers provide our children with the tools to learn and grow. Teachers who abuse also teach our children. But those lessons — of loss of safety and misplaced trust — are painful ones. Ones that they should never have been taught ... The bottom line is this. Abusers belong in a courtroom, not a classroom. The challenge is clear. A course of action is proposed. The aim is compelling — protecting our students.

Ontario Report 2000, pp. 367–369.

This chapter deals with:

- the background and aims of the review
- the rationale for reporting publicly
- the statutory basis for the CJC's involvement
- the extent and consequences of the problem
- the scope and focus of the report
- the methodology and data sources
- the structure of the report.

BACKGROUND OF REVIEW

Concerns about possible sexual misbehaviour by Education Queensland employees towards students first came to public attention in April 1998 following disturbing allegations to Education Queensland, the CJC and the media. Newspaper headlines at the time included:

- THE PE TEACHER AND HIS SCHOOLGIRL LOVERS (*Daily Telegraph*, 2 April 1998)
- TEACHER ACCUSED OF SEX WITH STUDENTS (*Courier-Mail*, 2 April 1998)
- EXTRA-CURRICULAR ACTIVITY: GIRL TELLS OF SEX WITH TEACHER (*DAILY Telegraph*, 3 April 1998)
- EX-IPSWICH TEACHER AT CENTRE OF SEX SCANDAL (*Queensland Times [Ipswich]*, 3 April 1998)
- TWO MORE TEACHER SEX CASES REPORTED (*Courier-Mail*, 4 April 1998)

Education Queensland was clearly required to act. It did so by instigating an immediate investigation of its own and by establishing a telephone 'hotline' service to enable people to express their concerns or provide information confidentially and, if they preferred, anonymously. Sixty-five complaints were made to the hotline, covering a variety of allegations of misbehaviour over a number of years and including some allegations relating to non-state school employees.¹

All these matters have now been investigated, either by the CJC, the Queensland Police Service (QPS) or Education Queensland.² The action taken with each allegation has depended largely on the nature of the alleged misconduct and whether the allegation could be substantiated. Some allegations have led to criminal or disciplinary proceedings against the employees concerned with a number of these employees being convicted of criminal

offences, and others being subjected to disciplinary proceedings such as dismissal. Some of the teachers have been de-registered by the Board of Teacher Registration, which means they are no longer able to work in the state or private school systems in Queensland.

Chapter 2 provides a statistical overview of the outcome of the hotline matters received by the CJC and some similar complaints received since the hotline. However, the principal focus of the report is not on the handling of complaints but on assessing what actions Education Queensland has taken, or should consider taking, to minimise the risk of inappropriate behaviour. This approach is consistent with the strong emphasis that the CJC places on its preventative role.

AIMS OF REPORT

- To examine Education Queensland's response to issues raised by the telephone hotline
- To develop recommendations that will assist Education Queensland and the Board of Teacher Registration to prevent future inappropriate behaviour of a sexual nature by Education Queensland employees towards students

THE RATIONALE FOR A PUBLIC REPORT

The CJC accepts that almost all Education Queensland employees behave honourably towards students.

Given that there are over 45,000 Education Queensland employees and over 468,000 students attending Queensland state schools, the number of sexual misconduct allegations made against employees is very small. However, given the seriousness of this issue — and the public interest in it — the CJC considers it important that Parliament and the people of Queensland are informed about the actions that have been taken to deal with those matters reported to the CJC. The adequacy of existing and proposed legal and organisational controls regarding this matter is also considered. A public report is the best way of performing this educative role and of ensuring that the issues that the CJC has identified receive the proper attention.

The fact that some Education Queensland employees have behaved inappropriately towards students with, at times, devastating consequences for the student is sufficient to justify an examination of policies and procedures currently in place to prevent such behaviour from occurring in the future, and to compare those policies and procedures to relevant best practice standards.

THE STATUTORY BASIS FOR THE CJC'S INVOLVEMENT

The CJC is statutorily authorised to investigate allegations of official misconduct involving holders of appointments in units of public administration. Certain, but not all, behaviour of a sexual nature by an Education Queensland employee towards a student would amount to 'official misconduct' under the *Criminal Justice Act 1989*.

Sections 31 and 32 define official misconduct as:

- (a) conduct that is in the general nature of official misconduct prescribed by section 32;
- (b) a conspiracy or attempt to engage in conduct referred to in paragraph (a).
- (2) Conduct may be official misconduct for the purposes of this Act notwithstanding that—
 - (a) it occurred before the commencement of this Act; or
 - (b) some or all of the effects or ingredients necessary to constitute official misconduct occurred before the commencement of this Act; or
 - (c) a person involved in the conduct is no longer the holder of an appointment in a unit of public administration.
- (3) Conduct engaged in by, or in relation to, a person at a time when the person is not the holder of an appointment in a unit of public administration may be official misconduct, if the person becomes the holder of such an appointment.
- (4) Conduct may be official misconduct for the purposes of this Act regardless of—
 - (a) where the conduct is engaged in;
 - (b) whether the law relevant to the conduct is a law of Queensland or of another jurisdiction.

32 General nature of official misconduct

- (1) Official misconduct is—
 - (a) conduct of a person, whether or not the person holds an appointment in a unit of public administration, that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or of any person holding an appointment in a unit of public administration; or
 - (b) conduct of a person while the person

holds or held an appointment in a unit of public administration—

- (i) that constitutes or involves the discharge of the person's functions or exercise of his or her powers or authority, as the holder of the appointment, in a manner that is not honest or is not impartial; or
 - (ii) that constitutes or involves a breach of the trust placed in the person by reason of his or her holding the appointment in a unit of public administration; or
 - (c) conduct that involves the misuse by any person of information or material that the person has acquired in or in connection with the discharge of his or her functions or exercise of his or her powers or authority as the holder of an appointment in a unit of public administration, whether the misuse is for the benefit of the person or another person;
- and in any such case, constitutes or could constitute—
- (d) in the case of conduct of a person who is the holder of an appointment in the unit of public administration, a criminal offence, or a disciplinary breach that provides reasonable grounds for termination of the person's services in the unit of public administration; or
 - (e) in the case of any other person, a criminal offence.
 - (2) It is irrelevant that proceedings or action in respect of an offence to which the conduct is relevant can no longer be brought or continued or that action for termination of services on account of the conduct can no longer be taken.
 - (3) A conspiracy or an attempt to engage in conduct, such as is referred to in subsection (1) is not excluded by that subsection from being official misconduct if, had the conspiracy or attempt been brought to fruition in further conduct, the further conduct could constitute or involve an offence or grounds referred to in subsection (1).

In addition, section 29(3)(e) of the Act provides:

29 Role and functions ...

- (3) It is the function of the [official misconduct] division, subject to directions or orders of, and guidelines issued by, the commission ...
 - (e) to offer and render advice or assistance, by way of education or liaison, to law enforcement agencies, units of public administration, companies and institutions, auditors and other persons concerning the detection and prevention of official misconduct; and ...

This function is discharged in conjunction with the Research and Prevention Division of the CJC.

SCOPE AND PREVENTION FOCUS OF THE REPORT

Scope

The CJC's jurisdiction is restricted to 'units of public administration', as defined by section 3A(1) of the Criminal Justice Act. This gives the CJC the power to investigate allegations of official misconduct made against teachers and other employees of Education Queensland, but excludes staff employed in private schools. The statistical data referred to in this report, therefore, relate only to alleged inappropriate behaviour by Education Queensland employees. Similarly, most of the CJC's recommendations relate only to Education Queensland policies and procedures. Nevertheless, the findings and recommendations made in this report may be equally applicable to the behaviour of employees in Queensland's various private school systems.

The report is confined to inappropriate behaviour of a sexual nature. However, the discussion of policies and procedures to prevent such behaviour is generally applicable to other forms of inappropriate employee behaviour.

This report deals only with matters that have become the subject of a complaint; it does not set out to assess the 'true' extent of sexual misconduct by Education Queensland employees towards students. We acknowledge, however, that, given the nature of the behaviour and the circumstances in which it occurs, it is likely that some cases do not come to official attention. An inquiry into sexual misconduct by school employees towards students in Ontario schools (Ontario Report 2000, pp. 109–110) has observed, for example:

Studying covert behaviour is never easy because most cases are never discovered by authorities. Attempts to study those cases that are discovered can be met with suspicion by educators who believe that such cases are extremely rare and who fear that their profession will be unfairly denigrated by the unacceptable actions of a few ... Teachers who sexually abuse students, not surprisingly, do not generally come forward to identify themselves or to seek assistance with their behavioural problems. More often than not they take measures to ensure that their victims remain silent or are not believed should they tell ... In addition, even when complaints of abuse are disclosed, it may not be possible to substantiate the complaints.

It is widely recognised that sexual assault of children is significantly under-reported.³

This report concentrates on the policies and procedures adopted by Education Queensland. Other current and recent reviews have commented on the role and effectiveness of other relevant agencies.⁴

Prevention focus

As indicated, the focus of this report is on ensuring that students are adequately safeguarded from sexual misconduct by Education Queensland employees. The CJC considers that this object is most likely to be achieved if:

- Education Queensland clearly defines and prohibits inappropriate behaviour (see chapter 3)
- Education Queensland has documented procedures for:
 - encouraging and facilitating the receipt of reports of inappropriate behaviour from either internal or external sources (see chapter 4)
 - preserving confidentiality and protecting staff who may be the subject of reprisals (see chapter 4)
- allegations are expeditiously and appropriately assessed and investigated by Education Queensland (if not requiring investigation as criminal activity or official misconduct) or by other relevant authorities such as the CJC, the QPS and the Queensland Crime Commission (QCC) (see chapter 5)
- there are procedures in place to gain the full benefit from disclosures and to create an environment that supports whistleblowers including:
 - proper records of disclosures and actions taken in response (see chapter 4)
 - appropriately trained investigators who can act impartially (see chapter 5)
- Education Queensland has mechanisms to:
 - screen out inappropriate applicants for employment (see chapter 7)
 - discipline employees for failure to comply with policy directions relating to inappropriate behaviour towards students (see chapter 6)
 - reinforce the need for compliance and the consequences of noncompliance (see chapters 3, 6 and 7)
- the Board of Teacher Registration has powers to:
 - prevent unsuitable people from being registered as teachers in Queensland in the first place (see chapter 7) and
 - de-register teachers who prove themselves unfit to work with young people (see chapter 6)
- student teachers and new employees are made fully aware of their ethical and legal responsibilities towards students and all employees are required to attend regular, compulsory further education on those responsibilities (see chapter 7).

The report uses this general framework to assess the adequacy of existing controls and to make recommendations for strengthening those controls.

Education Queensland is under a duty to protect students from all foreseeable forms of harm while they are in the care of the department. A breach of that duty by the department and by its employees that results in a student suffering injury or loss could also result in a substantial financial civil liability to the department. It is possible that the adequacy of policies and procedures to prevent such harm will be relevant in establishing negligence on the part of the department. Even in the absence of negligence, it is possible in certain situations that the department will be vicariously liable for the actions of its employees.⁵ Such potential liability should be an added incentive for the department to ensure that its policies and procedures are adequate.

METHODOLOGY AND DATA SOURCES

The information contained in this report comes primarily from the following sources:

- **CJC complaints data**
Research officers examined all CJC files from April 1998 (the date of the hotline) to mid-July 1999 that contained relevant allegations (83) (see chapter 2 for an overview of those complaints). A sample of 73 files was selected for a more detailed analysis (see appendix A).
- **Education Queensland policy documents including its Code of Conduct and Child Protection Policy** (see appendix C)
- **Burge Report** (the 1998 Education Queensland-sponsored report, *An Investigation into the Management of Inappropriate Teacher–Student Relationships and Associated Departmental Policy and Procedures*)
- **consultations with Education Queensland, the Board of Teacher Registration, the Children’s Commission, the Queensland Teachers’ Union, and other relevant organisations**
- **relevant literature** (see reference list).

STRUCTURE OF THE REPORT

Chapter 2 provides an overview of complaints trends and outcomes of matters referred to the CJC.

Chapter 3 considers the importance (to misconduct prevention) of clearly defining what is meant by ‘inappropriate behaviour’.

Chapter 4 discusses the reporting of allegations of inappropriate behaviour.

Chapter 5 discusses the investigation of allegations of inappropriate behaviour.

Chapter 6 discusses the disciplinary processes that determine the consequences of inappropriate behaviour for an employee’s career and for the professional registration of teachers.

Chapter 7 discusses screening as a prevention tool.

Chapter 8 contains a brief description of legal issues that have emerged from the CJC’s review.

Chapter 9 concludes the report by discussing how the recommendations may be implemented and monitored.

Appendix A provides further details on CJC complaints files.

Appendix B sets out relevant criminal offences.

Appendix C sets out Education Queensland’s Code of Conduct and Child Protection Policy.

Endnotes

- 1 See Burge Report 1998, p. 26.
- 2 Thirty-one cases were referred or re-referred to the CJC. (See Burge Report 1998.)
- 3 See, for example, detailed discussion in QCC and QPS *Project Axis Volume 1 Child Sexual Abuse in Queensland: The Nature and Extent*, June 2000.
- 4 For example, QCC and QPS, *Project Axis Volume 2 Child Sexual Abuse in Queensland: Responses to the Problem*, November 2000; Queensland Law Reform Commission, *The Receipt of Evidence by Queensland Courts: The Evidence of Children* (Report 55, part 1, June 2000); *Report of the Taskforce on Women and the Criminal Code*.
- 5 An employer can be liable for the intentional torts committed by employees in the same way that the employer is liable for the negligence of employees. There have been no reported Australian cases where vicarious liability has been established for sexual misconduct of an employee. In the Supreme Court of Canada case of *Bazley v. Curry* [1999] 2 S.C.R. 534, a nonprofit organisation operating residential care facilities for the treatment of emotionally troubled children was held to be vicariously liable for an employee’s sexual abuse of children under his care. The physical contact with the children was considered to be a necessary part of the activities of employees who were expected to act as parent figures in the supervision of the children. The employee’s conduct was a form, though not a proper or authorised form, of doing what he was required to do. In the Ontario Report (p. 221), it was noted:

The degree to which this doctrine [vicarious liability] will be extended to other factual situations or, more particularly, to school boards [the equivalent to Education Queensland] in the types of situations with which this review [the review of sexual misconduct of teachers in Ontario] is concerned, remains to be seen.

See also the Queensland Law Reform Commission’s forthcoming report on vicarious liability.

OVERVIEW OF COMPLAINTS RECEIVED BY THE CJC

This chapter:

- outlines the limitations of data from complaints files
- places complaints against Education Queensland employees in perspective
- outlines recent data on complaints received by the CJC as a result of, and since, the hotline.

Appendix A presents the results of a more detailed analysis of 73 files.

LIMITATIONS OF COMPLAINTS DATA

The complaints data referred to in this chapter and in appendix A must be read in light of the limitations referred to below. Despite these limitations, CJC complaints data represent the best information currently available in Queensland on the issues under review. The main alternative source of data is QPS crime statistics, but these are less complete because some allegations of inappropriate behaviour may not amount to criminal offences. In any case, it is not possible to determine from readily available police data whether the alleged behaviour involved an Education Queensland employee or student.

Unreliability of data due to under-reporting

Complaints data do not provide an accurate indication of the frequency or prevalence of misconduct because not all instances are likely to come to the attention of the relevant authorities, such as Education Queensland, and only some are likely to result in a formal complaint.⁶

Some students do not report disturbing behaviour out of embarrassment or shame, or the belief that the person they disclose the information to will not believe them or not be able to help them, or that the employee they are complaining about or person they report to will blame or punish them.

In addition, some forms of inappropriate behaviour are more likely than others to be reported, which means that the complaints received may not be a true representation of the forms of misconduct occurring in the school. For example, a 'consensual' relationship between an employee and a student may be less likely to be reported than uninvited

inappropriate behaviour by the employee. Likewise, allegations of inappropriate behaviour may be more likely to come to light in some schools and areas than others because of different formal and informal reporting systems.

For these reasons, complaints data cannot be used to develop a profile of employees who pose the greatest threat to students, or to profile students who are most likely to be the victims of sexual misconduct. Nor can the data be relied on to pinpoint where such behaviour is most likely to occur.

Difficulties in establishing the facts

Quite often in complaints made to the CJC, the facts referred to are 'in dispute' between the parties and there may be insufficient information to establish the claims of either side. Many complaints will not be substantiated because of insufficient or conflicting evidence.

Complexity of matters

The complexity of some complaints of sexual misconduct also makes it difficult for the investigating authorities to be able to report fully on the outcomes of their investigations.

Many complaints consist of numerous allegations, often spanning many years and involving more than one student and teacher. In any one complaint the allegations may range from criminal activity such as rape to non-criminal, albeit clearly inappropriate, behaviour, such as sexual harassment. Some allegations will relate to conduct that would clearly be official misconduct; other allegations, perhaps in the same complaint, will relate to behaviour that can only be dealt with as a relatively minor disciplinary matter by Education Queensland.

Elapsed time

The data presented in this chapter and appendix A arise from incidents spanning thirty years (from 1969 to 1999) and may not indicate a typical profile of activity currently occurring in Queensland. There is no restriction on the age of the incident that can be the subject of a complaint to the CJC. Of the complaints referred to in this chapter and appendix A, 16 per cent relate to incidents occurring before 1990.

PUTTING THE COMPLAINTS INTO PERSPECTIVE

From 1 July 1991 to 30 June 2000, the CJC received 21,774 complaints (containing 48,041 allegations) against public sector employees, many of which involved multiple complainants and multiple employees.

Around 5 per cent of these complaints were made against Education Queensland employees, and 22 per cent of these contained allegations related to sexual conduct.⁷ Overall, only 1 per cent of all allegations received by the CJC related to conduct of a sexual nature by an Education Queensland employee. These figures should be read in light of the fact that Education Queensland has over 45,000 employees and has responsibility for over 468,000 students.⁸

The rate of complaints against Education Queensland employees has been slightly below that of public sector agencies in general, although many minor complaints are not recorded in the CJC database.⁹

Between 1991 and 2000, the CJC received 312 allegations related to sexual misconduct by Education Queensland employees.

The yearly breakdown is set out in table 2.1.

Table 2.1 — Complaints to CJC containing allegations of a sexual nature about Education Queensland employees

Year	Complaints	Allegations
1991–92	4	5
1992–93	32	49
1993–94	27	32
1994–95	18	32
1995–96	25	29
1996–97	28	33
1997–98	60	67
1998–99	42	45
1999–00	20	20
TOTAL	256	312

The number of complaints against individual agencies recorded by the CJC can vary from year to year for several reasons. There may be:

- an improvement or deterioration in standards of behaviour within the agency
- changes in the level of public awareness about complaint processes and/or the willingness of people to make complaints
- changed reporting and notification practices on the part of the agency concerned
- ‘one-off’ or infrequent events, such as the Education Queensland telephone hotline, which attracted complaints to the CJC.

The number of complaints rose sharply in 1998, most likely as a result of hotline matters being referred to the CJC. The hotline attracted 65 complaints of sexual misconduct by Education Queensland employees towards students. Thirty-one of those cases were referred to the CJC.

Guidelines for handling hotline complaints

In response to the hotline and in anticipation of receiving a large number of complaints from Education Queensland, on 19 June 1998 the CJC endorsed guidelines that specifically applied to complaints referred to the CJC involving allegations of sexual misconduct by teachers towards students. The guidelines, which were operative in relation to most of the CJC complaints files referred to in this report, were rescinded in August 2000. Under the guidelines:

- Any allegation that could amount to a criminal offence was referred to the QPS for investigation, unless the allegation came within another category referred to below.
- Prior to a matter being referred to the QPS, the CJC made all necessary preliminary inquiries (for example, by interviewing witnesses) to ensure that the allegation had some veracity, and was not based merely on rumour or unsubstantiated hearsay.
- If it appeared that an allegation (which could amount to a criminal offence) involved more than one teacher or more than one student, the matter was to be investigated by the CJC.
- If the allegation could not have amounted to a criminal offence, the matter was referred back to Education Queensland for investigation, with a view to the taking of disciplinary action where a teacher was found to have engaged in inappropriate behaviour concerning a student.

The guidelines were limited to sexual misconduct between teachers and students. They did not apply to other Education Queensland employees.

The guidelines did not have to be strictly adhered to for every complaint — the CJC retained its prerogative to investigate complaints that did not amount to a criminal offence.

OUTCOMES OF COMPLAINTS RECEIVED BY THE CJC FROM THE HOTLINE AND AFTERWARDS

To make practical and relevant recommendations and to provide a simple overview of what happens to complaints of sexual misconduct by Education Queensland employees towards students, we examined a sample of 83 CJC complaints files representing:

- all complaints received by the CJC containing allegations arising from the 1998 Education Queensland telephone hotline in early April 1998, and

- all other complaints of this nature made against Education Queensland employees received by the CJC subsequent to the hotline and up to mid-July 1999.

Each of the 83 complaints files was examined to determine the outcome of the CJC's investigations and the action taken by Education Queensland, the Board of Teacher Registration, the QPS and the courts in relation to the employees.

Nature of allegations made against Education Queensland employees

The allegations contained within the 83 complaints varied greatly. Although some were of an obvious criminal nature, others related to behaviour that, while clearly inappropriate, did not necessarily amount to 'official misconduct'.

The allegations included, for example, sexual intercourse, inappropriate touching, inappropriate remarks, the provision of pornography to students and sexual assault (see appendix A for more details).

Status of CJC complaint file

As of late November 2000, CJC investigations were completed in all of the 83 cases examined (although in two cases the assessment of evidence was continuing).

In around one-quarter of the cases, the CJC determined that complaints of official misconduct could not be substantiated (that is, not satisfied to the required standard of proof). This does not necessarily mean that in every one of those cases the employees did not do what was alleged. A matter may be unsubstantiated because of:

- the difficulties many victims have in revealing and discussing intimate details
- a lack of witnesses (often only the victim and the offender will be present at the time of the incident)
- the unreliability of some witnesses.

Table 2.2 outlines the current status of the 83 complaints files.

Table 2.3 outlines the basis on which 22 cases referred to the CJC were found not to warrant further investigation.

Table 2.4 (next page) gives the outcomes of Education Queensland's investigations into the 20 cases referred by the CJC back to the department.

Table 2.2 — Status of complaint

Complaints of alleged sexual misconduct against Education Queensland employees received by the CJC, April 1998 – July 1999

Status	No. cases
Not substantiated after investigation	24
Ascertained as not warranting further investigation	22
Following preliminary or full investigation by the CJC, referral to Education Queensland for further investigation and/or disciplinary action	20
Investigation undertaken by the QPS	14
Investigation completed, assessment of evidence continuing	2
Criminal prosecution proceeding	1
TOTAL	83

Notes: Refer also to tables 2.3, 2.4 and 2.5.

Table 2.3 — CJC complaints not warranting further investigation

Complaints of alleged sexual misconduct against Education Queensland employees received by the CJC, April 1998 – July 1999

Status	No. cases
Insufficient evidence to proceed	7
File closed due to resignation, death, or withdrawal of complaint	7
Determination of no 'official misconduct'	5
Lack of jurisdiction, subject officer not employed by Education Queensland	3
TOTAL	22

Court outcome for employees charged with criminal offences relevant to the allegations

Fourteen employees from the sample were charged with criminal offences relating to the allegations made in the complaint against them. The charges included: indecent dealing, carnal knowledge, indecent treatment of children under 16, carnal knowledge of girls under 16, carnal knowledge of girl under 12, incest (of foster child), maintaining a sexual relationship with a child, sexual assault, and supplying obscene publications to children (see appendix B for a list of relevant criminal offences).

Four employees have been convicted to date and a further three matters are still to be heard by the courts.

Table 2.5 (next page) outlines the outcome of those matters referred to the QPS by the CJC. Six other employees were also prosecuted. One of those was convicted, two have been committed for trial and in three cases the charges were dismissed.¹⁰

Table 2.4 — CJC complaints referred to and investigated by Education Queensland

Complaints of alleged sexual misconduct against Education Queensland employees received by the CJC, April 1998 – July 1999

Current status	No.
Not able to be proven, not substantiated (still employed)	7
Investigations still ongoing ¹ (one still employed, one suspended)	2
Substantiated, moderate, caution ² (still employed)	2
Substantiated, resigned	1
Substantiated, serious, dismissal	2
Diminished work performance ³ (still employed)	1
Substantiated, minor, letter to employee (still employed) ⁴	1
Substantiated, serious, reprimand (still employed) ⁵	1
Unfounded, no action (still employed)	1
Referred to Human Resources for disciplinary action (still employed) ⁶	1
Employed as casual teacher (no other record)	1
TOTAL	20

Notes: The terms 'substantiated, moderate', 'substantiated, serious', 'substantiated, minor' are Education Queensland categorisations.

1 The allegations included sexual assault and a sexual relationship with a 15-year-old.

2 The allegations included supplying an adult magazine to a 12-year-old, kissing a 9-year-old on the mouth and other inappropriate touching.

3 The allegations included having Year 4 students massage a teacher's neck and shoulders and read inappropriate material in class.

4 The allegation was that a male teacher lifted a 10-year-old female student's shirt to expose the student's chest.

5 The allegation was that an employee was involved in a sexual relationship with a 17-year-old student.

6 The allegation was that an employee was involved in a sexual relationship with a Year 12 student.

Table 2.5 — Outcomes of those matters referred to the QPS

Complaints of alleged sexual misconduct against Education Queensland employees received by the CJC, April 1998 – July 1999

Outcome	No.
Convicted	4
Prosecution not proceeding at this stage	1
Committed for trial	
Listed for trial	4
Complaint withdrawn	1
Charges dismissed (including at committal and due to death of employee)	2
No charges laid	2
TOTAL	14

Employment outcome for the employees

The allegations against many employees who were the subject of complaint to the CJC were not substantiated.

Several employees resigned before or during the investigation. As discussed in chapter 8, except with criminal investigations, resignation effectively brings a CJC investigation to an end because a Misconduct Tribunal cannot determine a matter involving a former public servant. Similarly, Education Queensland cannot discipline former employees, although the department can place an 'I' notice (see chapter 6) on a former employee's file to prevent that person being employed by the department ever again. This does not, however, prevent the person being employed in a private school unless the Board of Teacher Registration has also removed the person from the register of teachers.

Table 2.6 indicates the current employment status of the employees against whom the complaints were made.

Table 2.6 — Education Queensland: current status of employee

Complaints of alleged sexual misconduct against Education Queensland employees received by the CJC, April 1998 – July 1999

	Status	No.
No longer employed	Resigned	9
	Dismissed and 'I' notice placed on file	6
	Resigned after substantiated, serious	5
	Retired	4
	Deceased	1
	SUBTOTAL	25
Still employed	Not substantiated, no disciplinary action	40
	Suspended or on leave	5
	Substantiated, moderate, disciplined	7
	Substantiated, serious, disciplined	2
	Substantiated, minor, disciplined	2
	Re-deployed to non-teaching position	1
	TOTAL	82

Notes:

1 One employee was the subject of two complaints files and in this instance has been counted once only.

2 The terms 'substantiated, moderate', 'substantiated, serious', 'substantiated, minor' are Education Queensland categorisations.

Status of registration as a teacher

The Board of Teacher Registration can only inquire into matters referred to it. Although almost all the employees in the sample were Education Queensland teachers, the Board was not notified of all the matters involving teachers.¹¹

After inquiry, the Board of Teacher Registration altered the registration status of a number of the teachers referred to it. As the register is a public record, de-registration may affect the type of work a person can hope to do in the future, even outside teaching. The information on the register is also available to relevant organisations in other jurisdictions, which will mean, for example, that a person who has been de-registered in Queensland will, at least, find it very difficult to teach in the public school system in another Australian jurisdiction and in some overseas ones.

The Board will, after inquiry, invariably cancel the registration of any teacher convicted of a sexual offence. A teacher is also likely to be de-registered if he or she has been dismissed by Education Queensland for sexual misconduct towards a student and the Board is satisfied, after inquiry, that the teacher is not of 'good conduct'.¹²

Of the 82 employees in the 83 complaints files examined for this report, 65 were teachers at the time of the incident and were registered with the Board of Teacher Registration. The Board has provided the CJC with information on 22 of these teachers. In 10 cases the teacher has been removed from the register.

The teachers who are not referred to in table 2.7 (43) remain on the register with no relevant annotation against their names.

Table 2.7 indicates the current registration status of teachers within the sample.

**Table 2.7 — Board of Teacher Registration:
current status of teacher**

Complaints of alleged sexual misconduct against
Education Queensland employees received by the CJC,
April 1998–July 1999

Action taken by the Board	No.
No evidence/inadequate evidence	5
Registration lapsed for nonpayment of annual fees	5
In process/awaiting advice	4
Board decided on no disciplinary action	2
Deceased	2
Registration cancelled	2
Removed from register at own request	1
Reprimanded/suspended by the Board	1
TOTAL	22

Endnotes

- 6 Fleming (1997) reports only 10% of child abuse in Australia is ever reported, pp. 65–68.
- 7 This includes the categories of sexual assault, sexual harassment, other sexual offences and (since 1999–2000) inappropriate sexual relationship.
- 8 'Careers and Vacancies' at www.education.qld.gov.au/corporate (accessed 26.11.00) and written communication from Education Queensland, 23 November 2000 and 'Count and Full-time Equivalent of Students (Full- and part-time) by School Type, 1995–1999' at www.education.qld.gov.au/schools/statistics (accessed 26.11.00).
- 9 Since late 1993, Education Queensland has provided the CJC with a monthly schedule of complaints of non sexual assaults of a minor nature, in accordance with a CJC–Education Queensland protocol. See chapter 5 of this report.
- 10 Including at committal and due to death.
- 11 See chapter 6 for a discussion on the limitations of the jurisdiction of the Board of Teacher Registration.
- 12 Meeting with the Director, Board of Teacher Registration, 20.11.00.

DEFINING ‘INAPPROPRIATE BEHAVIOUR’

This chapter discusses:

- the need for clear policies relating to inappropriate employee behaviour
- Education Queensland policies relevant to inappropriate behaviour
- deficiencies in Education Queensland policies

and defines what is meant by ‘inappropriate behaviour’.

THE NEED FOR CLEAR POLICIES

The Ontario Report (p. 287) stressed the need for clear standards of behaviour to be expressed in policy documents, as a prevention tool:

Conduct may also [in addition to the law] be guided by policies, procedures, guidelines or protocols.¹³ Though policies and protocols may not be binding in law, they represent important tools for the prevention and early identification of sexual misconduct, and for protecting those already victimized by such misconduct.

Prevention of inappropriate behaviour cannot be achieved simply by proscribing such conduct in written documents, irrespective of how clearly worded and widely distributed these documents may be. Nevertheless, unless there is a clear written enunciation of what is regarded as inappropriate behaviour, and of the consequences to the individual for behaving in such a manner, it is unlikely that other prevention strategies will be effective.

Effective prevention strategies can only be built on a clear understanding of the behaviour or outcomes sought to be prevented. A clear understanding by all employees may, in time, have a positive influence on the culture of an organisation, which might otherwise have put less significance on certain types of behaviour than it should.

It is possible that the Education Queensland hotline and the publicity it generated (including agency action in relation to individual cases) had the effect of raising employee consciousness of what the department — and the general public — regard as unacceptable behaviour. It may even have caused some employees to alter their behaviour. However,

such publicity cannot by itself guarantee that all current, or future, Education Queensland employees will know precisely what behaviour is regarded as unacceptable.

Important reasons for clearly defining what behaviour is inappropriate include to:

- strengthen the deterrent value of departmental policies
- provide a firmer basis for disciplinary action, by making it more difficult for suspect employees to claim they did not know that some alleged behaviour was unacceptable
- educate employees and others (including students and parents) about what is unacceptable.

The most appropriate policy document for setting the behavioural standards of employees is an agency’s code of conduct. In the public sector, the purpose of a code of conduct is to provide standards of behaviour for public officials consistent with their ethical obligations under the *Public Sector Ethics Act 1994* (Qld).

A code of conduct has the potential to heighten staff awareness of ethical issues, positively shape the culture and reputation of an organisation and generate pride among employees. Codes can also play an important role in the disciplinary process, as failure to comply with the code’s provisions may be dealt with under an organisation’s disciplinary provisions relevant to that employee.

It has been observed by the Standing Committee of Community Services and Income Security Administrators, in relation to employees working with children, that a clear code of conduct is:¹⁴

more effective in maintaining ethical and professional behaviour with children than repeating Criminal and Departmental Record Checks.

All public sector agencies in Queensland are required by the provisions of the *Public Sector Ethics Act* to adopt a code of conduct for their employees.

For a code of conduct to be effective, it is essential that it provide clear guidance on the standards of behaviour expected because it is against those

standards that the actions of employees are assessed for disciplinary purposes. Accordingly, codes of conduct should be continually tested for effectiveness and relevance and be updated when necessary.¹⁵ This can be done as part of the agency's regular review and monitoring process.

A code of conduct should be prepared in such a way as to be a learning and reference document for management and staff. Staff can use it to help them in decision making and to resolve conflicts of interest and other ethical dilemmas. Accordingly, a code of conduct should contain instructive examples and be easy for all employees to read and understand.

A code of conduct alone will not guarantee that students will be safe from inappropriate behaviour of employees. However, with education and leadership, an effective code will help promote staff integrity and encourage proper behaviour. The need for such education and leadership is reinforced by section 21 of the Public Sector Ethics Act, which provides that the chief executive officer of a public sector entity must ensure that employees are given appropriate education and training about public sector ethics, including: the application of ethics principles and obligations to the public officials, the contents of the entity's approved code of conduct, and the rights and obligations of these staff in relation to contraventions of the approved code of conduct.

RELEVANT EDUCATION QUEENSLAND POLICIES

Education Queensland does not currently have any policy document that clearly defines what is meant by 'inappropriate employee behaviour'.¹⁶

The Department of Education Manual (DOEM) contains the department's Code of Conduct and Child Protection Policy, which go some way towards prohibiting inappropriate behaviour by Education Queensland employees without, however, clearly defining what behaviour is covered by the word 'inappropriate'.¹⁷

Code of Conduct

The department's Code of Conduct for all employees was approved by the Minister on 9 July 1996 and was first issued in February 1997. It has existed in its current form since July 1997 (see appendix C).

The then Director-General of Education stated that the Code was designed to:¹⁸

clarify the type of conduct that is expected of ... [the employee] in the performance of ... [the employee's] duties. It is aimed at providing practical assistance to you when faced with ethical challenges

In developing the Code, Education Queensland sought contributions from staff, relevant unions and interest groups. The use of consultative processes to develop codes of conduct provides a reasonable assurance that they will reflect the public interest and will cover those situations and issues for which staff need the most guidance.

The stated purpose of Education Queensland's Code of Conduct is to ensure that all employees are aware of their ethical obligations, especially in relation to how they act in their jobs and to their use of public resources.¹⁹ The Code is arranged under headings relating to the five ethics principles declared by the Public Sector Ethics Act as the principles that form the basis of good administration in the Queensland public sector: respect for the law and the system of government, respect for persons, integrity, diligence, and economy and efficiency.²⁰

Child Protection Policy

Education Queensland's Child Protection Policy (*HS-17 Health and Safety: Child Protection*) was first implemented in April 1998, the current version being produced in January 2000 (see appendix C). The Policy replaced three separate policy statements in the DOEM relevant to students who had been harmed or were at risk of harm from within or outside the school environment:

1. *HR-03/1 Allegations of Physical or Sexual Abuse of Students Made Against School Staff: Grievance Management* 1997
2. *HR-03/2 Sexual Harassment: Grievance and Appeal* 1997
3. *HS-05 Health and Safety: Suspected Child Abuse* 1997.

The Child Protection Policy incorporates components of a national strategy developed to prevent paedophilia and other forms of child abuse in schools. Education Queensland was represented on the Ministerial Council on Education and Youth Affairs, which developed the national strategy. The Child Protection Policy was clearly contemplated and under development prior to the announcement of the hotline in April 1998.

DEFICIENCIES IN EDUCATION QUEENSLAND POLICIES

Code of Conduct

While the Code is written in clear language and in a positive and personal style (referring to 'you' and 'we' helps to focus responsibility and promotes a sense that the Code is intended to apply to all employees and the work that they do), it also has some serious deficiencies that could detract from its effectiveness as a guidance document for employee behaviour.

If the Code is to be a useful guide to decision making, it needs specific information on what is and is not appropriate behaviour by Education Queensland employees.

Under the principle of 'integrity', the Code refers to conduct of departmental employees that may be relevant to their behaviour towards students:

4.21 All employees must be aware of interpersonal situations that could influence professional judgments. If you work in a school, your duties place you in a position of trust with students.

4.22 As well, teachers have a responsibility to protect the interests of students; to assess the trust involved in the teacher–student relationship; to accept the constraints and obligations inherent in that responsibility, and to assess student work fairly, objectively and consistently.

...

4.9 You are required to notify your principal/manager if you have been charged with or convicted of an indictable offence.

4.10 If an employee has been charged with an indictable offence, the Director-General of Education will decide whether the charge directly affects the proper performance of the employee's duties. This decision is not to consider the guilt or innocence of the employee but to ensure the effective operation of the department.

However, there is no clarification of 'interpersonal situations that could influence professional judgments'. It is unclear, for example, whether the phrase would cover a teacher taking a student to a social or sporting event, or a teacher giving personal gifts to students.

The Code provides no examples of situations that employees might encounter and no suggestions for dealing with such situations. These should be a feature of the Code or at least be referred to in supporting documentation. Clearly, it is not possible to provide sufficient examples to cover all possibilities, but well-constructed guidance would define acceptable and unacceptable behaviour on all major topics and assist employees to assess the appropriateness of their own behaviour. As the need arises, new topics could be included or existing guidelines amended.

In 1998, the Burge Report (p. 4) recommended that Education Queensland:

Develop a policy or a set of guidelines that deal explicitly with otherwise lawful staff–student relationships that are not covered by the Child Protection Policy (i.e. relationships that are considered to be consensual). (recommendation 3) and

Ensure the guidelines define what is meant by a professional relationship; outline what is considered appropriate and inappropriate; specify responsibilities of teachers, principals,

district directors, and other senior officers; guide the processes to be followed in the case of complaints, rumours and innuendo; and clarify the Department's response to cases of misconduct. (recommendation 4)

Although the department does respond promptly and seriously to all allegations involving sexual misconduct, including rumour and innuendo, neither of these recommendations of the Burge Report has been implemented, at least not in a written or easily identifiable form.

The Child Protection Policy (discussed in more detail below) is not referred to in the Code of Conduct. Although the Code should be a stand-alone document, it should refer to any other policy and directions relevant to employee behaviour. Clearly, the Child Protection Policy is intended as an adjunct to the Code of Conduct.

The Code of Conduct provides no information on the consequences of misconduct or contravention of the Code. Although contravention of a code of conduct, without reasonable excuse, could itself amount to misconduct or be grounds for disciplinary proceedings under section 87(1)(f) of the Public Service Act, this is not clearly enunciated in Education Queensland's Code for the benefit of employees. In order for the Code to send a clear message about inappropriate behaviour, it must specify that certain types of behaviour may be subject to disciplinary sanctions, including dismissal where the circumstances warrant it.

The wording and structure of the department's Code is at times ambiguous and vague. For example, in describing unacceptable behaviour, paragraph 4.22 states:

teachers have a responsibility to protect the interests of students; to respect the trust involved in the teacher–student relationship; to accept the constraints and obligations inherent in that responsibility; and to assess student work fairly, objectively and consistently.

Ambiguity may detract from the impact of a policy on an employee and may result in employees not applying it to daily ethical decisions. Ambiguity may also undermine the authoritative intent of setting behavioural standards. From the point of view of an employer, it is difficult to sustain disciplinary action where a number of interpretations may be made of a code of conduct's requirements. Also, without definitions and explanations of the intent of major terms, accountable officers will find it difficult to be consistent in determining what constitutes inappropriate behaviour by employees towards students.

The Code of Conduct provides little information on what assistance is available to employees in making decisions about their own or another employee's behaviour. The Code simply provides that 'persons

requiring further information are invited to contact the Manager, Employee Relations Branch, Human Resources Directorate'. Assistance may be required at any time, including during weekends and school holidays. The department has advised the CJC that during school holidays district offices and the department's headquarters are staffed. Further, the department intends to amend the Child Protection Policy to refer to the CJC's 24-hour toll free number.²¹ Reference to those facilities should also be made in the Code of Conduct.

Child Protection Policy

Protection from harm

The Child Protection Policy has the protection of students from 'harm' as its primary purpose. It should not, therefore, be treated as a de facto code of conduct. Mechanisms and processes for extending protection to students should be comprehensively documented in the Policy.

The definition of the term 'harm' in the Policy has recently been amended (section 1, paragraph 1.5) in line with section 9 of the *Child Protection Act 1999* (Qld) and reads:

Harm to a child is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing. It is immaterial how the harm is caused. Harm can be caused by:

- (a) physical, psychological or emotional abuse or neglect; or
- (b) sexual abuse or exploitation.

The definition of 'harm' in the original version of the Child Protection Policy did not refer to 'significant nature'. The term 'significant nature' appears to imply some discretion as to what may harm a child. However, sexual misconduct will affect different children in different ways. What might at first appear to be an insignificant incident could, in fact, be a precursor to conduct causing significant harm to the child.

Confusing nature

The Child Protection Policy is a daunting mix of policy and procedural guidance and convoluted and contradictory statements that do not give substance to the Policy's stated focus: the care and safety of students. For example, although it purports to be a 'child protection' policy it clearly applies to students of any age.

The accountabilities for various types of staff are not set out in an organised fashion. For instance, while accountabilities for principals are described as including a duty to ensure that employees know that they are not to engage in a sexual relationship with a student enrolled at a state educational institution, employees are required only to report allegations and assist in the documentation and recording of a complaint.

Under the Child Protection Policy, some employees would have difficulty in understanding what was expected of them in relation to allegations. For example, where an allegation is received about a student who is in need of protection from a situation outside of the school environment, there is a prohibition on informing parents or caregivers about the allegation.²² However, where an allegation is made about an employee behaving inappropriately towards a student, the Code is silent on what, if any, information can be provided to the employee (although the student's parents are informed immediately). Education Queensland has advised the CJC that in these circumstances the employee is provided no information at this early stage apart, perhaps, from an indication that an allegation has been made (for example, as an explanation for the employee being removed from the classroom). There may be valid legal reasons for this inconsistency in procedure, but neither the procedures nor the reasons for the different approaches are spelt out in the Child Protection Policy in sufficient detail to be understood by all parties involved.

It is unclear what the consequence will be to an employee if he or she breaches the Child Protection Policy. A breach of the policy that is not also a breach of the code of conduct would need to fall within the definition of 'misconduct' in section 87 of the Public Service Act for the department to be able to discipline the employee. Misconduct is defined in that section as:

- (a) disgraceful or improper conduct in an official capacity; or
- (b) disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the public service.

DEFINING INAPPROPRIATE BEHAVIOUR TOWARDS STUDENTS

Different consequences flow from the categorisation of the sexual misconduct of employees as criminal or non-criminal.

Criminal

The *Criminal Code* (Qld) contains a number of provisions that may be relevant to dealing with sexual conduct by Education Queensland employees towards students. Some offences are age- and/or gender-dependent. (A list of possible offences is set out in appendix B.)

Criminal conduct of a sexual nature towards anyone is clearly unacceptable to the general community. Such behaviour towards children can never be tolerated by public-sector agencies whose employees work closely with children.²³ Criminal sexual behaviour by employees towards people other than students would also, in many cases, be sufficient reason for the employee to be dismissed or removed from contact with students. Such

behaviour may indicate a potential threat to students and would most probably be regarded as 'misconduct' under section 87 of the *Public Service Act 1996* (Qld).²⁴ An employee's ability to continue to work with students after such conduct would likely depend on whether the person's conduct might tend to affect the personal integrity or security of students or the school environment.

In addition to police and court processes applicable to employees charged with criminal offences:

- The Board of Teacher Registration is informed when teachers are charged with and convicted of relevant criminal offences. After inquiry, the Board may act on such information to de-register or otherwise penalise the teacher, whether or not the evidence against the employee would be sufficient to maintain the criminal charges.
- Education Queensland takes what action it considers necessary to ensure that the employee is not in a position to be a threat to any student until the matter is resolved.²⁵ This will include suspending the employee pursuant to section 89(1) of the *Public Service Act* if the department:²⁶

reasonably believes that the allegations are of a nature that an employee could be a threat to a student or the proper and efficient management of the school might be 'prejudiced'. This may involve suspending an employee until the conclusion of criminal proceedings, or dismissing an employee should relevant criminal charges be proven.

There may be an argument for criminalising certain behaviours that are not currently subject to criminal sanction. For example, the *Queensland Taskforce on Women and the Criminal Code*, which reported to Parliament in early 2000, recommended that sexual exploitation by adults in a position of trust over young people under the age of 18 (such as teachers, coaches, health-care professionals) be criminalised.²⁷ (This proposal is discussed in chapter 8 'Legal Issues'.)

Non-criminal

Behaviour by an employee that is not necessarily criminal may nevertheless be regarded as unacceptable by the general community or by that part of the community in which the behaviour occurs. In those circumstances, the behaviour may be regarded as serious enough to be the subject of dismissal or other disciplinary sanction. What non-criminal behaviour is inappropriate in the circumstances of a particular case may need to be viewed in light of the fact that, in certain circumstances, apparently innocuous behaviour may lead to more serious misconduct.

Students under 16 years of age

It is difficult to imagine any overtly sexual conduct

by an employee towards a student under the age of 16 that would not be criminal in nature. Nevertheless, any sexual conduct towards a student that young would generally be unacceptable and would normally lead to the employee's dismissal, unless there were exceptional circumstances.

Students 16 and 17 years of age

Non-criminal sexual conduct by an employee towards students 16 and 17 years of age (that is, above the legal age of consent for females) is slightly more problematic, although most probably still widely considered as inappropriate.

If Education Queensland were to prohibit what would otherwise be a lawful sexual relationship between an employee and a 16- or 17-year-old student (for example, sexual intercourse between a teacher and a 17-year-old female student) the department would, on the face of it, be in breach of the *Anti-Discrimination Act 1991*. Section 7(1)(l) of that Act prohibits discrimination on the ground of 'lawful sexual activity'. However, section 28 of the Act provides a relevant exemption. Discrimination on the basis of lawful sexual activity can occur if the work involves care or instruction of 'minors' and the discrimination is 'reasonably necessary' to protect the 'physical, psychological or emotional wellbeing of minors having regard to all the relevant circumstances of the case, including the person's actions'. Sixteen- and 17-year-old students would be minors for the purposes of the *Anti-Discrimination Act*. Section 28 of the Act would appear to protect Education Queensland from breaching the Act if its policy prohibited lawful sexual activity between a departmental employee and a student under the age of 18 years.

Students 18 years of age and older

Non-criminal sexual conduct by employees towards students 18 years of age and older may also be objectionable, at least in certain circumstances. However, to prohibit inappropriate but lawful sexual conduct towards adult students, an exemption under the *Anti-Discrimination Act* may need to be sought.

Sexual harassment

In some circumstances, non-criminal behaviour will amount to 'sexual harassment' under the *Anti-Discrimination Act*. Section 118 of that Act prohibits sexual harassment. The age of the person who has been sexually harassed is not relevant. The Act may apply to a student who has been sexually harassed by an Education Queensland employee. Section 119 therefore provides:²⁸

Sexual harassment happens if a person—

- (a) subjects another person to an unsolicited act of physical intimacy; or
- (b) makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or

- (c) makes a remark with sexual connotations relating to the other person; or
 - (d) engages in any other unwelcome conduct of a sexual nature in relation to the other person;
- and the person engaging in the conduct described in paragraphs (a), (b), (c) or (d) does so—
- (e) with the intention of offending, humiliating or intimidating the other person; or
 - (f) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

Examples of subsection (1)(a)—

- Physical contact such as patting, pinching or touching in a sexual way.
- Unnecessary familiarity such as deliberately brushing against a person.

Example of subsection (1)(b)—

- Sexual propositions.

Examples of subsection (1)(c)—

- Unwelcome and uncalled for remarks or insinuations about a person's sex or private life.
- Suggestive comments about a person's appearance or body.

Examples of subsection (1)(d)—

- Offensive telephone calls.
- Indecent exposure.

A single event may constitute harassment.

Situations leading to the impression of impropriety

The Ontario Report (p. 316) recommended that employees should be instructed to avoid activities that, standing alone, might not amount to sexual misconduct but:

would raise concerns in the minds of a reasonable observer as to their propriety. School employees and volunteers should be mindful of these and other considerations, in evaluating the propriety of activities:

- (a) whether the activities are known to, or approved by, the supervisors and/or parents or legal guardians;
- (b) whether the student is isolated;
- (c) whether urgent or exigent circumstances obtain;
- (d) whether the school environment might be detrimentally affected by the activities;
- (e) to what extent may the activities be reasonably regarded as posing a risk to the personal integrity or security of a student, or as contributing to any student's level of discomfort.

THE CJC'S VIEWS

Conduct of a sexual nature by employees towards students is clearly inappropriate in the context of the employee–student relationship. Such conduct may indicate a potential to harm students or, more generally, may indicate that the employee is a person lacking the necessary character to be an employee of Education Queensland or of the public service.

By explicitly prohibiting such conduct in the Code of Conduct, the responsibility for ensuring that an employee's conduct is appropriate rests with the employee, not with the student. This would remain the case even if it is the student who attempts to initiate a sexual relationship with the employee.

The Code of Conduct must therefore clearly define the prohibited behaviours and must indicate that a breach of the Code can by itself be grounds for disciplinary proceedings resulting in dismissal or some lesser disciplinary outcome depending on all the circumstances of a case. For example, if a person is *convicted* of a sexual offence involving children, he or she would normally be immediately dismissed from Education Queensland, with the possibility of reinstatement depending on the outcome of an appeal. If the person has been charged with such an offence, it would usually be appropriate to suspend the employee or place the person in a non-teaching position until the matter has been finalised.

Criminal sexual behaviour

Clearly, any criminal sexual behaviour by an employee towards a student must be regarded as a breach of the Code of Conduct as well as a crime. Not only would such behaviour indicate a danger to students, it would constitute 'disgraceful or improper conduct' under section 87 of the Public Service Act. It cannot be tolerated other than in the most exceptional circumstances.

Clearly, criminal sexual behaviour by an employee towards any other person, whether or not a student, should also be regarded as a breach of the Code of Conduct if such conduct might tend to affect the personal integrity or security of students or the integrity and security of the school environment (for example, an employee is convicted of rape, incest, or pornography-related offences).

Sexual harassment

Education Queensland should specifically prohibit sexual harassment of students by reference to section 119 of the Anti-Discrimination Act. That Act applies as much to students as to any other member of the community, although many people in the school environment may not be aware of this. Making it clear in the Code of Conduct that sexual harassment is prohibited and providing examples of such behaviour in the Code or associated policies may go some way towards preventing such conduct by employees towards students.

Other non-criminal sexual conduct

The CJC is also of the view that it would be generally unacceptable for an employee to engage in any other sexual conduct directed towards or involving students in the following circumstances:

- **Students under 18 years of age, irrespective of whether the employee and the student are at the same school.** Any sexual conduct by an employee towards a student who is a minor either will be, or will be perceived to be, a misuse of the power an employee may have over the student. There may, however, be circumstances where the power imbalance between the employee and the student is not as pronounced. In those circumstances it may be appropriate for the disciplinary consequences to the employee to be less severe than dismissal.
- **Students 18 years of age or older in circumstances that could reasonably be regarded as providing a student with an academic or other school-related advantage, or convey the impression that such an advantage may be forthcoming.** It is not Education Queensland's role to regulate the private lives of adults, unless such conduct affects the duties and responsibilities of the employee or harms students. For example, it is highly unlikely that a lawful sexual relationship between an employee at one school and a mature-aged high-school student at another school would be regarded as inappropriate, although if the student were a student of the employee the relationship could be seen as providing the student with a school-related advantage.

Unless all the forms of sexual misconduct referred to above are expressly prohibited, it will leave open the possibility of abusive and harmful behaviour towards students being regarded as permissible by some Education Queensland employees. Exceptional cases should not detract from the community's primary concern, which has to be the protection of students from potential harm. Nevertheless, the type of disciplinary sanction to apply to an employee engaging in prohibited conduct will depend on all the circumstances of the case.

Conduct suggesting sexual misconduct

The CJC is of the view that Education Queensland's Code of Conduct should also prohibit conduct that, although not constituting sexual misconduct, would, to the reasonable observer, suggest sexual misconduct. For example:

- intimate letters from teacher to student
- sexualised dialogue through the Internet
- suggestive comments in the classroom
- dating.

The Ontario Report (p. 315) noted in relation to such behaviour:

Some of these activities, such as staying over at teachers' residences, or driving students home from games or practices, may or may not be incidental to sexual misconduct or represent a prelude to misconduct. These activities cannot be characterized, in and of themselves as sexual misconduct, but may nonetheless be subject to some regulation to avoid sexual impropriety or the appearance of it.

Examples

Education Queensland should promulgate examples of sexual misconduct and other prohibited conduct, and of the circumstances that employees should avoid. The examples would be a guide for employees and so need not be exhaustive. It will be important in this exercise to avoid giving the impression that entirely innocent or naive behaviour will be punished.

The Board of Teacher Registration has had valuable experience in considering the appropriateness of the conduct of teachers, in the context of assessing the 'good character' of teachers. The Board's assistance in devising examples of inappropriate behaviours and of situations to avoid would be invaluable, as would the views of teachers, other employees, students and the Queensland Teachers' Union.

CODE OF CONDUCT/CHILD PROTECTION POLICY: PROMOTION AND TRAINING

To make a continuing and worthwhile contribution to the ethical culture of an organisation and the decisions staff make, codes of conduct and associated policy documents such as the Child Protection Policy need to be known and understood by all employees in the organisation. This can only be achieved by regular training, awareness raising and information sessions.

The significance of employee awareness of the provisions of a code of conduct and associated policies has been recognised by the enactment of section 21 of the Public Sector Ethics Act, which provides that the Chief Executive Officer of a public sector entity must ensure that public officials of the entity are given appropriate education and training about public sector ethics, and, in particular, the education and training must relate to:

- (a) the operation of this Act; and
- (b) the application of ethics principles and obligations to the public officials; and
- (c) the contents of the entity's approved code of conduct; and
- (d) the rights and obligations of the officials in relation to contraventions of the approved code of conduct.

It is not known how many Education Queensland employees have read and understood the provisions of the department's Code of Conduct, although it is likely that a good many are at least familiar with the Child Protection Policy because the department has been more active in promoting the Policy.

Promotion of the Code of Conduct and associated policies might include, for example:

- publication on the Internet
- publishing articles in staff newsletters
- publishing information for client groups in relevant languages, including information on how to make a complaint in relation to suspected breaches of the Code.

Surveys of employees and school communities will assist in ensuring that the Code of Conduct and associated policies remain relevant and informed.

Child Protection Policy

Extensive statewide training in 1998 on the Child Protection Policy could be used as a foundation for building a training package that also covers the Code of Conduct.

The Child Protection Training Manual purports to form the basis of 'mandatory training of all current employees who have contact with students'. This includes 'current' employees (that is, employees at the time of the training) who came within the following categories:²⁹

All school-based staff, i.e. principals, teachers, office staff, cleaning staff, ground staff, part-time staff, visiting staff etc. It is also desirable for schools to include volunteer staff such as parent helpers, sports coaches and religious education teachers.

Schools should also aim to include staff employed by other government departments (e.g. police officers, nurses etc.) and non-government agencies (e.g. chaplains) where those staff are based in the school or visit regularly.

Those staff in central office and district offices who have ongoing contact with students must also be using the Child Protection Training package.

To ensure that all 'new' employees (that is, people employed since the comprehensive training in 1998) who have ongoing contact with students receive training as part of their induction program, the Child Protection Training Manual provides:³⁰

The principal or manager is to annually complete the following forms (provided in Part 7 of this manual for printed versions or the two floppy disks for electronic versions of these forms):

- training certification;
- training program (enclosing a copy of the program used in the training);
- a list of staff (with signatures) and the date they completed the training

- Evaluation Form C: school/district office/central office branch evaluation

The principal or manager should retain these forms in the school/district office/central office branch for reporting.

To comply with legislation and ensure Education Queensland's liabilities are covered, the principal or manager is to indicate annually that new staff have received training and that all staff have received training where child protection procedures have changed within the centre.

All staff who complete the training should receive a signed certificate of attendance which they should retain. In the event of transfer to a new school or office, the certificate could be used as evidence of their having completed the training thus removing the necessity of repeating the training.

It is not known whether the training of all new employees in the Child Protection Policy has eventuated, although individual schools may be including the Child Protection Training Manual material in their induction program for new staff. There does not appear to have been an audit of the training given to new employees in this respect.

Comprehensive training on the Child Protection Policy has not been repeated since 1998.

Code of Conduct

An employee who can reasonably claim no knowledge of his or her organisation's code of conduct, either through lack of training or any other awareness initiatives, may have an excuse to avoid discipline for breaching the code.

Although Education Queensland's Code of Conduct contains a training guide, there are no requirements for managers to initiate training within any particular time frame or circumstances, such as at the induction of new employees.

Some public sector agencies require staff to sign a statement that they understand the content of their code of conduct and that they undertake to follow it. This may occur after training or as part of the process of inducting new staff. Establishing a contractual-type relationship with employees in regard to a code of conduct would also negate any claims that the provisions were unknown to the employee should disciplinary proceedings eventuate.

Education Queensland responded to a proposal that it adopt a similar practice, by suggesting that employees:³¹

are not necessarily going to treat the matter with the degree of seriousness it deserves, particularly if it requires them to report matters on which they have no first-hand knowledge. In addition the logistical difficulties with having approximately 50,000 employees sign such an acknowledgment would be enormous. An

alternative approach may be to consider deeming all present staff in terms of 'acknowledgment' and applying the suggested regime to all new staff employed by the department.

One way of easing the administrative burden on Education Queensland would be to have employees sign a form after attending a training session, acknowledging that they have attended the session, and have understood and accepted the requirements of the Code.

Induction

Induction of new employees is the responsibility of individual schools. It is not done for District Office, Central Office or school-based administration and ground staff. It is understood that some schools have a written induction policy.

Education Queensland's Human Resources Policy provides that the department is committed to ensuring that all employees appointed to new positions receive an induction that is 'appropriate to their needs and those of the department'. There is no specific mention of the Code of Conduct or associated policies being an integral part of any induction program.³² The policy states:

The employee and their principal or manager are responsible for ensuring that induction occurs.

Principals and/or managers must:

- (a) provide an induction process that enables employees to adapt to their new job as quickly and smoothly as possible;
- (b) ensure that induction is a flexible and effective process which reflects the principles of equity and considers an employee's specific needs as well as their skills and previous work experience;
- (c) provide employees with any work-unit or job-specific information that is necessary for them to perform their duties effectively;
- (d) provide employees with relevant Education Queensland and workplace health and safety information upon commencement of duty;
- (e) foster the personal and professional development of employees commencing with induction;
- (f) ensure that all information supplied to employees is accurate and up-to-date; and
- (g) ensure that the induction process recognises the employee as a learner by addressing the principles of effective learning and teaching.

Given the number and diversity of employees in Education Queensland, it will be a challenge to ensure that all new employees are made aware of the Code of Conduct and associated policies and the importance of their provisions. This will be complicated by the fact that the recruitment, induction and training of employees is decentralised

to about 1,300 centres around Queensland, including schools, District Offices and facilities centres.³³

Ongoing training

The Ontario Report (p. 302) noted:

Education and training of student teachers should be complemented by ongoing education and training of current teachers, volunteers and other school staff, who are with students on a regular and prolonged basis ... The best policies and protocols are ineffective if they do not reach those they govern and are not understood or not followed.

The Queensland Teachers' Union was opposed to a suggestion that training be conducted annually, on the basis that:³⁴

Professional development and training demands on its members are such that at present, the department [Education Queensland] is unable to provide all the necessary professional mandatory development and training in work time. This necessitates pressure being placed on our members to conduct significant professional development and training in their own time. The Union does not believe there is sufficient time currently available in the employer's time for Code of Conduct training to be conducted annually.

The CJC is sympathetic to this view but at the same time acknowledges the absolute necessity for training to be conducted on a regular basis. The Taskforce should take all these considerations into account in determining how regular the training must be conducted.

TRAINING OF GRADUATING TEACHER EDUCATION STUDENTS

The Board of Teacher Registration encourages higher education institutions offering teacher education programs to ensure that graduates have an understanding of 'the rights and responsibilities, both inside and outside the classroom, associated with the profession of teaching' and of the Board of Teacher Registration *Code of Ethics*.³⁵ However, there is currently no compulsory, comprehensive training of student teachers in Queensland on the ethical behaviour expected of teachers and on associated issues.

Board of Teacher Registration representatives attempt to address graduating teacher education students at all higher education institutions around the State. However, this is not done in a consistent or comprehensive manner. It is not known whether the training that is provided is influential in the future behaviour of teachers.

The Board distributes information to newly registered teachers including its *Code of Ethics*.

However, that information does not specify the behaviour expected of Queensland teachers. The *Code of Ethics* is inspirational rather than a practical guide to the teacher's professional working life.

Although not all graduating teacher education students will be employed by Education Queensland and will not be subject to the department's Code of Conduct or to the Public Service Act, there are ethical considerations relating to the teaching profession that transcend the type of school in which teachers will be working. This is particularly so given that newly qualified teachers with very little experience in the type of situations they may encounter can be put in unsupervised control of students.

One way of ensuring that future teachers have a basic understanding of their responsibilities in relation to students is to include a compulsory legal studies component in the curricula of all courses of study leading to a teaching qualification. Education Queensland's Child Protection Training Manual and associated material could be used as a resource in such a course. Such a course should be completed before the student teacher's first practicum as an attempt to ensure that student teachers are aware of the type of behaviour towards students that must be avoided, and the type of behaviour that should be reported.

The Queensland Teachers' Union has observed that it may not currently be practical in all tertiary institutions to cover this subject adequately before a student teacher's first practicum. It may be necessary for at least an abbreviated presentation and relevant printed material to be given to the student teachers before the practicum and for the more detailed course component to be undertaken as soon as practicable thereafter.

RECOMMENDATIONS

RECOMMENDATION 3.1

That Education Queensland's Code of Conduct define, with examples, 'inappropriate sexual conduct towards students'.

3.1.1 That the Code of Conduct specifically prohibit employees from engaging in 'sexual misconduct'.

3.1.2 That 'sexual misconduct' be defined as including:

- conduct towards a student that would constitute a criminal offence of a sexual nature (including offences not involving physical contact with the student but that may affect the student, such as the commission of an offence under the *Classification of Publications Act 1991*) — a list of possible sexual offences should be referenced in the Code of Conduct (see appendix B)

- conduct towards any other person that would constitute a criminal offence of a sexual nature if the fact that the employee has engaged in the conduct might tend to affect the personal integrity or security of students or the integrity and security of the school environment
- conduct in the nature of 'sexual harassment' towards students by reference to the term as used in section 119 of the *Anti-Discrimination Act 1991*
- any other sexual conduct directed towards or involving:
 - a student under the age of 18 years irrespective of whether the employee and the student are at the same school
 - a student 18 years of age or older which could reasonably be regarded as providing a student with an academic or other school-related advantage, or the impression that such an advantage may be forthcoming.

3.1.3 That the Code of Conduct also prohibit behaviour that, to the reasonable observer, would suggest sexual misconduct or the possibility of it.

3.1.4 That Education Queensland seek advice on the need for an amendment to the *Anti-Discrimination Act* before implementing recommendations prohibiting lawful sexual relationships between employees and students 18 years of age or older.

RECOMMENDATION 3.2

That the Code of Conduct make clear that a breach of the Code can by itself be grounds for disciplinary proceedings and that prohibited behaviour can result in dismissal or (depending on all the circumstances of a case) some lesser disciplinary outcome.

RECOMMENDATION 3.3

That the Code of Conduct refer to Education Queensland's Child Protection Policy (see appendix C) as the appropriate specific policy document relating to allegations of sexual misconduct by employees towards students.

3.3.1 That the Code of Conduct emphasise that a breach of the Child Protection Policy will be regarded, for disciplinary purposes, as a breach of the Code of Conduct.

3.3.2 That, to avoid any possible confusion on the part of employees who are expected to be guided by the Code of Conduct and by the Child Protection Policy, the documents should be rewritten simultaneously and in such a way that their provisions are complementary. The documents should be in plain English with every effort made to avoid ambiguity and vagueness.

RECOMMENDATION 3.4

That appropriate examples of each type of prohibited behaviour should be set out in the Child Protection Policy. These examples should be formulated in consultation with employees, representatives of students, the Board of Teacher Registration and the Queensland Teachers' Union.

RECOMMENDATION 3.5

That the Code of Conduct include a strong commitment to the training of employees on the Code and associated policies and should be promoted widely by Education Queensland among employees and the general community.

RECOMMENDATION 3.6

That the Code of Conduct inform employees of mechanisms for seeking advice on the operation of the Code and associated policies, including the Code's definition of appropriate behaviour, and on difficult or potentially difficult circumstances in which employees may find themselves.

RECOMMENDATION 3.7

That the Code of Conduct and associated policies be regularly reviewed and updated. The commitment to review should be stated in the Code.

RECOMMENDATION 3.8

That the Child Protection Policy be rewritten so that:

- its focus is clearly on the care and safety of students
- it outlines the accountabilities for various staff members in an organised fashion and is internally consistent
- it clearly and fully states the procedures for handling allegations that a child has been harmed
- it indicates the possible consequences to the employee for breaching a requirement of the Policy
- the department's response to 'harm' caused to a child is not limited to 'significant' harm.

RECOMMENDATION 3.9

That Education Queensland adopt a comprehensive documented training program for all new employees and continuing employees in the Code of Conduct and associated policies.

3.9.1 That training be included at induction.

3.9.2 That training be conducted regularly.

3.9.3 That the effectiveness and content of the training be reviewed regularly.

RECOMMENDATION 3.10

That the responsible Minister consider requiring all courses leading to qualifications as a teacher in Queensland to include a compulsory component on the legal and ethical issues relating to the teaching profession. That component should be completed, if at all practicable, before the student teacher's first practicum.

Endnotes

13 Footnote to quotation from Ontario Report:

The Toronto District School Board distinguishes between these terms in this way: A *policy* is a statement adopted by the Board that provides the framework for a course of action consistent with the Board's mission and values; a commitment by which the Board is held accountable. A *procedure* is a prescribed course of action, emanating from board policy, that must be taken in a given situation and which is consistent with the Board's mission and values. A *guideline* is a recommended course of action that may be taken in a given situation and which is consistent with the Board's mission and values and policies. A *protocol* is a procedure that sets out rules for the interaction between the Board and outside agencies. I [Justice Robins] find that these terms are often used interchangeably and the distinctions easily blurred. For convenience I often use the phrase "policies and protocols" to describe them all. The Toronto District School Board's definitions are useful in emphasizing the various types of matters that need be addressed in establishing comprehensive "policies and protocols".

14 The Protection and Care Sub-Committee of the Standing Committee of Community Services and Income Security Administrators. Discussion Paper (August 1996), *Development of Best Practice Standards for National Safety Screening of Persons Employed in a Paid or Voluntary Capacity with Children* at paragraph 3.5.

15 One method of assessing the relevance of a code of conduct would be to interview employees to ascertain their understanding of the requirements of the code and to ask them to respond to scenarios by using the code as a guide. Another, though perhaps less useful, tool for assessing the effectiveness of the code would be to debrief employees after a major incident by reference to relevant provisions of the code.

16 On 30 September 1988, the Education Office Gazette issued a 'departmental instruction' that attempted to define inappropriate behaviour of a sexual nature in the following terms:

The following statement, which has been cited in the past as partly typifying departmental policy in relation to the behaviour of teachers towards students, is reproduced for the guidance of teachers:

The nature of acceptable and appropriate conduct by teachers would be the same as that accepted by the community. Students would be rewarded by a handshake, words of congratulations, a smile. The manner in which a teacher speaks to a student conveys his/her opinion of the student's work. Teachers are expected to carefully refrain from any

- physical contact with students which could be interpreted as having sexual implications.
- 17 This document is widely available to employees on the department's Intranet, though it is not available on the Internet.
 - 18 Memorandum from the Director-General attached to the Code of Conduct as a schedule.
 - 19 Section 1.3 Department of Education *Code of Conduct* (see appendix C).
 - 20 The principles are set out in section 4 of the Public Sector Ethics Act. Division 2 of Part 3 of the Act sets out the ethics obligations of public servants in recognition of the principles.
 - 21 Oral communication with the office of the Education Queensland CJC Liaison Officer, 24.11.00.
 - 22 But note: s. 15 of the *Child Protection Act 1999* provides that a child's parents are to be told of an allegation of harm or risk of harm to a child by an authorised officer or a police officer investigating the matter, although the officer need not do so if he or she reasonably believes that someone may be charged with a criminal offence for harming the child and the officer's compliance with the provision may jeopardise the investigation, or if compliance with the provision may expose the child to harm.
 - 23 For example, s. 13 of the *Public Service Regulation 1997* provides that employees must give their employing authority written notice that they have been charged with an indictable offence or convicted of any offence ('convicted' is defined in section 13(4) as including 'a finding of guilt, whether or not a conviction is recorded').
 - 24 The definition of 'misconduct' in section 87 includes: 'disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the public service'. An employee can be dismissed for misconduct.
 - 25 Meeting with representatives of Education Queensland, 12.10.00.
 - 26 Correspondence from Education Queensland, 24.11.00.
 - 27 Taskforce on Women and the Criminal Code, *Report of the Task Force on Women and the Criminal Code 2000*, recommendation 68.
 - 28 A person who alleges that he or she has been sexually harassed (or someone acting on his or her behalf) may make a written complaint to the Anti-Discrimination Commissioner (see s. 134 of the Anti-Discrimination Act). If the Anti-Discrimination Commissioner believes that a complaint cannot be resolved by conciliation, the person who made the complaint is entitled to require the Commissioner to refer the complaint to the Anti-Discrimination Tribunal for determination (see ss. 165 and 166 of the Anti-Discrimination Act).
 - 29 Education Queensland, *Child Protection Training Manual*, 1998, p. 8.
 - 30 Education Queensland, *Child Protection Training Manual*, 1998, p. 6.
 - 31 Letter from Education Queensland, 23.11.00.
 - 32 Education Queensland Human Resources Policy *HR-04-3 Employee Induction*.
 - 33 Letter from Education Queensland's CJC Liaison Officer, 23.11.00.
 - 34 Queensland Teachers' Union, 'QTU Response to the Draft Recommendations on a Report of Inappropriate Behaviour of a Sexual Nature by Education Queensland Employees Towards Students', 22.11.00.
 - 35 Board of Teacher Registration Queensland, *Guidelines on the Acceptability of Teacher Education Programs for Teacher Registration Purposes*, April 1999, paragraph 6.18.

REPORTING ALLEGATIONS

The challenge here is to develop protocols that correctly reflect existing law, reinforce the obligation to report, where appropriate, and still show fairness to the affected parties, including teachers. However, so as not to be misunderstood, uncertainty needs to be resolved in favour of the best interests of the child.

Ontario Report 2000, p. 320.

The most effective way to prevent harm to students and to deter inappropriate behaviour by employees is to have internal and external mechanisms that enable employees, students and other interested people to report suspected misbehaviour. Compulsory and readily apparent reporting mechanisms may also assist in:

- managing the perception of detection
- speeding up the investigation and resolution process
- assuring students that they will not be subjected to further inappropriate behaviour by that employee.

The Ontario Report (p. 287) elaborated on how a written policy can assist in the handling of complaints of inappropriate behaviour by employees:

A policy on how complaints of sexual abuse should be acted upon that is clear, fair and known to all is likely to help protect children, ensure fairness to the affected teacher, provide assurance to the community and enhance the school environment. The absence of such a policy often produces uneven or inappropriate treatment of students and teachers,

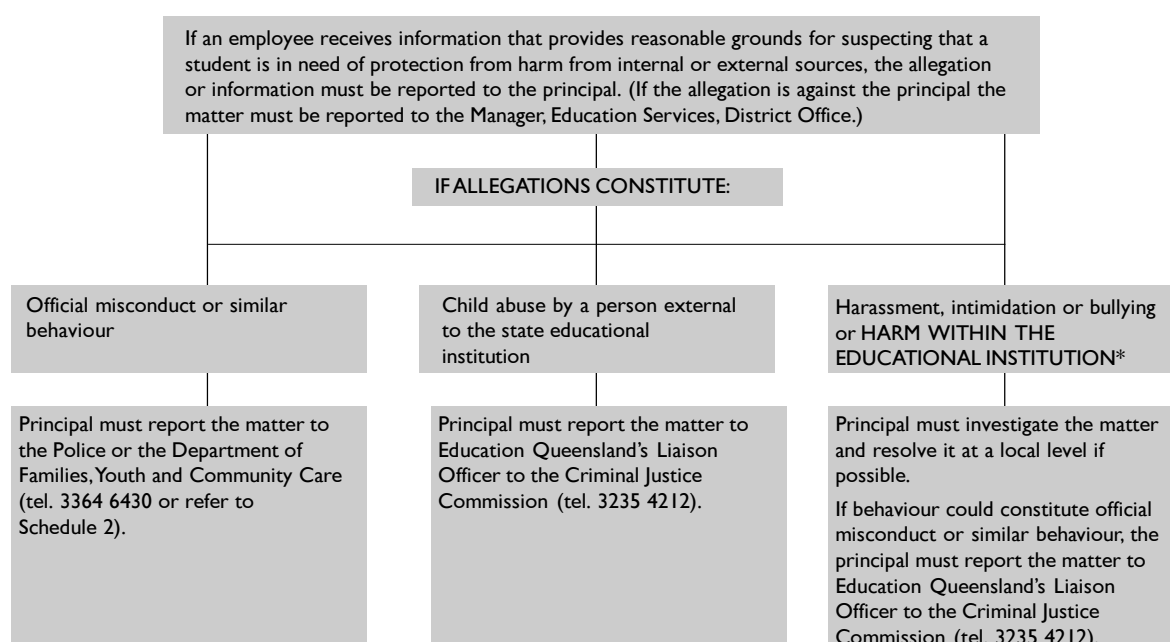
unnecessary uncertainty, speculation, gossip and innuendo, heightened trauma to the interested parties, particularly children and, overall, a process that is seen to be arbitrary and unfair.

Apart from a direction to disclose suspicions of 'fraud, corrupt conduct, or maladministration by another public sector employee' (paragraph 2.8), Education Queensland's Code of Conduct gives no direction to employees on when and how to report suspicions of inappropriate behaviour of a sexual nature by fellow employees. The only departmental directions in that regard are currently found in the Child Protection Policy.

This chapter considers the current internal and external reporting requirements relevant to allegations of inappropriate employee behaviour, and the steps that have been and should be taken to facilitate such reporting.

REQUIREMENTS TO REPORT

Section 2 of the schedule to the Child Protection Policy sets out the department's understanding of the reporting requirements relating to suspicions of harm to students:



Note: * Emphasis added. The highlighted words do not appear in an equivalent chart in the Child Protection Training Manual (1998, p. 57), which is used to explain the reporting requirements in the Policy to employees.

Internal reporting requirements

The Child Protection Policy requires employees to report allegations of conduct falling within general categories such as ‘official misconduct’, ‘criminal offence’ and ‘harassment’.³⁶ There are no detailed definitions of those terms and no explanation of their relationship to each other.³⁷

Under the ‘Accountabilities’ section of the Child Protection Policy:

- All employees must:
 - (a) report any allegation made against or information about an employee which could constitute official misconduct, or other conduct which could or does constitute a criminal offence, to the principal or if the allegation is made against or the information is about the principal, to the Manager, Education Services, at the District Office
- All principals must:
 - (h) report the receipt of and particulars of the allegations from any person, including an anonymous source, made against an employee to Education Queensland’s Liaison Officer to the Criminal Justice Commission and document the receipt of and particulars of the allegations.
- All Managers, Education Services, at the District Office, receiving knowledge of an allegation of official misconduct made against a principal, must:
 - (a) report the receipt of and particulars of the allegations to Education Queensland’s Liaison Officer to the Criminal Justice Commission

Paragraph 4.3 of the Child Protection Policy provides:

Where allegations of harassment are received from students in relation to the behaviour of an employee, and the alleged behaviour could constitute official misconduct, the matter must be reported to Education Queensland’s Liaison Officer to the Criminal Justice Commission.

No examples are given of what would constitute ‘official misconduct’, of criminal offences amounting to official misconduct, of criminal conduct not amounting to official misconduct, ‘harassment’, harassment amounting to official misconduct, or harassment not amounting to official misconduct.

Official misconduct

‘Official misconduct’ is defined in the Child Protection Policy simply by repeating the definition given in section 32 of the *Criminal Justice Act 1989*.³⁸ The definition includes conduct involving a breach of trust placed in the employee by reason of his or her position, if that breach could amount to criminal conduct or conduct for which the employee could be dismissed.

It is not clear from the Child Protection Policy whether employees are required to report their suspicions in relation to behaviour of fellow employees that may not amount to criminal conduct or conduct for which the employee could be dismissed — for example, a suspicion that a teacher is dating a student or that a teacher has been sexually involved with a 16-year-old student from a different school to the teacher. Principals and Managers, Education Services, at District Offices are, however, required to report ‘allegations’, not specifically ‘criminal offences’ or ‘official misconduct’. Clearly, these are ambiguous and confusing directions.

To add to the confusion, the Policy also provides:³⁹

Allegations must be reported, regardless of whether in the opinion of the person hearing the complaint, the alleged behaviour does not suggest a criminal offence has been committed or the alleged behaviour would result in the termination of the employee’s services [effectively the definition of ‘official misconduct’].

It is unclear whether this is a requirement for all employees, for principals, for district officers or for Education Queensland’s Liaison Officer to the CJC. In any event, it is a very confusing direction in light of the more specific reporting requirements referred to above. It could be read as implying that there is no discretion in any of those parties to determine whether there is possible official misconduct or possible criminal behaviour and that absolutely all allegations regardless of how spurious or trivial must be reported. It can only be assumed that the provision refers to reporting of allegations to the officers referred to earlier.

Harassment

The Child Protection Policy requires the reporting of allegations of ‘harassment’⁴⁰ received from students in relation to the behaviour of employees where the alleged behaviour could constitute ‘official misconduct’.⁴¹ It is not specified who is under this obligation, although presumably it is any employee who receives such an allegation. It is unclear whether the obligation extends to allegations received indirectly from the student (e.g. by way of another student or a parent) or to incidents that have not been reported by the student to anyone but that have been observed by others. The report must be made to the Liaison Officer.

If a principal receiving a complaint of sexual harassment does not believe the student, the principal may decide not to take the matter any further, particularly if it is also assumed that the alleged behaviour would not amount to official misconduct. Paragraph 4.6 of the Child Protection Policy provides:

If the principal, in the course of investigation, has reasonable grounds for believing that a

complaint has not been made in good faith, they have discretion not to proceed any further. The complainant, however, is always free to pursue the matter further, either at the district level or through legal procedures.

It is unclear whether the principal would normally document the exercise of this discretion or give assistance to the complainant by suggesting that he or she go to another section of the department.⁴²

Self-reporting

Section 13 of the Public Service Regulation 1997 requires public sector employees to report to the department if they have been charged with an indictable offence, together with the details of the alleged offence, and, if the employee has been convicted of an offence (including a finding of guilt whether or not a conviction was recorded), the details of the offence and the penalty imposed.

The Code of Conduct restates the legislative requirement to report by providing that all employees must notify their principal or manager if they have been charged or convicted of an indictable offence. The Code provides that the Director-General is the only officer who may decide whether the charge directly affects the proper performance of the employee's duties.

Effect of failure to report under Child Protection Policy

The effect of a breach of the Child Protection Policy is unclear,⁴³ although the CJC has recommended in chapter 3 of this report that a breach of the Policy should be regarded, for disciplinary purposes, as a breach of the Code of Conduct.

Education Queensland has advised the CJC that there are no documented accounts of an employee being reprimanded or informally cautioned for failing to take action in relation to the complaint of a student, although:⁴⁴

this does not rule out instances where such a matter has been dealt with at the local school or district level, especially if an informal caution was given and/or the matter was considered to be at the low end of the scale. However, the lack of information relating to this issue may also be indicative of the seriousness with which staff approach such complaints and that the systems that have been put in place to handle these types of complaints are effective.

In one instance, Education Queensland's Liaison Officer to the CJC requested a District Office to informally caution a female teacher who 'failed to meet her reporting obligation in respect of a male teacher colleague who had become unduly involved emotionally' with a student.

A failure to report a suspicion of sexual misconduct towards a student should, in appropriate circumstances, result in the employee's dismissal on

the basis that the consequences of a failure to report are potentially disastrous for the student and for other students. Furthermore, not responding to a failure to report could be sending out a message to the community that the misconduct is not being taken seriously.

Facilitating the internal reporting by students

The Child Protection Policy provides that:⁴⁵

5.1 It is advisable that state educational institutions: ...

- (k) publicise procedures for resolving complaints to all employees, students and voluntary workers;
- (l) put in place harassment officers ...
- (p) respond supportively to any student who makes a complaint

No audit has been done to see if there has been compliance with this advice.

Education Queensland has no specific policy to encourage, or enable, students to report sexual misconduct by employees or others.

In only 13 (16 per cent of total) of the cases reviewed for this report did the student report the incident to an agency: seven to Education Queensland (including five via the hotline); five to the QPS and one to the Children's Commissioner. However, not all those students were children by the time the complaint was made. Only one of the matters reported to Education Queensland was reported by a student who was still a child (12 years old).⁴⁶

Any policy aimed at raising student awareness of their ability to report allegations should also recommend advising students that what they reveal may not remain confidential, and that there may be adverse consequences for students who make false allegations.

External reporting requirements

There is no general legislative requirement for teachers or other Education Queensland employees to report suspected cases of child abuse (including employee sexual misconduct towards children) to the QPS or to any other external agency.⁴⁷

The Liaison Officer, acting as a delegate of the Director-General of Education, is required by statute to refer certain allegations involving official misconduct or possible official misconduct to the CJC. Section 37(2)(b) of the Criminal Justice Act provides, in part:

It is the duty of each of the following persons to refer to the complaints section all matters that the person suspects involve, or may involve, official misconduct—

- (b) the principal officer (other than the commissioner of the police service) in a unit of public administration ...

The jurisdiction of the CJC in this regard is limited to investigating allegations of 'official misconduct'.⁴⁸ If an allegation does not involve possible criminal conduct or conduct that could result in the person's dismissal, then the CJC must refer the matter back to the department for action.

If there is a case for a charge of official misconduct against an employee, the matter can be referred by the CJC to a Misconduct Tribunal. In the last two years there have been no cases referred to a Misconduct Tribunal involving allegations of sexual misconduct by an Education Queensland employee towards a student.⁴⁹

CJC–Education Queensland Protocol

A protocol has been developed between the CJC and government departments and other relevant public-sector agencies for the handling of employee disciplinary matters over which both the CJC and the public-sector agency have jurisdiction (*CJC Protocol on the Disciplinary Process 1998*). Education Queensland is a party to the disciplinary protocol. The protocol includes guidelines for reporting matters to the CJC.

Under particular reporting guidelines for Education Queensland, the Director-General does not need to refer minor matters to the CJC even though the conduct of the employee may amount to official misconduct. Minor matters include those:

- which contain an allegation of assault
- where the facts surrounding the incident are reasonably clear
- in which the incident can be accurately ascertained
- in which there is no evidence of injury/sexual contact or likelihood of further injury or danger to the child or other children
- in which the parents of the student do not want the matter referred to the CJC or to the QPS for investigation
- in which there is no history of any previous complaint of assault.

In these circumstances, Education Queensland undertakes the investigation and takes action where appropriate. Education Queensland provides a precis of the complaint and advice as to the action taken in relation to the complaint to the CJC.

In relation to suspicions of child abuse occurring *outside* the school, the Child Protection Policy says:⁵⁰

All principals must: ...

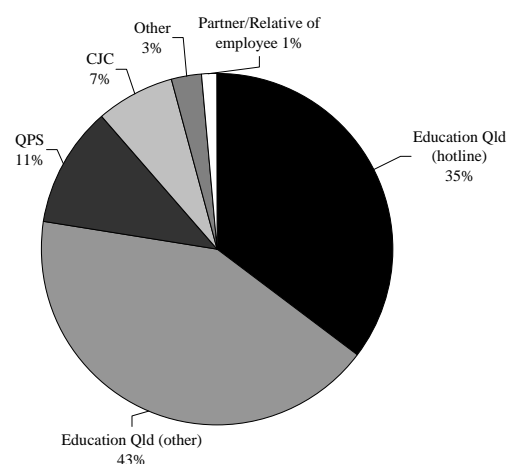
- (l) if on receiving advice from an employee they suspect a student is in need of protection from a situation outside the immediate State educational institution environment, contact either the:
 - (i) Queensland Police Service's Child Abuse Investigation Unit ... ; or
 - (ii) Department of Families, Youth and Community Care ...
- (j) not inform parents/caregivers that a situation detailed in (l) has been reported ...

Of course, there is nothing to prevent, but, equally, nothing to encourage, an employee or principal from contacting the CJC direct, if he or she suspects that the behaviour of a fellow employee towards a student constitutes 'official misconduct'. Section 37(1) of the Criminal Justice Act provides:

Any person may furnish to the complaints section [of the Criminal Justice Commission] a complaint or information concerning conduct that is perceived as, or may be, official misconduct. [emphasis added]

In practice, as figure 4.1 shows, very few individuals have complained to the CJC of sexual misconduct by Education Queensland employees towards students. Less than 4 per cent of the CJC complaints files reviewed for this report⁵¹ were referred to the CJC by an individual. Most complaints came from Education Queensland, although, of course, this does not necessarily indicate that employees report all allegations of inappropriate sexual misconduct by their fellow employees of which they are aware.

Figure 4.1 — Source of complaints to the CJC
Complaints of alleged sexual misconduct against Education Queensland employees received by the CJC April 1988 – July 1999



CULTURAL IMPEDIMENTS TO REPORTING

It will be a challenge for Education Queensland to ensure that all employees report allegations of inappropriate behaviour of fellow employees and that all students are encouraged, and are easily able, to raise their concerns about inappropriate behaviour of employees towards them or others. This challenge may be more to do with attempting to change the culture of schools than with writing clearer policies.⁵²

It may not be possible to establish that there is a culture across Education Queensland schools that acts as an impediment to reporting, but there is nothing to suggest that Education Queensland and individual schools are any different to other organisations where employee misconduct can be

hidden by the inaction of others. A compounding factor is that the victims in schools are likely to be in a far more vulnerable position than in other workplaces and less likely to report misconduct directed towards them.

An organisation's culture is largely shaped by management, particularly senior management. The United States Treadway Commission Report (1992, p. 19) observed:

Official policies specify what management wants to happen. Corporate culture determines what actually happens, and which rules are obeyed, bent or ignored. Top management — starting with the Chief Executive Officer — plays a key role in determining corporate culture. The Chief Executive Officer usually is the dominant personality in an organisation, and individually often sets its ethical tone.

Education Queensland management should ensure that there are effective lines of communication upwards and downwards so that employees feel confident when reporting suspicions of inappropriate behaviour by fellow employees that they will be taken seriously and not victimised as a result. The Treadway Commission Report noted (p. 20):

A strong corporate ethical climate at all levels is vital to the well being of the corporation, all its constituencies and the public at large. Such a climate contributes importantly to the effectiveness of company policies and control systems and helps influence behaviour that is not subject to even the most elaborate system of controls.

The lack of specific direction to employees on when to report allegations implies that it is up to the employee to decide what and when to report. Such decisions can be influenced by a range of circumstances including the employee's perception of the truthfulness of students and the trust put in fellow employees. There might also be personal and professional dilemmas for individual employees. For example, the Burge Report (p. 13) noted a concern by some guidance officers in state schools that they should be exempt from any obligation to report allegations that would involve a breach of the duty of confidentiality they had to the student. The Burge Report recommended that it be made clear in the Child Protection Policy that guidance officers are not exempt from the reporting requirements and that their obligations as an employee override any obligation to a professional group. That recommendation has not been implemented, apart from the inclusion of guidance officers in the initial training to employees on the Policy.

If employees perceive that management (including principals) will not be receptive to certain types of allegations made by an employee against other staff members, employees may be hesitant in raising such allegations with management.

Because of the nature of the behaviour and the vulnerability of the students involved, it is likely that many, if not most, students will find it difficult to disclose allegations of sexual misconduct by employees. When there is a possibility of disclosure, it should be encouraged and appropriately facilitated. The Ontario Report (p. 317) observed:

When disclosures by students of alleged sexual misconduct are made, they must be responded to appropriately. An important component of an appropriate response is how the complaint is first received. Because a child might pick anyone to hear an allegation of sexual misconduct and because the first reaction to the child is often crucial — training on how to respond should be required of all ... employees, not just teachers ... the emotional impact of being sexually abused or harassed may depend in large measure upon how the initial disclosure is received. Gratuitous trauma may result from responses that seek to minimize or discount truthful disclosures.

In addition to family members and friends, the person to whom particular students might feel comfortable making a disclosure will cover the range of people associated with schools, from volunteers to teachers, Sexual Harassment Referral Officers, and specialist employees such as guidance officers and school nurses (where available).

It may be sensible, particularly for younger students, for relevant information on when to speak up on these type of matters, and to whom, to be made part of human relationships education.

The reporting of sexual misconduct by employees towards students may be facilitated by a sympathetic approach to the handling of students, particularly young students, who may have been the victim of such behaviour. The Ontario Report (p. 318) recommended that:

School employees should be trained on how to detect the warning signs of sexual misconduct and, further, how to respond to disclosures of sexual misconduct ... policies and protocols should contain basic 'do's and don'ts' that should guide such situations. Some examples follow:

DO

- Listen to the child.
- Tell the child who must be notified.
- Reassure the child that the conduct described is not the child's fault and that the child has done the right thing by disclosing.
- Speak to the child in private.
- Determine the immediate safety needs of the child, involving the child in this decision.

DON'T

- Do not lead or suggest answers to the child.
- Do not promise the child not to tell anyone.
- Do not criticise the child for how or when disclosure has been made.
- Do not bring the teacher in to confront the child.
- Do not return the child to a risk-laden situation.

PROCEDURES FOR RECEIVING AND RECORDING ALLEGATIONS

Paragraphs 2.11 and 2.12 of the Child Protection Policy provide:

2.11 The person to whom a student makes a complaint (teacher, principal or other employee) should listen attentively in a non-judgmental manner and record the free and spontaneous words uttered by the student in relation to the allegations. If clarification is required, the use of leading or closed questions should be avoided.

2.12 Parents/caregivers, students and other adults making or reporting allegations should be advised to maintain confidentiality of all information except to those who are authorised to investigate the matter.

In addition, Education Queensland has a standard form for reporting allegations made against an employee relating to 'physical/sexual abuse'.⁵³ Although reports can be made orally to appropriate officers, employees are encouraged to complete and submit this form if there is any suggestion that the allegation involves sexual misconduct on the part of an employee. There is, however, no direction in the Child Protection Policy that the report must be made in writing and no mention of the form.

Unless the procedures for reporting and receiving allegations are fully documented in every case, there may be insufficient basis for gauging the effectiveness of the reporting procedures.

PROTECTING EMPLOYEES WHO DISCLOSE

Education Queensland has recently promulgated a policy that seeks to protect employees who disclosure conduct amounting to a 'public interest disclosure' from reprisals from other employees or managers. Any future revision of the Code of Conduct and the Child Protection Policy will now be able to refer to the new policy in addition to the *Whistleblowers Protection Act 1994* (Qld). At the time of such a revision, it would be sensible to ensure that the policy statements relating to reporting allegations and investigating allegations and the responsibilities of and protections offered to employees are compatible across each of these policy documents.

Whistleblowers Protection Policy

The Whistleblowers Protection Policy acknowledges that Education Queensland is:⁵⁴

- bound by the Whistleblowers Protection Act
- committed to the investigation of 'public interest disclosures'
- committed to the protection from reprisal of any employee and manager who genuinely makes such disclosures.

The Policy sets out the procedures to be followed by employees who make, receive or deal with a 'public interest disclosure'.

Public interest disclosure and official misconduct

What may constitute a 'public interest disclosure' is set out in Part 3 of the Whistleblowers Protection Act and includes, for example, any information that the person 'honestly believes on reasonable grounds' tends to show the conduct is 'official misconduct'.⁵⁵ The information may be about an event or 'something that has or may have happened, is or may be happening, or will or may happen'. If the information is about someone else's conduct, the information may be about 'conduct in which the other person has or may have engaged, is or may be engaging, or is or may be intending to engage'. The information need not be in a form that would make it admissible evidence in a court proceeding.

'Official misconduct' is defined in the Whistleblowers Protection Act by reference to the definition of that term in section 32 of the Criminal Justice Act (set out on page 2 of this report). An abbreviated definition, based on the Criminal Justice Act definition, is used in the department's Whistleblowers Protection Policy:⁵⁶

2.1 Official misconduct is conduct by an employee that:

- (i) involves a breach of trust placed in the employee by virtue of the employee's position;
- (ii) involves a misuse of official information; or
- (iii) is not an honest or impartial discharge of the employee's responsibilities.

PROVIDED

the conduct is or could be:

- (i) a criminal offence; or
- (ii) serious enough to warrant dismissal.

Confidentiality

Supervisors, investigators and employees must not make any disclosure of matters imparted in a public interest disclosure, unless it is unavoidable for the purpose of investigating the matter and the risk of reprisal has been assessed as low. (See s. 5 of the Whistleblowers Protection Policy.)

It is a criminal offence to make a reckless or intentional disclosure of the confidence of someone who has made a public interest disclosure. (See s. 55 of the Whistleblowers Protection Act.)

Confidential information can only be given to the employee against whom the public interest disclosure has been made if it is essential to do so to afford natural justice and it is unlikely a reprisal will be taken against the employee who has made the disclosure.

Protections

The protections offered to the person making a public interest disclosure include:

- an appeal to the Commissioner for Public Sector Equity against disciplinary action or an appointment or transfer, or unfair treatment which he or she believes is a reprisal action
- an application to the Industrial Commission or the Supreme Court for an injunction
- civil action for damages
- no civil, criminal liability or liability under an administrative process.

(See s. 12 of the Whistleblowers Protection Policy.)

Employees engaging in reprisals against someone who has made a public interest disclosure may be subject to disciplinary action and/or dismissal. (See s. 42 of the Whistleblowers Protection Act and s. 13 of the Whistleblowers Protection Policy.)

To be protected under the Act, a person making a public interest disclosure must make the disclosure in good faith and without intentionally giving false or misleading information. The disclosure must be made to Education Queensland's CJC Liaison Officer or to the person's direct supervisor. (See s. 57 of the Whistleblowers Protection Act and s. 14 of the Whistleblowers Protection Policy.)

A person who makes a disclosure to the media or in public is not protected under the Act against reprisal action or breach of confidentiality. It is an indictable offence to make a disclosure that is intentionally false or misleading. (See s. 56 of the Whistleblowers Protection Act and s. 14 of the Whistleblowers Protection Policy.)

REPORTING OF RUMOUR AND INNUENDO

It is important that rumour and innuendo within the school or wider community be acted upon quickly — both to halt untrue or unfair claims relating to an employee and to ensure that students are safe if the rumour or innuendo is based on truth. (See further discussion in chapter 5.)

The Burge Report (p. 13) expressed concern about lack of action on rumour and innuendo relating to possible sexual misconduct of employees:

It has become apparent that in a number of cases, members of school communities including students, teachers and administrators are aware of rumour and innuendo relating to allegations of inappropriate student/staff relationships. In some cases administrators appear to have ignored the presence of such information in the community, possibly because it presents only at the level of rumour.

It seems essential that school administrators and other senior officers take action as soon as they

become aware of information whether that information be factual or rumour. This can be done in a number of ways which do not infringe employee rights of due process. Essentially it involves making the employee who is the subject of the rumour aware of what is being said, without prejudice. It would be advantageous for a record of such conversations to be recorded, co-signed and filed locally in a manner that is consistent with natural justice and due process.

The Burge Report (p. 14) recommended that Education Queensland:

Recommendation 12 — Managing rumour
Incorporate into principal and district officer induction and ongoing training proactive methodologies for managing rumour and the investigation of rumour where possible.

Recommendation 13 — Recording actions on rumour

Explore and establish an acceptable method of recording the actions taken on rumour and or the investigation of rumour and instigate as part of training when available.

Education Queensland has noted that as a result of the training on the Child Protection Policy principals and district officers are now reporting, investigating and recording rumour-based allegations:⁵⁷

Wide training is needed to alert officers to potential misconduct where vague allegations of inappropriate relationships are made. Some principals have demonstrated outstanding initiative by instigating informal investigations into rumours and keeping the CJC Liaison Officer closely informed. It must be appreciated that some courage and energy is needed to pursue and investigate these rumours. More often than not they prove fruitless. However the message imparted is that inappropriate relationships will not be tolerated.

It is important that the commitment to investigating rumour and innuendo is made in the Code of Conduct or associated policy documents. Those policies can also be used to document and preserve effective methodologies that have developed by individual officers.

In relation to the Burge Report recommendation 13 — that actions on rumour be recorded — the department has responded:⁵⁸

The new Complaints Management System incorporates the ability to record cases under the heading of 'possible' which allows an enquiry to be made into rumour-based allegations and such outcomes to be stored in the database. The category of 'possible' can be amended at a later date if rumour is substantiated or a formal investigation is progressed.

Education Queensland advised the CJC in November 2000 that district officers and principals have been told of these new reporting guidelines.

RECOMMENDATIONS

RECOMMENDATION 4.1

That the Child Protection Policy provide that an employee (including an Education Queensland employee not working in a school) is under a duty to report, as soon as practicable, any suspicion that a fellow employee has behaved in such a way that amounts to 'sexual misconduct' or in a way that would suggest sexual misconduct or the possibility of it. This would include, for example, allegations or information acquired in confidence or second-hand.

4.1.1 That the Child Protection Policy provide that an employee's duty to report is ongoing. Where there are additional grounds to suspect inappropriate behaviour, a further report must be made.

4.1.2 That the Child Protection Policy emphasise that if an employee is under a duty to report an allegation and fails to report or pass on the allegation, the employee be subjected to disciplinary proceedings.

RECOMMENDATION 4.2

That the Child Protection Policy provide that employees (including guidance officers) are to report allegations of sexual misconduct to the principal or, if the principal is the subject of the allegation, to the Manager, Education Services, at the District Office.

RECOMMENDATION 4.3

That the Child Protection Policy inform employees, including principals, of the option to also report allegations direct to:

- the CJC, if they believe that the matter involves official misconduct
- the Queensland Police Service, if they are of the view that a criminal offence may have been committed
- the Department of Families, Youth and Community Care, Queensland, if they believe the child is at risk.

RECOMMENDATION 4.4

That the Child Protection Policy require principals and all other employees who have received an allegation involving inappropriate behaviour by an employee against a student to document the allegation and the action taken in response to the allegation fully and as soon as practicable after the allegation is made.

RECOMMENDATION 4.5

That the Child Protection Policy require principals to refer all allegations to the Education Queensland CJC Liaison Officer, whether or not they believe that the matter involves a criminal offence or official misconduct. The Liaison Officer should keep a record of all allegations received against employees, irrespective of the manner in which the allegations were reported.

RECOMMENDATION 4.6

That the Child Protection Policy emphasise the protections and support offered to employees who report allegations internally, including protection from liability and retribution.

RECOMMENDATION 4.7

That Education Queensland implement appropriate mechanisms to ensure that all students in primary and high schools are aware that they can talk to understanding adults about any employee behaviour that concerns them and that they will be listened to in a non-judgmental way.

RECOMMENDATION 4.8

That Education Queensland policy ensure that support structures are in place in all schools in Queensland for students who may wish to, and who do, disclose alleged sexual misconduct.

RECOMMENDATION 4.9

That Education Queensland policy implement the Burge Report recommendations that the department:

- incorporate into principal and district officer induction and ongoing training proactive methodologies for managing rumour and the investigation of rumour where possible
- explore and establish an acceptable method of recording the actions taken on rumour and/or the investigation of rumour, and instigate as part of training when available.

Endnotes

36 Section 44 of the Whistleblowers Protection Act provides protection to those who make a public interest disclosure and requires departments to have 'reasonable procedures to protect officers from reprisals'.

37 The term 'official misconduct' is defined in Education Queensland's Whistleblowers Protection Policy, see page 27 of this chapter.

38 Section 32 is set out in full in chapter 1.

39 *Allegations of or Information about Official Misconduct Concerning any Employee: Reporting*, paragraph 2.2.

40 'Harassment' is defined in the Policy under the heading *Definitions*, paragraph 1.4 in the following terms:

Harassment, intimidation and bullying involves the abuse of power with the intention of causing distress to the other person(s), or for personal gain or gratification. Behaviours may include repeated behaviour that can be covert and subtle, and be social, psychological, verbal, physical and/or sexual in nature.

The Anti-Discrimination Act definition of 'harassment' is also referred to under the heading *Responding to Complaints of Harassment, Intimidation and Bullying of Students: Reporting* paragraph 4.2.

41 *Responding to Complaints of Harassment, Intimidation and Bullying of Students: Reporting* paragraph 4.3.

42 Although, under the Child Protection Policy *Accountabilities* paragraph (h), principals must 'document the receipt of and particulars of the allegations'.

43 Although the Child Protection Policy *Accountabilities* (e) suggests that failure of an employee to behave in a manner consistent with the requirements of the Policy may result in criminal proceedings and/or disciplinary proceedings against the employee under the Public Service Act. Section 87 of that Act, which sets out the grounds for disciplining public servants, does not specifically refer to policy documents other than a code of conduct. However, under s. 87 a breach of a provision of the Code of Conduct can result in the person being disciplined if the breach would, for example, amount to 'disgraceful or improper conduct in an official capacity' or 'disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the public service'.

44 Letter from Education Queensland, 24.11.00.

45 Under the heading *Suggested State Educational Institution Management Approaches and Strategies to Ensure Child Protection*, paragraphs 5.1(k), (l), (p), (q) and 5.2.

46 The five matters reported to the hotline were reported by people who were adults at the time of the hotline, although the alleged incident occurred when they were schoolchildren. Four of the 'students' who reported incidents directly to the QPS were adults by the time they made their report. In the matter reported direct to the Children's Commissioner, there had been a 17-year delay in reporting the matter and the 'student' was an adult by the time of the reporting.

47 Education Queensland's Code of Conduct requires that staff report corruption and maladministration to a principal or manager or other proper authority. Medical practitioners are the only professionals in Queensland with a legislative duty to report suspicions in relation to child abuse. Section 76k(1) of the *Health Act* provides:

A medical practitioner who suspects on reasonable grounds the maltreatment or neglect of a child in such a manner as to subject or be likely to subject the child to unnecessary injury, suffering or danger shall, within 24 hours after first so suspecting, notify by the most expeditious means available to the medical practitioner a person authorised under a regulation to be so notified.

48 By comparison, the New South Wales Ombudsman is to be notified of any child abuse allegation or convictions against employees of designated agencies (including, for example, the Department of Education and Training). The Ombudsman can then monitor the progress of an investigation conducted on behalf of the agency. At the end of the investigation, the Ombudsman will determine whether the allegation or conviction were appropriately investigated and whether appropriate action was taken. The Ombudsman is also required to keep under scrutiny the systems for preventing child abuse by employees and the systems for handling and responding to allegations of child abuse or convictions involving those employees. See *Ombudsman Act 1974* (NSW) Part 3A (inserted by *Ombudsman Amendment (Child Protection and Community Services) Act 1998*) and NSW *Ombudsman-Child Protection* at www.nswombudsman.nsw.gov.au/child_protection.

49 Letter from the Acting Registrar, Misconduct Tribunal, 16.11.00.

50 Under the heading 'Accountabilities'.

51 For an overview of those complaints, see chapter 2; for a more detailed analysis, see appendix A. Figure 4.1 refers to the sample of 73 complaints that are analysed in appendix A. By comparison, more than 60% of the complaints (of all types) made to the CJC that involve an individual victim, such as complaints of police misconduct against individuals, are made directly to the CJC by the alleged victim.

52 For possible cultural influences on reporting, see Cook & Lafferty 2000, pp. 18–19.

53 *Allegations of Physical/Sexual Abuse Against Staff, Reporting Proforma* (10 May 2000). The form includes provision for details of the employee, the person making the allegation, the student, the allegation, action taken by the parents (e.g. whether they prefer an investigation by the school, the department, the police or the CJC) and action taken to advise the District Officer, the CJC Liaison Officer and the police. Another form is available for the reporting of minor incidents.

54 Department of Education Manual Legal and Legislation LL-13: Management of Public Interest Disclosures Under the Whistleblowers Protection Act, November 2000.

55 See, in particular, ss. 14 and 15 of the Whistleblowers Protection Act.

56 Department of Education Manual Legal and Legislation LL-13: Management of Public Interest Disclosures Under the Whistleblowers Protection Act, November 2000, s. 2 *What is Official Misconduct?*

57 Letter from Education Queensland, 24.11.00.

58 Letter from Education Queensland, 24.11.00.

INVESTIGATIVE PROCESSES IN EDUCATION QUEENSLAND

Mechanisms to encourage complaints are unlikely to be successful unless people believe that appropriate action will be taken on information supplied. When appropriate action is taken, a clear message is sent that certain behaviour will not be tolerated and that making a disclosure is worthwhile. Investigations can also be a valuable preventative tool if an organisation communicates the details of an investigation and its outcomes to staff in a way that promotes understanding of the organisation's values and standards, especially if this is done as part of a planned approach to reinforce the Code of Conduct.

This chapter discusses

- the investigative role of Education Queensland in relation to allegations of sexual misconduct by employees towards students
- standards for investigating allegations
- Education Queensland policies and procedures relating to the investigation of allegations against employees of sexual misconduct towards students.

THE INVESTIGATIVE ROLE OF EDUCATION QUEENSLAND

In addition to Education Queensland, the CJC, the QPS, the QCC and the Department of Families, Youth and Community Care, Queensland, may be involved at the same time or at different times in the investigation of allegations of sexual misconduct by Education Queensland employees towards students.⁵⁹

Even where an external agency has primary carriage of the investigation, Education Queensland may still:

- have been responsible for the initial investigation to determine whether the allegation was a matter that should be referred to an external agency
- be required by the external agency to conduct an internal investigation or further internal investigations in relation to the allegation.

For example, the CJC has legislative power to investigate cases of alleged or suspected official

misconduct by persons holding appointments to units of public administration, which include teachers and others employed by Education Queensland.⁶⁰ When the CJC receives any type of complaint from whatever source involving an Education Queensland employee, the complaint is assessed to determine whether further investigation is feasible and who should conduct the investigation. If the matter does not involve a criminal offence but may require disciplinary action, the CJC will usually refer the matter to Education Queensland. The CJC may expressly request to be informed of the outcome of the departmental investigation and possible disciplinary action. In the sample of 83 complaints files reviewed for this report, 20 complaints were referred back to Education Queensland for investigation. (See also chapter 2.)

If the CJC's initial assessment indicates that a criminal offence is involved, the matter will normally be referred to the QPS. Where the matter is in the nature of official misconduct rather than a disciplinary matter, and if it does not involve a criminal offence, the CJC may investigate the matter itself.

STANDARD FOR INVESTIGATIONS

Any organisation that investigates complaints, either of mismanagement or of criminal matters, must have policies and procedures to ensure appropriate action as the need arises. If matters are not investigated properly, resources may be wasted, evidence may be damaged, unnecessary pressures may be placed on staff and the outcome of the investigation may be jeopardised.⁶¹

In the context of investigating allegations of sexual misconduct by Education Queensland employees towards students, it is also essential that the investigation is seen as a search for facts rather than as an exercise of authority to discipline the subject of the investigation. The investigation must also be seen to be fair to all parties. If properly carried out, it could help alleviate the potentially devastating consequences to students of behaviour that is the subject of true allegations, and the equally devastating consequences to individual employees, schools and communities of false allegations.

Investigations should include techniques that enhance the reliability of witness statements and exclude techniques that detract from their reliability.

Impartial and unbiased

A concern was expressed in the Ontario Report that conduct is too easily characterised as sexual and that inappropriate behaviour that may be deserving of a reprimand can too easily be characterised as criminal. A result of this overzealousness may be a reluctance of employees to interact with students beyond what is absolutely necessary. The Ontario Report (p. 13) noted:

Fear causes some teachers to avoid the most innocent physical contact with students. After-hours activities with students are sometimes curtailed. Some teachers will never meet with a student alone. Classroom doors are kept open during any such meetings that do take place. A culture of over-reporting complaints which are either groundless or do not involve criminality may result in children's aid societies and police officers being brought in to address unclear boundary issues, or frivolous or ill-motivated complaints rather than true crimes.

If employees perceive that an investigative system is in place that fairly addresses such complaints, it is less likely that they will be unduly inhibited in their interaction with students. The Ontario Report (p. 13) observed:

Students need to feel that they will be heard, that their accounts will not be discounted or minimized solely because they are students and the alleged offender is a teacher. Teachers also need to feel that they will be heard and that complaints will not be accepted just because they are made by children.

Addressing unfounded allegations

An unfounded allegation can have a disastrous effect on the employee, the school and the community. It can also affect the credibility of children as complainants.

It is very difficult to quantify unfounded allegations. A number of complaints received by the CJC relating to sexual misconduct by school employees were found to be unsubstantiated or resulted in the employee being found 'not guilty' during a subsequent criminal trial (see chapter 2 for a discussion of the complaints received by the CJC). In some cases, it is apparent that something inappropriate did occur — but it could not be proven beyond a reasonable doubt in the criminal courts, or there was insufficient evidence to take the matter before the court.

In other cases, the allegations may have been made maliciously. A false allegation made by a student or anyone is a powerful tool in the hands of the person making the complaint. An employee's reputation and future career may be seriously jeopardised simply upon the making of an allegation of this

nature. The prompt and efficient investigation of all allegations will help alleviate the problems flowing from false allegations.

A penalty should attach to anyone knowingly making a false allegation.⁶² The Taskforce would be a likely body to consider what sanctions should apply to students within the disciplinary structure of schools.

Options for investigations

Any organisation in the public sector that does not have a regulatory or enforcement function must evaluate options for conducting internal investigations. Those options include: contracting out investigations, training existing staff to conduct investigations in addition to their regular duties and establishing a dedicated internal investigation unit. The nature and number of matters that require investigation should determine which option is best.

Regardless of which option is adopted, the agency needs to:

- consider the best means to ensure that organisational improvements occur as an outcome of investigations when required
 - ensure that the investigation is conducted by people with the right skills and knowledge
- Procedural fairness requires that an officer at a higher level than the employee conduct the investigation. Interviews conducted by appropriately trained interviewers may minimise the trauma associated with multiple interviews.
- facilitate planning and cooperation between those with a legitimate interest in the investigation

This can minimise the trauma for students of repeatedly reliving disturbing memories; for example, the Ontario Report (p. 332) noted:

Protocols should stress that any questioning of the student by school staff should be done only to clarify the nature of the complaint, if any. Once the matter is reportable to the police or CAS,⁶³ school staff should not conduct an investigation. Such an investigation can contaminate the student's testimony through suggestive questioning, can unduly traumatize the student through repetition of the critical events and may affect the fullness of later disclosure to CAS or police.

- ensure that investigation policies are widely promulgated
- All staff should know how information will be received and assessed, what matters may be investigated, what roles and responsibilities different staff members may have and who may conduct an investigation
- ensure that confidentiality is maintained throughout the investigation

- ensure that clear, well-documented records are kept at each stage of the investigation
- ensure that resources are available to conduct internal investigations properly
- ensure that a report on the results, outcomes and recommended actions is prepared and independently reviewed by an appropriate authorising officer⁶⁴
- manage the impact of investigations on a workplace and staff not directly involved in the investigation to ensure that the repercussions are minimised
- monitor and review investigation activities regularly to ensure effectiveness and to make modifications as needed.

EDUCATION QUEENSLAND POLICIES AND PROCEDURES RELATING TO INVESTIGATIONS

Education Queensland does not have documented policies and procedures relating specifically to the investigation of allegations of inappropriate behaviour of a sexual nature by employees towards students.⁶⁵ This has led to practical problems, and suggests that not all allegations of inappropriate behaviour have been pursued as comprehensively and as fairly as possible. The Burge Report (p. 13) observed, for example:

A review of files examined to date reveals that when investigators are confronted with two contradictory versions of events there may sometimes have been no obvious further effort to seek out other information or persons which may corroborate one or other versions. Lack of corroborative information has meant that the allegation is not pursued any further. Procedures for the taking of information, the management of investigative processes, and the formation and use of investigative teams, may not be widely known or used at school level, or for that matter, at district level, in the current department structure.

Despite the lack of documented procedures, informal procedures have developed such as:⁶⁶

- Most departmental investigations are conducted at the local level. District Office personnel usually require the investigation to be carried out by the principal of the school where the incident allegedly occurred. Matters that involve allegations against the principal or deputy principal are investigated by other principals or by District Office personnel. The investigation culminates in a report by the investigating officers to the District Office and the report forms the basis for any disciplinary action.
- Alleged incidents are treated on a case-by-case basis. As it is not possible at the outset to predict

the outcome of any particular investigation, the department adopts a process of constant evaluation of information gathered during the course of any preliminary inquiry into or investigation of a matter. This process enables the department to take immediate action on potentially criminal conduct or suspected official misconduct.

Education Queensland has taken steps to outsource investigations. A small number of investigations have been handed on to private investigators and to officers of other departments. The department has noted, however, that:⁶⁷

Given the volume of investigations conducted by EQ, this is a course of action with not insignificant budgetary implications.

In response to a recommendation in the Burge Report — that senior principals and key district officers are trained in investigation procedures — Education Queensland has advised that:⁶⁸

Employee Relations Unit training in investigation procedures was conducted over an 18 month period and included all Districts within Queensland. Officers offered training included District Directors, Managers Education Services, Principal Personnel Officers and key districts.

However, the department has no evaluation mechanisms for the training of internal investigators.

The Human Resources and Executive and Legal branches of the department are developing a 'comprehensive resource kit for investigators'.⁶⁹

This is a positive move to improve the quality and effectiveness of investigations. So, too, is the acknowledgment by the department that there is need to improve the quality of its investigations.⁷⁰

GUIDELINES

Education Queensland has developed a set of guidelines (as opposed to formal policies) for school personnel involved in investigating and resolving 'student behaviour issues'.⁷¹ The guidelines specifically exclude formal departmental investigations. A formal departmental investigation is said to happen (p. 1):

for very serious matters, such as official misconduct or appeals against school decisions about exclusions. In these cases, the investigation would be carried out by a district office person, e.g. district manager Education Services, or by a principal trained in official investigations, or the principal of the school would be asked to investigate the matter, in which case the principal would receive guidance on how to go about this.

Even if the guidelines were expanded to include 'formal investigations', they would not be a

replacement for policy direction. Policy can dictate mandatory standards for all investigations, regardless of where or by whom the investigations are carried out. A policy document can also make clear what the effects of noncompliance will be. A breach of policy may enable an aggrieved party to seek redress.

The guidelines do not define what the investigation is (such as, for example, a structured process for the search of facts) and do not address the responsibility for deciding whether a case has been proven as a result of the investigation. The guidelines do not address the issue of confidentiality. Nevertheless, they may provide some assistance to Education Queensland in preparing a policy on the investigation process.

To paraphrase the guidelines:

- *Show respect for people and observe protocols.*

For example:

Ask yourself how you would like to be treated. If people are treated courteously and fairly they are more likely to accept the decision, even though they might not be entirely happy with the final outcome.

Ask who else the issue affects.

You would be wise to interview a student in the presence of another person, e.g. a colleague or a parent. Consider if it is appropriate to suggest that a student should bring a friend to the interview to provide support.

Allow a staff member to consult a union representative, or any other person, or to have them present as a support person at an interview.

- *Observe the principles of natural justice.*

For example:

Begin with the presumption of innocence.

Ensure that your processes are open, fair, free from bias, and that all parties get a chance to state their case before a decision is made.

Try to be aware of any bias you, other students, or other staff, might have against the student because this influences the conclusions you draw from your investigation.

If you have a personal interest in the matter, or dealings with the student that make it difficult for you to maintain your impartiality, pass the matter on to a colleague or next-in-line.

Ensure that the person who has been complained about sees or hears the full allegation and has the opportunity to state their case fully and in a fair way. Do not assume that the complainant is always right.

Ensure that your processes and approach do not have a negative impact on the quality of information.

Be aware of the power differences in the situation, and that you may be intimidating

to the student. This can cause them to say things they think you want to hear but are not the fact of the matter.

Be assertive but not coercive. Do not browbeat students or put words into their mouths. Take your time. Ensure that students have uninterrupted turns to speak. Ask questions to help make things clear, when they have finished.

- *Aim to find out the facts of the matter.*

For example:

Get information and individual perspectives while these are still fresh.

Remove all impediments to finding out the truth.

Focus on the issue not the person.

Focus on the issue at hand. It is unwise to introduce different, past issues.

Talk quietly, calmly and slowly. You may find it helpful to use words like: 'You tell me your story while I listen.' This encourages openness and trust.

Be careful to distinguish between fact and hearsay. Obtain written accounts, with dates and signatures, from people who actually **saw** and **heard** the incident, especially disinterested third parties.

Ask open and non-leading questions, i.e. ensure that your questions are worded in such a way that the answer is not suggested, e.g. (at the outset) 'Were you there when this happened? Tell me what you saw and heard' rather than 'Did Bill grab Tom?'

Record students' spontaneous words.

Where there may be a threat to the wellbeing (both physical and emotional) of a witness/claimant, ensure that they are not identified to the person/student under investigation and that they are not victimised.

- *Be sensitive to all cultural needs.*

For example:

Get help from an appropriate support person, e.g. community education counsellor or community participation officer.

Check the language skills of the parents and provide interpreter assistance where necessary.

Be prepared to meet away from the school.

Approach the student without any preconceived notions or biases about their culture.

Be sensitive to different cultural attitudes to discipline, and to notions of family shame and saving face.

Be sensitive to the strength of family loyalties and how families should be approached because neglect of these can cause stress to other members of the family.

- *Keep clear records, so that others will readily follow your processes and the reasons for your decision.*

For example:

Document carefully all along the way, especially if the matter seems serious.

Ensure that you file:

full, clear and factual (not emotive) records of your actions,

legible, signed and dated statements.

your staff memos and correspondence.

This is important if the school's opinion is appealed against later.

Remember all records are subject to Freedom of Information investigation.

- *Follow up and review processes.*

For example:

Ask yourself how will you know when the issue has been resolved.

Follow up outcomes.

Reflect on what the investigation of the issue has taught you. Are there further actions you need to take to improve service delivery?

RECOMMENDATIONS

RECOMMENDATION 5.1

That Education Queensland prepare and adopt a comprehensive documented policy, based upon best practice, for the internal investigation of allegations involving sexual misconduct by employees towards students (see also recommendation 5.5).

RECOMMENDATION 5.2

That the policy referred to in 5.1 cover:

- how and when internal investigations are to be conducted (see also recommendation 5.5)
- by whom the investigations should be conducted (see recommendation 5.3)
- the interaction of Education Queensland investigators with the Queensland Police Service in its investigation of the same allegations, and with other agencies conducting related investigations
- what records are to be kept of the investigation, where those records are to be kept and who has access to the records
- regular audits and reviews of the investigation policy and of the conduct and outcome of investigations
- who is to conduct the audits and reviews, and how often
- professional support to students and employees referred to in the allegation.

RECOMMENDATION 5.3

That Education Queensland consider strategies for enhancing the investigative abilities of the department. This should include consideration of whether investigations into particular types of allegations should be conducted by:

- employees who have been trained in appropriate investigation techniques but who are not dedicated solely to the investigation of allegations (see recommendation 5.4)
- a specialist investigative team within the department
- an appropriately qualified police officer seconded to the department
- appropriately qualified and experienced external investigators or agencies contracted to the department for the purpose of an investigation
- investigators drawn from a pool of investigators including any of the above.

RECOMMENDATION 5.4

That Education Queensland, in consultation with relevant agencies, prepare and adopt written protocols relating to investigations. The protocols should cover the respective roles of relevant parties including, for example, Education Queensland, the CJC, the school principal, the District Office, the police and the parents. Matters to be covered should include:

- factors affecting the timing of the investigation and preliminary interviews
- factors affecting location of interviews
- factors affecting whether parents will be contacted prior to any interviews, or at all
- interviewing techniques that enhance or detract from the accuracy, reliability and completeness of the student's account
- special needs of students with disabilities
- the obligation to contact relevant agencies if the student-complainant transfers to another school
- the exchange of information between relevant agencies such as the police and the department (see also recommendation 8.1)
- the status of any internal investigation, pending an ongoing CJC or police investigation or criminal charges
- a caution against interviewing student-complainants or the suspected employee by school officials and an articulation of the dangers associated with conducting a concurrent investigation with the Queensland Police Service or an investigation related to an investigation by another agency

- when a support person will be permitted to remain with a student-complainant during any interviews
- when a suspected employee should be notified that an allegation has been made against him or her
- at what stage of the investigation the suspected employee should be given an opportunity to respond to the allegations and what information should be provided to that party and/or his or her counsel to enable the employee to respond to the allegations.

Endnotes

59 A matter may be referred to the **QPS** at any stage. For example, there is nothing to prevent a student, a parent, a teacher or a principal from contacting the QPS as soon as the alleged incident comes to light, if such action is considered necessary. If the QPS investigates a matter and finds that there is sufficient evidence for a person to be charged with a specific criminal offence, and a charge is laid, depending on the seriousness of the offence, the matter is either prosecuted by the QPS or referred to the Director of Public Prosecutions for action.

The **QCC** is a law enforcement body with functions that include investigating possible paedophilia offences (ss. 9 and 28(1) of the *Crime Commission Act 1997*). 'Criminal paedophilia' is defined in s. 6 of the Act as activities involving (a) offences of a sexual nature committed in relation to children; or (b) offences relating to obscene material depicting children.

The **Children's Commissioner** has no jurisdiction over Education Queensland employees. However, the Commissioner can refer matters relating to Education Queensland employees to the CJC if the matter involves official misconduct or possible official misconduct, or to the QPS if criminal action appears to be involved. When the Commission for Children and Young People Bill 2000 commences [expected to occur in early 2001], it will expand the role and the jurisdiction of the Children's Commissioner. In broad terms, the Bill proposes to empower that agency to receive, investigate and report on the outcome of investigations relating to the provision of services provided to children who are clients of Families, Youth and Community Care, Queensland or who have been dealt with under the *Bail Act 1980*. To come within the proposed expanded jurisdiction, a private service provider must be in receipt of government funding (clauses 8–10 and 32). Services provided by government and non-government schools will be included. The new legislation will enable the Commission to deal with complaints made by students (or persons acting on their behalf) who are within the care of the Department of Families, Youth and Community Care, Queensland, in relation to inappropriate behaviour by teachers at private and state schools. Students who are not under such orders will not be entitled to have a complaint investigated by the Commission. The Bill also

proposes to expand the Children's Commissioner's role to the investigation and reporting of systemic issues experienced by children under relevant orders who are affected by particular service providers. This may cover systemic issues in any government or non-government school provided they are in receipt of Government funding. (Clause 15 of the Commission for Children and Young People Bill.) The CJC will still investigate and report on systemic problems within units of public administration which may need to be addressed in order to prevent official misconduct within that organisation in the future.

- 60 Sections 3A(1) of the Criminal Justice Act. See definition of 'official misconduct' in chapter 1.
- 61 Independent Commission Against Corruption (NSW) *Practical Guide to Corruption Prevention: internal investigations module* at www.icac.nsw.gov.au/pub_corruption_prevention, accessed 18 September 2000.
- 62 It is an offence to make, or cause to be made, a false complaint to the CJC (s. 137 Criminal Justice Act). It is also an offence to falsely represent to the QPS that an action has been done or circumstances exist which result in a QPS investigation (s. 10.21 *Police Service Administration Act 1990*).
- 63 Children's Aid Society.
- 64 Any administrative action by Education Queensland will be subject to the department's grievance/appeal process and ultimately any administrative action can be reviewed by the Ombudsman. The jurisdiction of the Queensland Ombudsman is limited to the investigation of any administrative action taken by a public sector agency (s. 13 *Parliamentary Commissioner Act 1974*). Section 4 defines 'agency' to include departments, local government, public authorities and persons and bodies declared by regulation to be an 'agency' for the purposes of the legislation.
- 65 Letter from Education Queensland, 24.11.00.
- 66 Letter from Education Queensland, 20.7.00.
- 67 Letter from Education Queensland, 24.11.00.
- 68 Letter from Education Queensland, 24.11.00.
- 69 Letter from Education Queensland, 24.11.00.
- 70 Letter from Education Queensland, 24.11.00.
- 71 *Resolving Complaints and Issues in Schools: A Guide for In-School Investigations*: May 1999.

DISCIPLINARY PROCESSES

In this chapter we consider:

- the deterrent effect of appropriate responses to allegations
- actions taken by Education Queensland against employees prior to the conclusion of an investigation
- actions taken by Education Queensland against employees at the conclusion of internal or external investigations that substantiate allegations made against an employee
- actions taken against teachers by the Board of Teacher Registration in response to the allegations referred to the Board
- limitations imposed on disciplining authorities due to restrictions on the exchange of information relating to the employee.

DETERRENT VALUE OF EFFECTIVE DISCIPLINE

For most employees, the knowledge that consequences will flow once inappropriate behaviour has been detected will be a major deterrent to inappropriate behaviour and will help set the boundaries for future behaviour within an organisation.

Disciplining or punishing Education Queensland employees who behave inappropriately will also help ensure the future safety of students and maintain the confidence of the community in the integrity of their schools and of Education Queensland employees.

Depending on the circumstances, employees shown to have behaved inappropriately will:

- be dismissed from Education Queensland
- be subjected to criminal proceedings
- be counselled
- be prevented from working as a teacher in Queensland (provided the behaviour is such as to convince the Board of Teacher Registration, after inquiry, that the teacher is not a fit person to teach).

Further, while investigations are under way and before an allegation has been substantiated, there is a community expectation that Education Queensland will take whatever action is necessary to ensure the safety of students pending the outcome of the investigation, while at the same time respecting the basic principle that a person is innocent until proven guilty.

In some instances, it may be appropriate to suspend an employee on full pay until the investigation is complete. In other cases, it may be possible for Education Queensland to reassign the employee to a position within the department that does not require extensive contact with students (See chapter 2 for the employment outcomes for employees in the sample of CJC complaints files reviewed for this report.)

ACTIONS TAKEN BY EDUCATION QUEENSLAND BEFORE THE END OF AN INVESTIGATION

Education Queensland practice

There is no documented Education Queensland policy requiring the department to ensure the immediate safety of the student alleged to be the subject of sexual misconduct by an employee, although the department has advised:⁷²

- Employees are usually removed from all contact with students while the investigation is under way.
- If the investigation is a police one and the employee is not immediately charged with an offence or is charged but granted bail, the department attempts to find alternative employment for the employee within the department.
- If it is not practical to employ the employee elsewhere in the department, the employee will be suspended on full pay pending the resolution of the police investigation.

Without clear policy direction, inconsistent and wrong decisions may be made concerning the protection of students pending the results of an investigation into allegations made against an

employee. Education Queensland policy must clearly state the circumstances under which an employee will be removed from contact with students, and at what point the employee should be suspended from employment pending the outcome of investigations.

Transfer

Education Queensland has transfer guidelines applicable to permanent teaching personnel, principals, education officers (special duties), instructors of instrumental music and dance, community and assistant teachers, guidance officers and priority country area program coordinators.⁷³ The guidelines simply provide that an employee will not be transferred to a different district if a 'formal investigation' or a disciplinary proceeding is in progress.⁷⁴ There is no restriction on the transfer of employees to other schools within the same district.

Although the transfer policy may prevent an employee continuing to behave inappropriately at one school, in some circumstances it may simply be moving the problem to another school. The Burge Report (p. 15), commenting on the transfer histories of a number of employees accused of sexual relations with students, stated that:

it is difficult to escape the suspicion that some of the histories are the result of using transfer to solve a management problem related to inappropriate student/teacher relations.

However, depending on the nature of the allegation against the employee, a transfer to a position involving little or no contact with students may be a fitting response.

The current transfer policy does not mention how much information regarding the allegations and the progress of the investigation should be provided to the principal of the employee's new school. Without ready access to such information, the new principal may not be able to fully assess the risk of harm to students under his or her care. Any amendment to the policy in this regard must balance or accommodate the need for access to such information, the presumption of innocence (pending the outcome of investigations) and the right to confidentiality.

The CJC is of the view that a transfer of an employee under investigation may be an option for the department to consider, but only after taking into account the nature of the allegations and only after a full assessment has been made of the risk to students at the proposed new school. If the allegations are minor and if the new position involves very little or no direct contact with students, a transfer may be the best course of action. In other circumstances, it may be better to leave the employee at his or her current school or to suspend the employee pending the outcome of the investigation.

ACTIONS TAKEN BY EDUCATION QUEENSLAND AT THE END OF AN INVESTIGATION

Discipline

Under section 87 of the Public Service Act, Education Queensland is entitled to discipline an employee if reasonably satisfied that the employee has 'been guilty of misconduct' or has 'contravened, without reasonable excuse, a provision of this Act or a code of conduct'. 'Misconduct' is defined as:

- (a) disgraceful or improper conduct in an official capacity; or
- (b) disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the public service.

The scope of this provision, in the context of the power of Education Queensland to discipline employees, is limited by the absence of a clear definition of inappropriate behaviour in the department's Code of Conduct (see chapter 3), although the above definition of 'misconduct' may cover some of the behaviours that the CJC considers should be prohibited by the Code of Conduct.

Section 88 of the Public Service Act sets out the types of disciplinary actions that can be taken against a public servant by the employing authority.⁷⁵ The action must be what the employing authority 'considers reasonable in the circumstances' including, for example, one or more of the following:

- terminating the officer's employment
- reducing the officer's classification level and change the officer's duties accordingly
- transferring or redeploying the officer to other employment in the public service
- forfeiting or deferring a remuneration increment or increase of the officer
- reducing the level of the officer's remuneration
- imposing a penalty on the officer of not more than the total of two of the officer's periodic remuneration payments
- directing that a penalty imposed on the officer be deducted from the officer's periodic remuneration payments
- reprimanding the officer.

In obvious serious cases, such as where an employee is convicted of a sexual offence against a student, the department will invariably dismiss the employee. Non-criminal sexual intercourse between an employee and a student will prima facie attract the disciplinary sanction of dismissal.⁷⁶ The outcome is less certain in relation to other conduct.

In the sample of 83 CJC files considered for the purposes of this report, 6 employees were dismissed

and 11 were the subject of other disciplinary action. (See chapter 2 for a more detailed overview of the sample.)

In chapter 3, the CJC has recommended that the Code of Conduct should clarify that a breach of the Code can be grounds for dismissal or some lesser disciplinary outcome, depending on all the circumstances of the case (recommendation 3.2)

‘I’ notice

If a person who is the subject of a complaint resigns or retires from Education Queensland before disciplinary action can be taken against the person, the department will, as a matter of course, place an ‘I’ notice on the person’s personnel file.⁷⁷ (See chapter 6 for a discussion of the effect of the employee’s resignation or retirement on the investigation and alleged inappropriate behaviour.) The effect of this notice is that it will not be possible for the person to be re-employed by any part of Education Queensland without the approval of the Director of Human Resources.

‘I’ notices can also be placed on a person’s personnel file when the person has been dismissed.⁷⁸ ‘I’ notices can also be placed on a person’s personnel file even when the person did not resign and was not dismissed. For example, where a person has been working as a supply teacher (that is, on a short-term contract at a school) and has been found to be unsatisfactory, the person’s contract will be terminated. Although the person did not resign, an ‘I’ notice may be placed on the person’s file to prevent the person from gaining further supply work.

Unsubstantiated

Of the 83 cases reviewed for this report, 40 were declared by Education Queensland to be unfounded. (See also chapter 2.)

If the result of an investigation is that the allegation is unsubstantiated or completely unfounded, it is essential that the employee’s personnel records reflect that outcome. It is equally important, however, that the record of the allegation not be expunged altogether from an employee’s personnel record. In some cases, it will only be after a number of similar allegations have been made against an employee that a pattern of alleged behaviour will emerge.

History of allegations/outcomes to follow employee

It is important that a history of allegations and investigation outcomes move with the employee from school to school so that principals are aware of the possibility (no matter how remote it may at first appear) that the new employee has a propensity to behave in certain inappropriate ways. Obviously, such information should be treated as highly confidential by the principal (or the District Officer

should the ‘new principal’ be the employee with a history of allegations made against him or her).

ACTIONS TAKEN BY MISCONDUCT TRIBUNAL AT THE END OF AN INVESTIGATION

After conducting an investigation into a complaint of official misconduct, the CJC may institute disciplinary action against the employee for workplace or work-related conduct that may amount to official misconduct in a Misconduct Tribunal.⁷⁹ The Tribunal may order that the employee be dismissed, reduced in rank or salary level, forfeit or have deferred a salary increment or increase, or be fined (s. 25 *Misconduct Tribunals Act 1997*).

Because it is unclear what kinds of non-criminal behaviour of a sexual nature towards a student could result in an employee’s dismissal from Education Queensland (see chapter 3 for a discussion on the definition of sexual misconduct), the Tribunal’s jurisdiction in this area is uncertain. Referrals of such matters by the CJC to a Misconduct Tribunal have been rare.⁸⁰

Education Queensland would need to specifically prohibit certain behaviour by its employees and ensure that employees are aware that such behaviour will result in an employee’s dismissal before the Misconduct Tribunal’s jurisdiction over such a matter would be certain.⁸¹

ACTIONS TAKEN AGAINST TEACHERS BY BOARD OF TEACHER REGISTRATION

The Board of Teacher Registration was established by the *Education (Teacher Registration) Act 1988* and consists of nominees of:

- the Minister
- the Director-General of Education (including two practising teachers)
- private school employing entities
- Queensland Teachers’ Union
- Queensland Independent Education Union of Employees (practising teachers in non-state school system)
- State Public Services Federation, Queensland (a registered teacher)
- institutions of higher education (practising teacher educators)
- community groups involved in education (parent of student in a Queensland school)
- registered teachers.

The members volunteer their time. The Board’s responsibilities include, for example, the registration of persons entitled to be registered as teachers, and

to confer and collaborate with relevant authorities and groups on standards of courses of teacher education.

Inquiry by Board upon information provided

Section 50(2) of the Education (Teacher Registration) Act enables the Board of Teacher Registration to conduct an inquiry into registered teachers and formerly registered teachers⁸² provided there are reasonable grounds to believe that:

- (a) the teacher has been convicted of an indictable offence (whether on indictment or summarily) or an offence against this Act; or
- (b) the teacher is incompetent in performing the work of a teacher but only if the teacher has been dismissed from employment as a teacher, or has resigned in circumstances, that, in the opinion of the teacher's employer in the State, call into question the teacher's competency to be employed as a teacher; or
- (c) if the teacher was registered in another State — the teacher's registration in the State as a teacher has been cancelled or suspended; or
- (d) if the teacher was employed in another State that does not register teachers — the teacher's employment as a teacher in the State has been terminated because the teacher's employer was reasonably satisfied the teacher was not competent or fit to be employed as a teacher in that State; or
- (e) the teacher has ceased to possess or does not possess the qualifications and experience (if any) on which the teacher was registered as a teacher; or
- (f) the teacher is not, or no longer is, of good character to be registered as a teacher.

An inquiry is conducted on the basis of information from the following sources:

Information provided by teachers

Section 44 of the Education (Teacher Registration) Act imposes an obligation on registered teachers to inform the Board of Teacher Registration within seven days after the following events have happened:

- the teacher is convicted of an indictable offence
- the teacher's registration in another State is cancelled or suspended
- the teacher's employment as a teacher in another State is terminated because the teacher's employer was reasonably satisfied the teacher was not competent or fit to be employed as a teacher in that State.

Information provided by Education Queensland

Education Queensland is required by section 44A of the Education (Teacher Registration) Act to provide written notice of the resignation or dismissal of a teacher to the Board of Teacher Registration if:

- the department is dissatisfied with a teacher after it has investigated a sexual allegation involving the teacher⁸³
- written notice of that dissatisfaction has been given to the teacher (that is, the teacher is given a 'show cause' notice); and
- within six months of that written notice, the teacher is dismissed or resigns.

The Board must receive the notice, whether the sexual allegation is of a minor or serious nature, within seven days of Education Queensland giving notice of the dismissal to the teacher or within seven days of receiving notice from the teacher of the teacher's resignation.

There is no current legislative requirement for Education Queensland to inform the Board of all disciplinary proceedings or of allegations made against the teacher.

Information provided by Commissioner of Police or the Director of Public Prosecutions

Under section 44B of the Education (Teacher Registration) Act, the Commissioner of Police or the Director of Public Prosecutions (the prosecuting authority) is required to give notice to the Board of Teacher Registration that:

- a teacher has been committed for trial on an indictable offence (the notice to be given within seven days after the committal)
- a teacher was convicted of an indictable offence (the notice to be given within seven days after the conviction)
- there has been an acquittal, mistrial, presentation of *nolle prosequi* to a court or a decision by the prosecuting authority not to present an indictment against a teacher (the notice to be given within seven days after the acquittal, mistrial, presentation or decision).

The prosecuting authority is not currently required to inform the Board or any employing authority of charges against teachers prior to the teacher being committed for trial, other than pursuant to a request from the Board for the criminal history of the teacher.⁸⁴

Outcome of Board inquiries

If, on the balance of probabilities,⁸⁵ the Board of Teacher Registration is satisfied about any of the matters referred to in section 50(2) of the Education (Teacher Registration) Act, it may make any one or more of the following orders:⁸⁶

- that the teacher's registration be cancelled
- that the teacher's registration be cancelled and provisional registration be substituted subject to any conditions the Board considers appropriate
- that the teacher's registration be suspended for a stated time
- that the teacher pay costs associated with conducting the inquiry
- that the teacher pay a penalty to the Board
- that the teacher be reprimanded and the reprimand be entered on the register.

For former teachers, the Board may order the person to pay costs associated with conducting the inquiry or order a 'notation or endorsement' about the person in the register.

If a person's registration as a teacher is cancelled, the person will not be able to work legally as a teacher in Queensland. If a teacher's registration is suspended, the teacher will not be able to teach in Queensland until the suspension has been lifted. Notations of cancellation or suspension will also obviously have a significant effect on the person's ability to teach in other jurisdictions that require disclosure of such information prior to employing teachers. These penalties are obviously extremely severe if the person's livelihood is dependent on the person being able to teach.

In the sample of 83 complaints files reviewed, the Board cancelled the registration of two teachers and suspended the registration of another teacher.⁸⁷ The Board is awaiting further information before inquiring into four other teachers. One teacher was removed from the register at the teacher's own request and the registration of three teachers lapsed when they did not pay annual registration fees.

In the last five years, the Board conducted at least eight inquiries per year into the suitability of teachers to continue to be registered.⁸⁸ The majority of these inquiries concerned teachers who allegedly committed a sexual offence against a student or inappropriately touched a student. During this period, 10 teachers' registrations were cancelled, 10 teachers allowed their registration to lapse⁸⁹ and 12 teachers have had the register annotated/name removed for sexual misconduct. The registration of two teachers was suspended and the teachers reprimanded. No disciplinary action was taken in three cases. Three further matters are still to be heard by the Board in 2000.

In 1999, the Board undertook disciplinary inquiries into five registered teachers who had been convicted of indictable offences, including one case of 'maintaining a sexual relationship with a child' and one case of indecent dealing and taking indecent photographs. The teacher's registration was cancelled in each case.⁹⁰

In 1999, the Board also conducted inquiries into four teachers whose registration had lapsed for less than one year:

In each case, a notation was entered against the teacher's name on the Register to the effect that they had been convicted on an indictable offence (three) or were not of good character (one).

The Board has encountered some instances where it has not had sufficient time to commence an inquiry into the suitability of a person to continue to be registered as a teacher because the person's registration had lapsed by more than a year. For example, if a teacher asks for his or her name to be removed from the register, the Board does not inquire as to the reason for this request. At the time of being removed from the register, investigations by the police into that teacher's past behaviour may not have commenced. If the teacher is subsequently charged with an indictable offence, the investigation, committal and trial process may last more than a year from the time the teacher's name was removed from the register. As a result, the Board is statutorily prevented from conducting an inquiry pursuant to section 50(3) of the Education (Teacher Registration) Act.⁹¹

The Board has indicated to the CJC that it would need more time to be able to use the powers of inquiry effectively in relation to teachers whose registrations have lapsed. The Board has suggested that a period of two years after the teacher's registration has lapsed would be a more adequate time frame in which to determine if a section 50 inquiry is to be conducted.

A suggestion has been made that if a teacher is convicted of certain serious offences, he or she should automatically be de-registered. However, it is unlikely that the Board would have any difficulty in finding that a teacher who had been convicted of a sexual offence involving a student or a serious sexual offence involving any other person is not a person of sufficiently good character to be registered as a teacher (section 50(2)(f) Education (Teacher Registration) Act).

Where a teacher has been convicted of an indictable offence that does not necessarily reflect on the good character of the teacher to continue to be registered as a teacher, the Board is not currently obliged to de-register the teacher. For example, if it is revealed that a teacher had been convicted of manslaughter 20 years ago in circumstances that do not indicate a propensity in the teacher to be violent, a Board inquiry may reveal that the person is still fit to be a member of the teaching profession in Queensland. If there were to be an automatic de-registration upon conviction for indictable offences or for certain categories of offences, the Board would have no discretion to assess the teacher's actual suitability to teach.

RECOMMENDATIONS

RECOMMENDATION 6.1

That Education Queensland prepare and adopt a written policy aimed at:

- ensuring the immediate and future safety of students alleged to have been the subject of sexual misconduct by an employee of Education Queensland, and
- the future safety of other students pending the outcome of any investigation into the allegations against the employee.

6.1.1 That the policy include options to transfer and suspend an employee.

6.1.2 That the transfer of an employee under investigation for sexual misconduct towards students be considered only after taking into account the nature of the allegations and conducting a full assessment of the risk posed to students at the proposed new school.

RECOMMENDATION 6.2

That Education Queensland prepare and adopt a written policy aimed at ensuring that all allegations made against an employee are recorded and maintained as a history against which new allegations can be considered.

RECOMMENDATION 6.3

That Education Queensland prepare and adopt a written policy aimed at ensuring that whenever an employee moves to a new school, the principal of the new school has access to the full history of allegations made against the employee and of investigation outcomes. The policy should also address access to, and the confidentiality of, such information.

RECOMMENDATION 6.4

That section 50(3) of the *Education (Teacher Registration) Act 1988* should be amended to extend the period within which the Board of Teacher Registration can conduct an inquiry into a person who was, but is no longer, registered as a teacher, from one to two years since the registration ended.

Endnotes

- 72 Letters from Education Queensland, 20.7.00 and 24.11.00.
- 73 Human Resource Workforce Management, *Teacher Transfer Guidelines* (approved 7.1.98), s. 5 headed 'Coverage'.
- 74 Human Resource Workforce Management, *Teacher Transfer Guidelines*, s. 10. The meaning of 'formal

investigation' is unclear from the wording of the policy but presumably would at least include a CJC investigation, and a QPS investigation. By comparison, in New South Wales, if there is sufficient substance to an allegation, the New South Wales Department of Education and Training informs the employee that he or she is not permitted to resign, retire, take long service leave, take leave without pay, apply to be transferred, apply to be promoted or apply for a copy of his or her service statement (which the person could use to apply for a position at another school — for example, a private school) until after any investigations and/or disciplinary proceedings are finalised. New South Wales Department of School Education (now known as the New South Wales Department of Education and Training), March 1997, *Child Protection: Procedures to be followed in response to allegations of improper conduct of a sexual nature by a staff member against a student*, 97/018 (s. 017) at www.schools.nsw.edu.au (accessed 22.11.00) and discussions with members of the department's Case Management Unit.

- 75 Section 90(1) of the Public Service Act refers to the requirement to comply with natural justice principles.
- 76 Written communication from Education Queensland to CJC, 20.7.00.
- 77 These notices were formerly referred to as 'D' notices.
- 78 In both situations, the former employee will be advised about the 'I' notice and given an opportunity to object to the notice.
- 79 To be amenable to the original jurisdiction of a Misconduct Tribunal, a person must be a 'prescribed person' within the meaning of s. 39(1) of the Criminal Justice Act. That is, a person who holds an appointment in a unit of public administration, which appointment is declared by regulation made by the Governor-in-Council to be subject to the jurisdiction of the Misconduct Tribunal. As there are no regulations in existence which relate to teachers as a general class, before any charge can proceed it is necessary to have the relevant teacher's appointment declared by regulation to be subject to the jurisdiction of the Tribunal (s. 17 *Misconduct Tribunals Act 1997*). Misconduct Tribunals are independent from the CJC.
- The Misconduct Tribunals have jurisdiction to hear and determine charges of official misconduct. (Section 13 *Misconduct Tribunals Act*.)
- 80 In the past two years, no such matters have been referred to a Misconduct Tribunal. (Correspondence from the Acting Registrar, Misconduct Tribunal, 16.11.00.)
- 81 An employee would need to be made a 'prescribed person' before the CJC can refer a matter to a Misconduct Tribunal. Under s. 39 of the Criminal Justice Act, a person can only be made a 'prescribed person' by regulation.
- 82 An inquiry into a person who was but is no longer registered as a teacher can only take place if it is in the public interest to conduct the inquiry and the

events happened while the person was registered and it is not more than a year since the registration ended. See s. 50(3) of the Education (Teacher Registration) Act.

83 Section 44A of the Education (Teacher Registration) Act defines 'sexual allegation' as an allegation that a teacher has:

- (a) committed an offence of a sexual nature, including, for example, carnal knowledge of a girl under 16 years and a sexual assault mentioned in the Criminal Code, section 337 [which has been repealed and remade as section 352 of the Criminal Code by the *Criminal Law Amendment Act 2000* section 2 and the operation of section 14H of the *Acts Interpretation Act 1954*] and; or
- (b) engaged in conduct of a sexual nature (other than an offence of a sexual nature) with a student or a child, whether in the teacher's capacity as a teacher or otherwise, and the conduct does not satisfy a standard of behaviour generally expected of a teacher.

84 Under s. 37(3) (6) and (7) of the Education (Teacher Registration) Act, the criminal history provided to the Board by the QPS includes charges and convictions.

85 Section 70(1) of the Education (Teacher Registration) Act. 'Balance of probabilities' is a lesser standard of proof than the 'beyond reasonable doubt' test applied in the criminal justice system.

86 Section 70(1) of the Education (Teacher Registration) Act.

87 For an overview of the CJC complaints files relating to sexual misconduct which was the subject of the Board's inquiries, see chapter 2.

88 Meeting with the Director, Board of Teacher Registration 20.11.00 and Board of Teacher Registration Queensland, *1999 Annual Report*, 30 April 2000, p. 14.

89 The Board has noted on its files that their registration is not to be automatically restored.

90 Board of Teacher Registration Queensland, *1999 Annual Report*, 30 April 2000, p. 14.

91 See note 82 above.

The most effective way to prevent students being harmed by employees would be to screen all Education Queensland employees who present a risk to students. Unfortunately, current screening mechanisms are far from perfect and the possibility of devising a foolproof mechanism is slight.

In the context of the Queensland education system, inquiries into the suitability of people to work with children are currently done at two levels: by an agency charged with setting and maintaining standards for the teaching profession (the Board of Teacher Registration) and by selection practices of Education Queensland as an employer.

This chapter looks at the screening of applicants for professional registration as teachers and the screening of applicants for employment with Education Queensland.

SCREENING FOR REGISTRATION AND EMPLOYMENT

What screening may achieve

Screening applicants for registration to a professional body or for employment may either be a positive or a negative control. Mechanisms for screening may attempt to identify applicants who have desirable traits and attributes known to enhance success in a particular vocation or job. Alternatively, employers may attempt to ensure that undesirable applicants are excluded prior to engagement. The particular risks being guarded against, or the qualities sought to be encouraged, will depend on the environment in which the person will be expected to work.

Screening out applicants who may have a propensity to behave inappropriately with children would be best effected by defining relevant risk factors and by establishing mechanisms for detecting those risks. A feedback and review mechanism would ensure that the screening process was working as intended. Regular reviews of critical risk behaviour in the workplace would also be desirable.

To be effective, screening mechanisms for applicants for employment with children must:

1. **ensure coverage of all 'at risk' persons**
Contact with children is not limited to classroom experiences and many categories of employees should be considered for screening.

2. **not be based upon an arbitrary determination**
The requirements for assessment need to be well defined and the process needs to be designed so as to minimise the possibility of being unduly influenced by the applicant. Representative groups that can assist in the assessment will always be preferable to a single decision maker, or decision makers, who are not seen to be objective.

3. **have well-defined risk indicators and assessment processes to facilitate effective monitoring**
If those processes are not defined or are vague or ambiguous, decision makers will find it difficult to be consistent or even fair in their assessments.

4. **not base decisions on unreliable predictors of inappropriate behaviour towards children/students**
Although a very strong indication of risk is a person's criminal history in relation to certain offences involving children, criminal-history checks will only reveal charges and convictions recorded in Australian jurisdictions. They will not reveal a person's previous undetected criminal behaviour and will not detect a propensity to behave in other undesirable ways towards children.

The QPS and the QCC have acknowledged that it is not possible to screen out all people from employment involving children who are likely to commit criminal offences against children, particularly those 'situational' offenders who have not previously displayed any inappropriate behaviour.⁹² They stress that employment screening is only one part of an effective prevention strategy:

Ongoing monitoring, training and supervision of employees who have access to children is critical to minimising the incidence of child sexual abuse. Effective screening should also be accompanied by a policy for potential employees that is explicit about the culture of the organisation and its attitude to child sexual abuse and children's rights and should be part of a broader preventative strategy, which

includes educating children about child sexual abuse and sexuality.

For some employees, their propensity for behaving inappropriately towards young people may never have been tested in an environment similar to a classroom or in a situation where they have held a position of such immense authority and trust over children. Employment screening must therefore be regarded simply as one aspect of a prevention strategy. Other strategies need to be explored, such as prohibiting clearly defined inappropriate behaviour in the Code of Conduct and the establishment of effective reporting and investigative processes. (See chapters 3, 4 and 5.)

Screening applicants for professional registration as teachers

The Board of Teacher Registration registers all teachers in Queensland — whether they are teaching, or intend teaching, in the state or private system. A person cannot work as a teacher in Queensland unless registered by the Board.⁹³

Before the Board of Teacher Registration can approve an application for registration it must be satisfied that the applicant has established that he or she is of 'good character'. The onus is on the applicant to convince the Board of this.

In deciding whether an applicant is of good character, the Board is required to have regard to an applicant's criminal history⁹⁴ and may take into account all other matters it considers relevant, even if the matter happened outside Queensland, including, for example, allegations of inappropriate behaviour towards students in other jurisdictions. If the applicant cannot satisfy the Board, the application is refused. The person can then ask for an inquiry 'about the person'.⁹⁵ At such an inquiry, the Board would draw on its collective wisdom, experience, precedents, policies and Crown Law advice for guidance.

The term 'good character' is defined only in the negative. Section 37(5) of the Education (Teacher Registration) Act provides:

However, without limiting subsection (2) [what the Board is to take into account in determining an applicant's good character], an applicant is not of good character, if the applicant:

- (a) behaves in a way that does not satisfy a standard of behaviour generally expected of a teacher; or
- (b) otherwise behaves in a disgraceful or improper way that shows the applicant is unfit to be registered as a teacher.

It has been the experience of the Board that some indicators requiring additional investigation of 'good character' are contained in the application for registration. For instance, a varied employment history may necessitate further referee checks.

The standards of behaviour generally expected of a teacher are not defined, although it would seem that the composition of the Board, through its wide representation, was intended to provide assistance in this regard.

If the Board is satisfied that the applicant is of 'good character', then the applicant will be registered as a teacher in Queensland. An unsuccessful applicant has a right of appeal to the District Court.⁹⁶

Of the 4,011 police checks conducted by the Board in 1999, only two resulted in applicants being refused registration on the grounds that they were not of 'good character'.⁹⁷ Depending on an agency's need to know, the fact that a person has applied to be registered and was refused registration may be revealed by the Board.

The fact that a person purporting to be a teacher is not on the register should put potential Queensland employers on alert. As stated above, only teachers registered with the Board of Teacher Registration are able to work as teachers in Queensland.

The QPS has conducted criminal-history checks on all applicants for registration since 1997. If the check reveals that relevant information is held in Queensland, the QPS will provide the Board of Teacher Registration with a copy of the applicant's Queensland criminal history. If the police check reveals that relevant information is held in another State or Territory, the Board will ask the applicant to obtain the information from the interstate police service. There is no central facility for the Board of Teacher Registration to acquire a cross-jurisdictional criminal-history check on an applicant.

If an applicant is required to obtain a criminal-history check from another jurisdiction, it is sometimes difficult to obtain all the information required by the Board. Police authorities in some jurisdictions will (depending on the law and practice in the various Australian jurisdictions) conceal some types of information before providing the results of the applicant's criminal history to the applicant. At times it is necessary for the applicant to make a Freedom of Information application to obtain information from the other jurisdiction's police authority in order to satisfy the Board of Teacher Registration requirements.

The Board has advised the CJC that applicants who are asked to provide information relating to their criminal history will sometimes simply choose to withdraw their application for registration.

When the Board evaluates the results of criminal-history checks it will usually consider:

- the seriousness of the offence
- whether it is a conviction or charge
- the nature of the offence and its relevance to registration as a teacher

- the circumstances surrounding the conviction or allegation
- anything else the Board considers relevant to the assessment of the teacher's registration.

Limitations of this process

The Board did not routinely undertake criminal-history checks on teachers who were registered prior to the end of 1997. Good character was assessed by other mechanisms such as referee statements. Approximately 12,000 currently registered teachers have had a criminal-history check considered by the Board. As at 30 June 2000, there were approximately 77,000 teachers registered in Queensland. There is effectively no mechanism to ensure that the remaining 65,000 registered teachers are fit to continue working with children — not even to the extent of ensuring that they have no relevant criminal history.

It is possible that there are teachers working in Queensland, registered prior to the end of 1997, who have relevant criminal histories that are unknown to the Board. Whether these teachers have a propensity to behave inappropriately towards students cannot be known.⁹⁸

To conduct criminal-history checks on all currently registered teachers who have not been checked to date would be a large administrative and financial impost. However, it may be practical and financially viable to conduct criminal-history checks on teachers who have been the subject of allegations of sexual misconduct towards students. In some cases the checks may reveal evidence of a pattern of behaviour that should be of concern to the Board in determining 'good character'.

The diverse composition of the Board⁹⁹ means that there is little risk that applicants can exert undue pressure to facilitate registration. However, it is unlikely that Board members play a significant day-to-day role in the screening process and, in particular, in the determination of 'good character'. Paid employees of the Board have limited delegations to determine the 'good character' of applicants who are, on the face of the application, most likely to be of good character, and to approve their registration.

The lack of detailed legislative guidance for Board members (or their delegates) in assessing an applicant's suitability for employment as a teacher may affect the consistency of decisions. Although the currently constituted Board is guided by the precedents established by the Board, future Boards may take different considerations into account when deciding similar matters. If more specific criteria were to be set out in the legislation or if comprehensive and publicly scrutinised guidance and precedent materials were available for Board members, this would enable feedback-and-review mechanisms to

be developed in relation to the Board's registration process.

Initial screening of applicants for registration is only one of the mechanisms available to the Board to help ensure a minimum professional standard for teachers in Queensland. The Board also has a continuing monitoring process via the reporting systems established under the Education (Teacher Registration) Act. (See chapter 6.)

Education Queensland's current employment selection processes

Non-teaching employment selection

This information is based on written communication from Education Queensland, 24 November 2000.

When a non-teaching position arises in an Education Queensland school, the school must send a *Notification of Vacancy* to the department's School Staffing and Recruitment Unit (SS&R), which will then send the school a list of employees on the deployment, redeployment and transfer lists. If the school rejects all the names on the list, it must seek SS&R approval to run a recruitment and selection process.

A recruitment and selection process must include:

- advertising the position in the local newspaper and school newsletter
- convening a selection panel, which will:
 - short-list applicants from written applications that address selection criteria
 - develop interview questions based on the selection criteria
 - interview short-listed applicants
 - select the successful applicant on the principles of equity and merit
- the school principal approving the selection and sending a report to the District Office to arrange for the paperwork to be processed
- the District Office arranging for the appointment to be placed on department systems and for a criminal-history check on the appointee.

Education Queensland requests criminal-history checks on all non-teaching staff employed in school-based positions and on people who have maintained their registration as teachers with the Board of Teacher Registration and who are coming back to work after a gap in employment. Checks are sought in relation to all categories of employment, including temporary and casual positions.¹⁰⁰ Education Queensland meets the cost of conducting the checks.¹⁰¹

Teacher selection

This information is contained in Education Queensland Applying for Teacher Employment, January 2000.

Education Queensland is only able to employ teachers registered with the Board of Teacher Registration. This does not include music instructors (instrumental), dance instructors and community and assistant teachers in Torres Strait Islander and Aboriginal community schools.

The application and selection process for filling teaching positions in Education Queensland includes:

- **Completion of an *Application for Teacher Employment* form.** Attached to the form must be:
 - the applicant's birth certificate,
 - the applicant's current registration as a teacher (a student applicant is to forward the registration to the relevant District Office as soon as it is obtained)
 - the applicant's award certificate or transcript of results
 - official statements of service from previous employers, other than Education Queensland, for whom the applicant has worked as a teacher
 - the names of two professional referees
 - for graduating applicants, copies of all practice-teaching reports.
- **An assessment process** designed to give the applicant the opportunity to demonstrate his or her teaching skills, knowledge and abilities as expressed by the selection criteria. The process will vary according to the type of applicant. For example, applicants with teaching experience are usually required to complete a temporary contract or casual supply work with Education Queensland before being eligible for assessment. The applicant will then be assessed by a panel including departmental officers from the school in which the applicant performed the contract or supply work. The panel will look at materials submitted with the application, the panel members' knowledge of the applicant's employment with Education Queensland and the applicant's ability to meet the selection criteria. The panel will ask the applicant to participate in a follow-up meeting to discuss the application. The panel may contact the referees to verify claims made by the applicant.
- **Suitability ratings.** After the assessment process and after verification of the applicant's eligibility for employment, the applicant is assigned a suitability rating which is intended as a measure of the extent to which the panel believes the applicant has met the selection criteria. The rating is measured against standards and profile characteristics ranging from suitability rating S1

(outstanding applicant) to U/S (unsuitable applicant). The profiles referred to in relation to the suitability ratings are restricted to the applicant's teaching abilities.

Offers of employment are made on the basis of 'merit and availability' considering the applicant's suitability rating, teaching capabilities and location preferences.

The only indirect reference in the application and selection process to the applicant's personal qualities is in the definition of 'merit'. Section 78 of the Public Service Act provides that:

- (1) Selection of an eligible person for appointment or secondment as a public service employee must be based on merit alone.
- (2) In deciding the relative merits of applicants, the following matters must be taken into account—
 - (a) the extent to which each applicant has abilities, aptitude, skills, qualifications, knowledge, experience and **personal qualities** [emphasis added] relevant to the carrying out of the duties in question;
 - (b) if relevant—
 - (i) the way in which each applicant carried out any previous employment or occupational duties; and
 - (ii) the extent to which each applicant has potential for development.

The selection criteria against which applicants are assessed are restricted to the applicant's professional abilities and knowledge. Likewise, the suitability rating given to an applicant refers only to the applicant's professional abilities and knowledge. No personal referees are required to be nominated or contacted during the selection process.

OTHER POSSIBLE SCREENING MECHANISMS

On 22 June 2000, the Queensland Government introduced into Parliament the Commission for Children and Young People Bill 2000. If the Bill is passed, the screening provisions may become law in 2001.

One of the aims of the Bill (clause 95) is to ensure that only suitable persons are employed in certain 'child-related employment'. People employed in child-related employment will include certain people employed with, or volunteers in, government and non-government schools, other than registered teachers and volunteers who are parents of a child enrolled at the school (see clause 97). Specifically, the legislation will require those people referred to in columns 2 and 3 of schedule 1 to the Bill (which covers employment in boarding schools and

employees at schools other than teachers and parents) to be screened.

The principal screening method to be adopted will be a QPS criminal-history check on applicants for employment and on continuing employees. The proposed scheme would give the Children's Commissioner discretion to determine whether a person charged or convicted of an offence poses any risk of harm to children.

If a criminal-history check reveals charges or convictions in relation to the applicant, the Children's Commissioner will need to decide the application having regard to:¹⁰²

- whether it is a conviction or charge
- whether the offence is a serious offence
- whether the offence was committed or is alleged to have been committed
- the nature of the offence and the relevance to child-related employment
- anything else the Commissioner reasonably considers to be relevant to the assessment of the employee.

For people who have been convicted of a 'serious offence' the Commissioner's discretion will be limited. In those cases, the Commissioner must declare that a person is an unsuitable person for child-related employment unless the Commissioner is satisfied it is an exceptional case in which it would not harm the best interests of children.¹⁰³

Although teachers are exempt from the proposed scheme (because a checking mechanism already exists in the form of the Board of Teacher Registration), the Commission for Children and Young People's Bill covers school staff such as teacher aides and before and after school care staff, as long as they are providing services or conducting activities at the school that are directed mainly towards or mainly involve children. It does not extend to cleaners, maintenance staff and groundsmen as they were considered not to provide services at schools that are directed mainly towards children, or conduct activities at a school that mainly involve children.¹⁰⁴

A criminal history for the purposes of this scheme will include all charges and convictions regardless of the age of the charge or conviction recorded against a person in Queensland or elsewhere.¹⁰⁵ Again, however, criminal-history checks will not detect people who may behave inappropriately towards children if those people have never been charged with a relevant criminal offence.

The Canadian Criminal Code has a provision that is similar to the proposed employment screening scheme in the Commission for Children and Young People Bill 2000. The Canadian provision enables

a court to impose a prohibition on people convicted of sexual offences involving children under 14 from attending certain places or from seeking employment that would involve contact with children. Section 161 of the Criminal Code (Canada) provides:¹⁰⁶

Order of prohibition

- (1) Where an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence under section 151, 152, 155 or 159, subsection 160(2) or (3) or section 170, 171, 271, 272, 273 or 281, in respect of a person who is under the age of fourteen years, the court that sentences the offender or who directs that the accused be discharged, as the case may be, in addition to any other condition prescribed in the order of discharge, shall consider making and may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from
 - (a) attending a public park or public swimming area where persons under the age of fourteen years are present or can reasonably be expected to be present, or a day care centre, schoolground, playground or community centre; or
 - (b) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of fourteen years.

Duration of prohibition

- (2) The prohibition may be for life or for any shorter duration that the court considers desirable and, in the case of a prohibition that is not for life, the prohibition begins at the later of
 - (a) the date on which the order is made; and
 - (b) where the offender is sentenced to a term of imprisonment, the date on which the offender is released from imprisonment for the offence, including release on parole, mandatory supervision or statutory release.

Court may vary order

- (3) A court that makes an order of prohibition or, where the court is for any reason unable to act, another court of equivalent jurisdiction in the same province, may, on application of the offender or the prosecutor, require the offender to appear before it at any time and, after hearing the parties, that court may vary the conditions prescribed in the order if, in the opinion of the court, the variation is desirable because of changed circumstances after the conditions were prescribed.

Offence

- (4) Every person who is bound by an order of prohibition and who does not comply with the order is guilty of
 - (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
 - (b) an offence punishable on summary conviction.

Although it is unlikely that an Education Queensland employee convicted of a sexual offence involving a child will continue to be employed by Education Queensland or will ever be able to work for Education Queensland again, a provision along the lines of section 161 of the Criminal Code (Canada) would help ensure that the person will not harm children in the future in other relevant settings.

The Canadian provision seeks to protect children from people who are a *proven* risk to children. A breach of the prohibition will be a punishable offence, which may result in a person being imprisoned simply for being in the vicinity of proscribed premises. Under the proposed Queensland scheme, the decision to deny a suitability notice will be made by a non-judicial body (the Children's Commission) and may be made taking into account less tangible considerations than convictions ('anything else the commissioner reasonably considers to be relevant to the assessment of the person'). The decision to make a prohibition order under the Canadian provision is made by a judge, upon sentencing the offender.

The Ontario Report observed that, despite the requirement in section 161 of the Canadian Criminal Code for judges to consider whether to make such an order, section 161 (and, in particular, s. 161(1)(b)) has received little judicial consideration since its enactment in 1993. This may be due to a belief that a prohibition order is dependent upon proof that the offender is a paedophile or a 'demonstrable risk in the future'.

The Ontario Report's recommendations in relation to section 161(1)(b) included the following proposals to deal with the low usage of the provision to date (pp. 161 and 162):

- Ontario prosecutors be specifically instructed to use the provision
- in the circumstances outlined in the provision, sentencing judges *shall* consider making, and may make, an order of prohibition
- sentencing judges be made alert to the existence of the provision and its use in appropriate circumstances
- the provision be extended to offenders convicted or conditionally discharged in relation to pornography offences and offences relating to the sexual exploitation of people with a disability

- the provision be extended to cover future employment involving being in a position of trust or authority towards persons under the age of 18 years.

RECOMMENDATIONS

RECOMMENDATION 7.1

That the Board of Teacher Registration consider additional mechanisms for ensuring the 'good character' of people applying for registration and of people who continue to be registered. Possible mechanisms include:

- requesting criminal-history checks on any teacher who has been the subject of an allegation relating to sexual misconduct towards a student, whether or not the person was registered as a teacher prior to the end of 1997, and irrespective of the date of the alleged incident
- instituting a system of thorough referee checks on all applicants for registration as teachers in Queensland.

RECOMMENDATION 7.2

That the responsible Minister consider more specific legislative criteria to guide the Board of Teacher Registration in making its determinations of 'good character'. The preparation of comprehensive guidance and precedent materials should also be considered.

RECOMMENDATION 7.3

That Education Queensland prepare and adopt written guidelines for ascertaining the suitability of applicants for all positions involving regular contact with students, including teaching positions. Those guidelines might include, in addition to a satisfactory criminal-history check on the applicant, satisfactory referee checks.

Endnotes

- 92 QCC and QPS, *Project AXIS Volume 2: Child Sexual Abuse in Queensland: Responses to the Problem* November 2000, p. 67.
- 93 Section 43(1) of the Education (Teacher Registration) Act. The Board may authorise the employment of a non-registered teacher only in circumstances of proven need and for a limited period, for example, where no registered teacher is available in a particular subject area. The Board has a power to conduct a criminal-history check only on registered teachers.
- 94 Section 37(2) of the Education (Teacher Registration) Act. The term 'criminal history' is defined to include all charges and convictions, regardless of the age of the charge or conviction. Section 37(7) of the Act. Note, all charges and convictions of a particular age are normally not regarded as part of a person's criminal history: see ss. 5 and 6 of the *Criminal Law (Rehabilitation of Offenders) Act 1986*. In Queensland, criminal-history checks may reveal convictions against a person in Queensland and cautions and community conference agreements. However, the QPS is prohibited from disclosing a person's criminal history without that person's consent unless authorised by statute.
- 95 Sections 42 and 50 of the Education (Teacher Registration) Act.
- 96 Section 72 Education (Teacher Registration) Act. The appeal is by way of a rehearing on the material before the Board or, if the judge hearing the appeal so orders, on material adduced at the hearing, or on both. There has not been an appeal from a decision of the Board of Teacher Registration.
- 97 Board of Teacher Registration Queensland, 1999 *Annual Report*, 30 April 2000 (p. 14):
two applicants did not proceed with their applications after being asked for further information about their criminal history ...
- 98 However, should those teachers re-offend, the processes in place with the Director of Public Prosecutions and the Queensland Police Service should ensure they come to the attention of the Board of Teacher Registration.
- 99 Section 3(2) of the Education (Teacher Registration) Act. A representative from Crown Law also attends all Board inquiries.
- 100 The Board of Teacher Registration seeks criminal-history checks on applicants for teacher registration.
- 101 The QPS commenced charging for conducting criminal-history checks in July 1999 with the cost being \$3.50 per check.
- 102 Clause 102(5) of the Commission for Children and Young People Bill.
- 103 Clause 102(4) Commission for Children and Young People Bill.
- 104 Cleaners and maintenance who work inside a boarding facility (which would include boarders at a non-government school) will be required to consent to a criminal-history check. However, groundsman will not be required to consent to a check in these circumstances as they actually work outside the boarding facility. Schedule 1 Clause 2 Schools — boarding facilities: Commissioner for Children and Young People Bill.
- 105 See the definition of 'criminal history' in schedule 4 of the Commission for Children and Young People Bill.
For people who are convicted of a 'serious offence' the Commissioner's discretion is limited. The Commissioner must declare that a person is an unsuitable person for child-related employment unless the Commissioner is satisfied it is an exceptional case in which it would not harm the best interests of children for the Commissioner to issue a notice that the person is suitable for child-related employment. Clause 102(4) *Commission for Children and Young People Bill*.
- 106 <http://canada.justice.gc.ca/FTP/EN/Laws/Chap/C/C-46.txt> accessed 15.11.00. Consolidation updated to 30.4.00

This chapter discusses several legal issues that came to our attention during the course of this review that may need to be considered in order to achieve an effective system for minimising the risk of sexual misconduct in Queensland state schools. The issues relate to:

- the sharing of information between agencies
- the use of resignation and retirement as a means of avoiding disciplinary action
- consensual relationships
- the disciplining of employees for failing to respond to a direction to answer a question made during a disciplinary hearing.

Some of these issues are already being dealt with by other agencies and so are not the subject of recommendations in this report.

LEGISLATIVE RESTRICTION ON THE SHARING OF INFORMATION

Unless all agencies with relevant information concerning a suspect employee are able to share that information with the disciplinary authorities (such as Education Queensland or the Board of Teacher Registration), it is possible that some employees who pose a danger to students will continue to be in contact with students. An agency may have information on a non-suspect employee that may indicate the employee's propensity to behave inappropriately towards students. Unless that information is shared with the disciplinary authorities it is possible that students will be at risk.

Similarly, without a central repository for information relating to all allegations of a sexual nature made against employees, whether or not substantiated, it is extremely difficult to watch for patterns that may indicate a potential threat to students. The Board of Teacher Registration is the obvious repository for such information about registered teachers.

However, the removal of restrictions on the sharing of information that is not on the public record can have devastating consequences to the employee, the school and the school community should the allegations be unfounded.

Restrictions

Aside from any civil action that a person may pursue for damages resulting from the dissemination by others of false or misleading information about the person, the law imposes a number of restrictions on the dissemination of information in the hands of certain agencies. At the same time, the law recognises a wider public interest in some agencies obtaining access to information that other agencies cannot access. For example:

- Section 7 of the *Criminal Law (Sexual Offences) Act 1978* prohibits reports being published during the committal stage that could lead to the identification of a defendant who has been charged with a sexual offence, unless a good and sufficient reason is shown.¹⁰⁷ The defendant loses this protection only after he or she has been committed for trial or for sentence (s. 8(2)). A 'report' is defined in section 3 of the *Criminal Law (Sexual Offences) Act* as 'an account in writing and an account broadcast or distributed in any way in or as sound or visual images'. This would include oral communications and correspondence relating to people charged with certain offences.

This prohibition applies to all individuals and agencies including the CJC and Education Queensland. However, the Board of Teacher Registration, the Department of Justice and Attorney-General, the Commissioner of Police and the Department of Families, Youth and Community Care, Queensland, are specifically excluded from the prohibition (s. 8(1)).

- Section 10.1 of the *Police Service Administration Act 1990* prohibits police officers or QPS staff from revealing police information unless authorised to do so. This would include, for example, all police records relating to individual Education Queensland employees. That information may be: charges laid against the employee, convictions, cautions and even allegations which, although not resulting in a charge, may nevertheless indicate a propensity to act inappropriately towards students.
- The *Criminal Law (Rehabilitation of Offenders) Act 1986* enables a person who is an applicant for a position to withhold certain information relating to his or her criminal history.

- Section 132 of the Criminal Justice Act prevents the CJC from disclosing information that has come to its knowledge unless the information is disclosed for the purposes of the CJC or unless the information is publicly available. This could prevent the CJC informing the Board of Teacher Registration or Education Queensland of certain information relating to a teacher or other employee that may indicate that the person poses a threat to students.
- Section 126 of the *Crime Commission Act 1997* has a similar effect on the QCC.
- Some organisations will be prevented from sharing information about employees because of natural justice considerations and an organisation's obligations as an employer.

Exceptions

In certain circumstances, information regarding a person's criminal history may be made publicly known or may be shared with certain agencies.¹⁰⁸ For example:

- Section 9A of the Criminal Law (Rehabilitation of Offenders) Act provides, in part, that:
 - applicants to the Board of Teacher Registration to be registered teachers, and
 - applicants to Education Queensland to be teachers, teacher aides or members of staff, (administrative or ground) at a state school
 must disclose offences defined in chapters 22, 32, 33, and 34 of the Criminal Code and part 2 of the *Drugs Misuse Act 1986* and contraventions (committed in Queensland or elsewhere) of any provision of law constituting an offence of a similar nature or involving an assault of a sexual nature. This would enable the QPS to provide such information to the Board of Teacher Registration or Education Queensland.
- Section 69 of the Education (Teacher Registration) Act gives the Board of Teacher Registration specific authority, after inquiry, to release certain material to certain agencies and officials if 'it discloses an offence':

If the inquiry body considers material before it discloses an offence, its chairperson may report the offence to one or more of the following persons and may make available to the person or persons all relevant material in the possession of the inquiry body:¹⁰⁹

- (a) the Commissioner of the Police Service;
- (b) the Criminal Justice Commission;
- (c) the Director of Public Prosecutions;
- (d) the chief executive. [the Director-General of Education]

The effect of the restrictions

Despite the exceptions referred to above, the current law may restrict the sharing of potentially significant information. For example:

- The QPS may not be able to share with any agency information relating to allegations that did not lead to the laying of charges against an employee.
- The CJC and the QCC may not be able to share with the Board of Teacher Registration, Education Queensland or even the Department of Families, Youth and Community Care, Queensland, information that could very well indicate that students are at risk from a particular employee, or potential employee.
- Education Queensland may not be able to share relevant information on an employee or a former employee with the Board of Teacher Registration that could influence the Board in its decision to register that person as a teacher.

The Board of Teacher Registration has informed the CJC of problems encountered in obtaining information on an applicant's criminal history from police authorities in other Australian jurisdictions. Owing to legislative or procedural restrictions on the release of certain information from the police authorities in some jurisdictions, applicants may have to resort to making a Freedom of Information application in another jurisdiction for information to satisfy the Queensland Board of Teacher Registration as to the applicant's 'good character'. It would be preferable for the Board, or the applicant, to be able to go to one location for all criminal-history information required by the Board.

THE USE OF RESIGNATION AND RETIREMENT AS A MEANS OF AVOIDING DISCIPLINARY ACTION

A public service agency can initiate disciplinary action only against a current employee. Where a person resigns, the CJC is no longer able to refer a charge to a Misconduct Tribunal. A common result is that there will be no official record of a person's misconduct and there may be a public perception that the person has suffered no detriment. This is so irrespective of the nature of the misconduct and could apply, for example, to a person resigning in the wake of allegations of inappropriate sexual behaviour towards children.

From the commencement of the CJC's operations in 1989 until 1 January 2000, over 480 public servants have resigned while under CJC investigation. In many cases, the resignation of a person under investigation might be viewed as obtaining a satisfactory outcome at minimal cost to the public purse. To routinely pursue all public servants who resign while under investigation would

be prohibitively expensive. On the other hand, an official determination of certain allegations may be desirable, particularly if there is a prospect the person may seek re-employment in a similar position elsewhere. This may be the case, for example, if a person is likely to seek future employment involving contact with children and his or her resignation had been contemporaneous to allegations of inappropriate behaviour of a sexual nature towards children.

Limited jurisdiction of Misconduct Tribunals

If, after a CJC investigation, it is found that there is sufficient evidence to support a disciplinary case of official misconduct against a public servant, the CJC may charge the person. The charge can be dealt with only by a Misconduct Tribunal.¹¹⁰ If the public servant resigns or retires before a matter is referred to a Misconduct Tribunal, the CJC may decide to continue with the investigation, but cannot then refer a charge of official misconduct to a Misconduct Tribunal (because a former public servant cannot be a 'prescribed person' for the purposes of a charge before the Misconduct Tribunal).¹¹¹

If the CJC finds sufficient evidence, following investigation, to indicate that the conduct of a former public servant constitutes, or could constitute, a criminal offence, it would normally refer the matter to the Director of Public Prosecutions, the QPS or some other prosecuting authority to consider appropriate prosecution action.

Although the CJC can investigate allegations of official misconduct by a former public servant where no criminal charge is open on the evidence, it is limited in the action it can take at the conclusion of such an investigation. The CJC is limited in that it may only report:¹¹²

- to the principal officer of the former public servant's unit of public administration (for example, to the Director-General of Education Queensland) 'with a view to disciplinary action being taken in respect of the matter to which the report relates' or
- under section 26 of the Criminal Justice Act, to the Chairman of the Parliamentary Criminal Justice Committee, the Speaker of the Legislative Assembly and the Minister through a follow-up report rendering advice or assistance by way of education or liaison concerning the detection and prevention of official misconduct.

On the one hand, quite serious personal and financial consequences may flow from a former public servant retiring or resigning his or her position during a CJC investigation into the person's conduct. On the other hand, the inability for disciplinary action to be taken against a former public servant by either a Misconduct Tribunal or the public service in some cases could be perceived by the public as enabling people to escape the consequences of their

misconduct. It also means that there is no official finding made about whether or not misconduct has occurred.

As the system currently operates, a person can deliberately avoid disciplinary proceedings by resigning or retiring from the public service. An appropriate extension of the jurisdiction of Misconduct Tribunals could be achieved through amendment of section 14 of the Misconduct Tribunals Act, with consequential amendments to the definitions of 'official misconduct' and 'prescribed person' in the Criminal Justice Act.

Limited jurisdiction of public service agencies

Once a person's contract of employment within the Queensland public service is terminated (for example, through resignation or retirement), the person is not subject to public service disciplinary action. A public service agency, including Education Queensland, can initiate disciplinary action only against a current employee.¹¹³

One result of this limitation is that there will often be no official record of a person's misconduct to act as a warning to future employers. If a teacher employed by Education Queensland is dismissed as a result of disciplinary action, Education Queensland will usually be obliged to notify the Queensland Board of Teacher Registration about the circumstances surrounding the dismissal.¹¹⁴ The significance of this notification is that if the person has been the subject of a Board inquiry and the person applies for another teaching position in Queensland or interstate, the potential employing schools or departments can approach the Board for information about the person's background (including the circumstances surrounding the person's dismissal from Education Queensland). However, where a teacher employed by Education Queensland resigns before he or she can be dismissed, Education Queensland will not always be obliged to notify the Board about the circumstances surrounding the teacher's resignation.¹¹⁵ Similarly, where a teacher employed by Education Queensland retires before he or she can be dismissed, Education Queensland is not obliged to notify the Board about the circumstances surrounding the teacher's retirement.

Some other jurisdictions have legislation enabling disciplinary action to be taken against public servants who have resigned or retired. For example, section 81 of the *Public Sector Management Act 1988* (NSW), which applies to the majority of the New South Wales public sector, provides in part:

- (1) If an officer who has been charged with a breach of discipline, or who has been informed that such a charge is about to be laid, retires or resigns from the Public Service, a disciplinary inquiry may be commenced or continued even though the

officer has retired or resigned, and:

- (a) The person shall, for the purposes only of the inquiry, be taken to be an officer suspended from duty without pay, and
 - (b) A decision may be made as to the punishment (if any) that would have been imposed under this part if the officer had not retired or resigned.
- (2) Any such decision (other than a fine) does not affect the former officer's retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation.
- (3) A fine imposed under any such decision may be recovered from the former officer as a debt due to the Crown in any court of competent jurisdiction, or out of any money payable to or in respect of the former officer by the Crown, or both.

Although it could be said that a public servant's 'forced' resignation or retirement has the effect of removing the person from his or her agency at minimal cost to the public purse and is in itself a punishment of sorts, there are adverse consequences in allowing resignation or retirement to end any prospect of disciplinary action. For example, it could be seen as sending a message to the community that certain misconduct will not be punished or dealt with on an official basis, while, from the former public servant's perspective, he or she may be denied the opportunity of publicly clearing his or her name through disciplinary proceedings and an official finding.

However, routinely pursuing disciplinary action against former public servants may be seen as a substantial waste of public funds, as the most serious penalty that can be imposed for disciplinary breaches (dismissal from the public service) is not available for former public servants.

CONSENSUAL RELATIONSHIPS

If a person consents, either directly or by implication, to being touched by another, the consent will normally preclude the successful prosecution of an assault offence arising from the incident. However, in recognition of the vulnerability of children to sexual abuse, the Queensland Criminal Code provides that females under 16 years of age are unable to provide a valid consent to sexual intercourse¹¹⁶ and males below the age of 18 years are unable to consent to sodomy. The young person's state of mind in those cases is generally irrelevant to whether an offence is committed.

Where the young person is below the age of legal consent, a defence is available where the accused reasonably believed the young person was over that age.¹¹⁷

Position of trust

If a young person of or over the age of consent (16 for females and 18 for males) consents to sexual intercourse (including, for males, to an act of sodomy) with another person of or over that age, then prima facie no offence has taken place.¹¹⁸ However, there is a concern that at least in some cases the young person's consent would not have been forthcoming had it not been for the position of trust or power that the other person held over the young person at the time.

The power differential between Education Queensland employees and students, and in particular between teachers and students, can result in an abuse of power. It is doubtful, however, whether the law would recognise many instances of abuses of power (and their potentially devastating consequences) as criminal.¹¹⁹

The Queensland *Taskforce on Women and the Criminal Code*, which reported to the Government in early 2000, specifically addressed the issue of young people's consent to sexual activity with adults in authority. After examining legislative initiatives in Australia and overseas, the Taskforce recommended that a new offence be created with the aim of protecting young people from sexual exploitation by persons in a position of trust and authority.¹²⁰ The offence is to cover a person who is in a position of trust and power in relation to a young person over the age of consent but under the age of 18 years.¹²¹

The CJC generally supports the recommendations of the Taskforce and, therefore, does not intend to make its own recommendations on this matter.

RECOMMENDATIONS

Legislative restrictions on the sharing of information

RECOMMENDATION 8.1

That the CJC, Education Queensland, the Board of Teacher Registration, the Queensland Police Service, the Queensland Teachers' Union, the Queensland Crime Commission and Crown Law jointly consider the legal and ethical factors currently preventing the sharing of information on Education Queensland employees between relevant agencies with the view to making recommendations to the relevant Ministers on the following:

- What type of information (concerning an employee of Education Queensland, or an applicant for employment with Education Queensland, or an applicant for registration as a teacher) in the hands of relevant agencies should be made available

to other agencies who share a concern about the safety of students?

- What legislative amendments would be required to enable that information to be shared?
- What restrictions should be imposed on access to such information?
- Who should have access to the information?
- How can the information be used by the various agencies?
- Whether a central database should be established to include relevant information from all agencies and, if so, where should the database be kept and what restrictions should be imposed on access to the database?

RECOMMENDATION 8.2

That Education Queensland develop strategies to enhance the mutual understanding between relevant investigative/disciplinary agencies and organisations representing interest groups, of the jurisdiction, policies and procedures of each of the agencies. One strategy, for example, may be to hold regular forums.

The use of resignation and retirement as a means of avoiding disciplinary action

RECOMMENDATION 8.3

That the *Public Service Act 1996* be amended to provide an extension of power to allow disciplinary findings to be made after resignation in appropriate cases.

RECOMMENDATION 8.4

That the jurisdiction of the Misconduct Tribunals be extended to enable them:

- to hear and determine disciplinary charges of 'official misconduct' made against a person, irrespective of whether the person has resigned or retired from a unit of public administration.
- if a charge of official misconduct against a former public servant is found proved under section 25 of the *Misconduct Tribunals Act 1997*, to make a declaration that, if the person had continued to be employed by the unit of public administration, the person should have been:
 - dismissed; or
 - reduced in rank or salary level.

RECOMMENDATION 8.5

That any proposal for extending the CJC's jurisdiction to pursue disciplinary charges against former public servants proceed on the basis that the power would be available at the CJC's discretion, and would only be pursued where particular circumstances warranted such action.

The CJC supports legislation, along the lines of section 81 of the *Public Sector Management Act 1988* (NSW), which would enable units of public administration to regard an officer who has been charged with a breach of discipline, but has subsequently resigned or retired, as continuing to be a holder of an appointment within that unit of public administration, for the purpose of disciplinary proceedings only.

Endnotes

- 107 These offences are defined in s. 3 of the *Criminal Law (Sexual Offences) Act 1978*. The offences are rape, attempt to commit rape, assault with intent to commit rape and sexual assault as defined in the Criminal Code, s. 337 [which has been repealed and remade as s. 352 of the Criminal Code by the *Criminal Law Amendment Act 2000* section 2 and the operation of s. 14H of the *Acts Interpretation Act 1954*].
- 108 In NSW the sharing of information with the Ombudsman is facilitated by the *Ombudsman Act 1974* (NSW) Part 3A, s. 25H (inserted by *Ombudsman Amendment (Child Protection and Community Services) Act 1998*).
- 109 The 'inquiry body' is defined in s. 2 of the Education (Teacher Registration) Act as the Board or the committee established by the Board.
- 110 See s. 39 of the Criminal Justice Act and s. 17 of the Misconduct Tribunals Act.
- 111 The decision by the CJC to continue the investigation after resignation or retirement would only be made after the Director of the Official Misconduct Division had considered the seriousness of the allegation and the public interest in the investigation proceeding.
- 112 Section 33(2A)(g) of the Criminal Justice Act.
- 113 See ss. 87–88 of the Public Service Act.
- 114 Section 44A of the Education (Teacher Registration) Act requires an employing authority (including Education Queensland) to notify the Board about a teacher's dismissal or resignation if the employing authority investigates a sexual allegation involving the teacher, the authority gives the teacher written notice that the authority is dissatisfied with the

teacher (that is, the teacher is given a 'show cause' notice) and the teacher is dismissed or resigns within six months of the notice. The notice to the Board must include the following: the name of the employing authority and, if the name of the authority is different to the name of the school, the name of the school; the name of the teacher; the date the employing authority gave notice to the relevant teacher of the dismissal or the employing authority was given notice of the resignation, and the date of effect of the dismissal or resignation; particulars of the sexual allegation; and the reasons given by the employing authority for the dismissal or by the relevant teacher for resigning.

115 See s. 44A of the Education (Teacher Registration) Act. The Board of Teacher Registration is only notified of a sexual allegation if a teacher is dismissed or resigns within six months of being given a 'show cause' notice. In practice, a teacher could move from a state to a private school without that school having any knowledge or means of acquiring the knowledge about the complaint.

116 Section 215 Criminal Code. Similar special protection is afforded people with intellectual disabilities (see, for example, ss. 208 of the Criminal Code — unlawful sodomy — and 217 — procuring young person etc. for carnal knowledge. Although no age limit applies to those offences, a defence is available where the defendant proves either that he or she believed on reasonable grounds that the person was not intellectually impaired, or where he or she can show that in the circumstances what was done did not constitute sexual exploitation of the intellectually impaired person.

117 Criminal Code s. 215(5) (carnal knowledge), s. 208(3) (sodomy), s. 215(5) (indecent treatment of children under 16), s. 229B(5) (maintaining a sexual relationship).

118 Absence of consent is not an element of a number of other potentially relevant offences, such as 'indecent treatment of children under 16' (s. 210 Criminal Code). See appendix B.

119 There has been little research on the effect on students of sexual relations between teachers and the students, particularly in Australia. See Dunne & Legosz 2000, pp. 43–58.

120 Office of Women's Policy, Department of Equity and Fair Trading, recommendation 68 (*Report of the Taskforce on Women and the Criminal Code*, February 2000, recommendation 68, p. 250).

121 In May 2000, the Queensland Government announced a package of proposed law reforms following the release of *Report of the Taskforce on Women and the Criminal Code* including 'creating a new offence to protect young people under 18 from sexual exploitation by adults in positions of trust or authority over them'. Queensland Government, Premier of Queensland, *Historic Law Reform for Women*, 8 May 2000. This recommendation has not been enacted to the date of this report.

This concluding chapter discusses how the recommendations may be implemented and monitored.

STRATEGIES FOR ADDRESSING THE PROBLEM

The CJC acknowledges that Education Queensland takes the issue of sexual misconduct by employees towards students very seriously and has implemented (or is in the process of doing so) a variety of initiatives to address this problem. However, this review has identified several areas where further action is warranted. In particular:

- Education Queensland employees should be given clearer guidance about what constitutes inappropriate sexual behaviour, and the consequences of engaging in such behaviour. This will necessitate revising and strengthening the department's Code of Conduct, and ensuring that it is promoted widely among employees and the general community.
- Measures need to be taken to increase the likelihood that inappropriate behaviour by staff towards students will come to official attention. These steps should include:
 - raising awareness of the issue amongst staff and students
 - ensuring that support structures are in place in all Queensland schools for students who may wish to, and who do disclose, alleged sexual misconduct
 - clarifying the reporting responsibilities of principals and other employees.
- The internal investigative capacity of Education Queensland needs to be enhanced. Options that should be considered by the department include forming a specialist investigative team, employing appropriately qualified external investigators, and building up the investigative skills of selected employees. In addition, Education Queensland, in consultation with relevant agencies, should prepare and adopt written protocols on the conduct of investigations which reflect 'best practice' in this area.
- Screening processes need to be tightened, to

further reduce the risk of inappropriate personnel being employed by Education Queensland. Strategies for achieving this include:

- reviewing the grounds on which the Board of Teacher Registration can reject an application for registration as a teacher or revoke an existing registration
- instituting a system of thorough referee checks on all applicants for teacher registration and for employment with Education Queensland
- expanding the range of criminal history checks undertaken by the Board
- improving the management of information within Education Queensland
- exploring ways of increasing the level of information sharing between Education Queensland, the Board of Teacher Registration, the QPS, the CJC and the QCC.

THE IMPLEMENTATION PROCESS

Most of the recommendations made in this report can be implemented without requiring legislative change or significant budgetary outlays. Consequently, there should not be any reason to delay taking action to address the issues which have been identified.

The Taskforce, which has recently been established by the Minister for Education to specifically address the issue of 'inappropriate relationships between teachers and other school employees and students', provides the ideal mechanism for carrying these matters forward. The CJC welcomes the opportunity to work with the Taskforce and will provide what assistance it can to support this important initiative.

In addition, as is our standard practice, we will actively monitor the implementation of recommendations and prepare internal updates on a regular basis. We will also monitor the extent to which our recommendations, and other actions taken by Education Queensland, have proved effective in addressing the underlying problem.

We expect to see some initial rise in the number of complaints, as the saliency of the issue increases and reporting processes are improved. However,

over the longer term there should be a drop-off in the number of complaints. We would also expect to see evidence of the increased effectiveness of system controls, such as a greater number of people being refused registration, or having it revoked, by the Board of Teacher Registration, and improvements in the quality of internal investigations conducted by Education Queensland.

Given that this is a report pursuant to Section 26 of the Act, it is anticipated that Parliament will be provided with a follow-up report at some future date.

APPENDIX A: COMPLAINTS SAMPLE — KEY FINDINGS

The purpose of this appendix is to provide more detailed information on the allegations contained in a sample of CJC complaints files where sexual misconduct by Education Queensland employees was alleged. The data must be read subject to the same limitations referred to in chapter 2 of this report.

This appendix discusses:

- the strategy for determining the sample and the data coding methodology
- the general characteristics of the students who were the subject of the allegations
- the general characteristics of the employees who were the subject of the allegations
- the age difference between the employees and the students
- the nature of the allegations
- the location of incidents.

Sampling strategy and data-coding methodology

We examined all CJC files from April 1998 (when the department conducted its telephone hotline) to mid-July 1999 that contained allegations of sexual misconduct by Education Queensland employees towards students. Out of a sample of 83 files, 73 were selected for closer analysis. The excluded files were not examined because:

- three ‘employees’ were not employed by Education Queensland at the time of the alleged incident (one, for example, was an employee of a private school — the CJC has no jurisdiction over private schools)
- the students were not identified by name in seven of the files: the sample was restricted to files referring to students who, at the time of the alleged major incident, were still attending school and who had been identified by name. This was a coding rule that ensured sufficient particularisation of the incidents surrounding the allegation.

The percentages presented in this analysis are proportions of valid cases; that is, unless otherwise stated, the calculations were performed excluding ‘missing’ and, where appropriate, ‘not applicable’ cases.

It was not practicable to examine all allegations covered by the complaints files examined as part of this review. Many of the complaints involving Education Queensland employees are complex. One complaint file may contain many allegations, relating to incidents spanning many years and involving several students. For those reasons, the coding of the files focused on the ‘alleged major incident’ referred to in each file.

The ‘alleged major incident’ was defined as the most serious allegation involving the employee, even though the CJC acknowledges that **any** of the allegations referred to in the sample of complaints files, if true, may have had devastating consequences for the students involved.

Where there were a number of possible criminal offences, the one with the highest penalty was regarded as the ‘alleged major incident’. If the incident was not a criminal offence, the incident that would have given rise to the most serious disciplinary action was regarded as the alleged major incident.¹²² Under this approach, the major incident may not have been the subject of the allegation that prompted the complaint.

In 71 of the cases, the alleged major incident involved only one student. In the other two cases where the alleged major incident involved more than one student (one case allegedly involved two students and the other allegedly involved five students¹²³) one student was coded as the ‘first student’. Additional coding sheets were completed for each additional student. If the file contained more information about a particular student, that student was selected as the ‘first student’; otherwise, the youngest student was selected.

General characteristics of the students

Key characteristics of the students in the study who were allegedly the subject of inappropriate behaviour were as follows:

- 71 per cent were female
- Of the 54 students whose ages were recorded, 37 (69 per cent) were under 16 at the time of the alleged major incident
- In 64 cases the students were recorded as being at the same school as the employee at the time of the alleged major incident. In 27 (42 per cent) of these cases, the student was taught by the employee and one had previously been taught by the employee. On the most recent information available to the CJC, the majority of students were still at the same school as the employee
- There were only three cases where the student was at a different school to the school where the employee worked
- In two further cases the student was at a different school to the school where the employee worked but had previously been at the same school.

The most recent information available to the CJC on the students indicates that:

- seven had undergone some form of counselling, though it is unknown whether this related to the alleged major incident
- one had attempted suicide, although it is unknown whether this related to the alleged major incident
- one student had been imprisoned for child sex offences.

General characteristics of employees

School

As shown in Table A1, the majority of employees were working in a secondary school at the time of the alleged major incident.

Table A1 — Type of school where the subject employee was working

Type of school	Frequency	Percentage
Secondary school	45	61.6
Primary school	23	31.5
Primary & secondary school	3	4.1
Special school	1	1.4
TOTAL	72	100

Note: Data were unavailable for one employee.

Type of employee

Table A2 indicates that most of the complaints (66) were against teachers, which included, in addition to ordinary classroom teachers, principals, deputy principals and relief teachers.

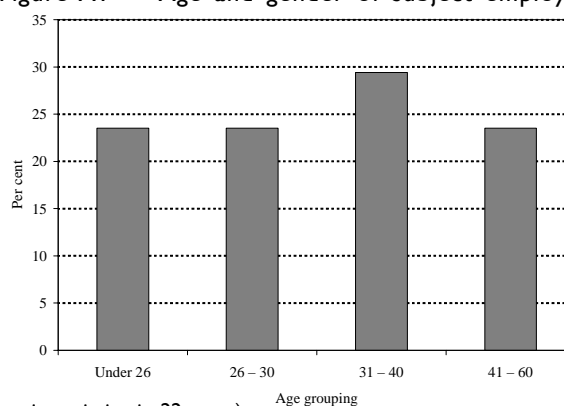
Table A2 — Role of the subject employee

Role of employee	Frequency	Percentage
Teacher	54	74.0
Principal	6	8.2
Relief teacher	4	5.5
Deputy principal	2	2.7
Gardener/grounds person	2	2.7
Teacher aide	2	2.7
Administrative assistant	1	1.4
Agricultural assistant	1	1.4
Community teacher	1	1.4
TOTAL	73	100

Age and gender of employees

The employees ranged from 20 to 60 years of age. Figure A1 shows that most employees were aged 40 years or under. In 86 per cent of the complaints, the employees were male.

Figure A1 — Age and gender of subject employees



Note: n=51 (information missing in 22 cases)

Length of service

Information on the length of time employees had worked for Education Queensland was recorded in less than half the complaints files reviewed (n=34; 47% of the total number of cases examined). In 16 of those cases the employees had worked for the department for five years or less. However, this does not necessarily indicate that there is a greater risk posed by employees in their early years of employment with Education Queensland.¹²⁴ Older incidents involving long-term employees may have never come to light.

Table A3 — Number of years subject employees worked for Education Queensland

Length of service	Frequency	Percentage
1 year	2	5.9
2 years	7	20.6
3 years	3	8.8
4 years	3	8.8
5 years	1	2.9
6 – 10 years	6	17.6
11 – 20 years	9	26.5
21+ years	3	8.8
TOTAL	34	100

Notes:

- 1 Length of service was defined as the period from commencement of employment until the time the incident occurred.
- 2 Information on length of service was unavailable for 39 employees.

Age difference

A common perception appears to be that the employees and students are usually close in age. In the 41 cases in which the age of the student and the employee was known in relation to the same alleged major incident, only 11 cases involved an age difference between the employee and the student of 10 years or less; in 17 cases, there was an age gap of 21 or more years. In five cases, there was over 40 years difference between the employee and the student.

Table A4 — Difference between subject employees' age and students' age

Difference (years)	Frequency	Percentage
10 or under	11	26.8
11–15	5	12.2
16–20	8	19.5
21–25	4	9.8
26–30	3	7.3
31–35	4	9.8
36–40	1	2.4
41–45	4	9.8
46+	1	2.4
TOTAL	41	100

Note: Data used to calculate the difference in age were missing in 32 cases.

Account of the incident

In many cases of this nature, it will be the word of the employee against the word of the student as to whether the allegation is to be believed and as to what were the circumstances of the alleged incident. This is complicated by the fact that many of the allegations were made to the investigating authorities by people other than the student allegedly involved. This opens the possibility that:

- some incidents were reported without the knowledge of the child
- some incidents were reported by people without access to the full facts surrounding the alleged incident
- some reports may have been false, possibly even made for vindictive reasons rather than for the protection of a student.

In 58 of the cases examined, the CJC was provided with an account of the alleged major incident:

- in 38 cases (66 per cent) the students asserted that the alleged incident had taken place
- in 19 cases (33 per cent) the students did not confirm the alleged incident had occurred
- in one instance the student confirmed the incident had occurred and later retracted this confirmation.

Sometimes a complaint made by a third party will be confirmed by the student, but the student may be unwilling to proceed with the matter — see cases 1 and 2, next page.

Type of behaviour alleged

The alleged incident in the complaints varied from penetrative sexual contact between the employee and the student to other inappropriate physical contact and non-physical behaviour by the employee towards the student. Some of these cases involved allegations of ongoing incidents and two incidents involved more than one student.¹²⁵

Penetrative sexual contact

Thirty-three cases allegedly involved penetrative sexual contact consisting of sexual intercourse or some other form of penetration, or at least a strong implication that such contact had occurred. Table A5 provides an age and gender breakdown for students in relation to incidents involving allegations of penetrative sexual contact by an employee.

Table A5 – Age and gender of students: incidents involving allegations of penetrative sexual contact

Student	16, 17 or 18 years	Under 16 years	Age unknown	Total
Male	2	2	3	7
Female	11	7	8	26
TOTAL	13	9	11	33

Case 1: Student unwilling to proceed with complaint

An anonymous hotline complaint alleged that, seven years earlier, a 25-year-old male secondary schoolteacher had been involved in an ongoing sexual relationship with a 16-year-old female student. When the student (now a 23-year-old woman) was approached by a CJC investigator, she confirmed that she and the employee had engaged in a consensual sexual relationship that lasted for about five months and began when she was a 16-year-old Grade 12 student. The student said she had not been cajoled into the relationship: 'I was 17 — I knew everything — I was a worldly woman.' The student's mother said that she had been aware of the relationship at the time and that, while she did not approve of it, she felt that 'there was little that I could do about it'. The employee was investigated by Education Queensland soon after the relationship ended and required to 'show cause'. The employee resigned two years later. He was on special leave in the intervening period. He now works at a private school. After the hotline complaint was made, an 'I' notice was placed on the employee's personal file.¹²⁶

Case 2: Withdrawal of complaint

A group of Grades 6 and 7 female students was asked to fill out an anonymous sexual harassment survey. One 12-year-old student wrote about an incident involving her male tennis coach, who was also a teacher at her school. The student alleged that the employee had touched the inside of her thigh and, on a number of occasions, had hugged her. The teacher who administered the survey knew the girl and, after speaking with her, passed her complaint on to the principal. The student was subsequently interviewed by a QPS officer and a formal statement was taken from her. Afterwards, the student became concerned that her anonymous complaint had 'gone too far' and she opted to withdraw her complaint to the QPS. In light of the fact that previous complaints of a similar nature had been made about the employee, the CJC recommended that Education Queensland consider monitoring the employee's future interaction with students.

Twenty-nine cases involved allegations of sexual intercourse with students or a strong implication that intercourse took place.¹²⁷ Twenty-four cases involved female students; five involved male students.

The age of 16 female students was known: five were under 16 years of age and eleven were 16 years of age or over. In three of the cases where the ages of the female students were not known, the students became pregnant.

The three male students whose ages were known were under 18 years of age.¹²⁸

Examples of this type of allegation include:

- A 24-year-old male teacher took three students on a holiday to the Gold Coast. It was alleged that they all got drunk and the teacher had sexual intercourse with a 15-year-old female student he was sharing a room with. The incident was reported by another teacher to the principal. The allegations could not be substantiated and the teacher is still employed by Education Queensland.
- A 27-year-old female teacher admitted to having sexual intercourse with a 12-year-old male student on five occasions and to kissing, cuddling and indecent dealing with the boy. The teacher was subsequently charged with and convicted of 'maintaining a sexual relationship with a child' and with 'indecent treatment' of a child. She was dismissed from Education Queensland.
- A 29-year-old male teacher had sexual intercourse with a 15-year-old female student. The teacher was subsequently charged with a number of counts of 'carnal knowledge of a girl under 16' and was convicted on all counts. He was also dismissed from Education Queensland.
- In one case, a male employee and a female student lived together in a de facto (sexual) relationship. The student was in Year 12 when the relationship started. They are still together and have two children. The age of the student at the time the sexual relationship began (18) would preclude the possibility of criminal charges against the teacher.

Other inappropriate physical contact

Thirty-two cases (44%) in the sample involved allegations of inappropriate physical contact of a sexual nature short of penetration.¹²⁹ See table A6.

The inappropriate physical contact that was alleged ranged from: fondling the student's genitals or breasts (eight cases); inappropriate touching or handling of the student (thirteen cases) to kissing or cuddling the student (six cases); and masturbation (five cases).

Examples of such allegations include:

- A male teacher fondled a 14-year-old male student. The employee was subsequently charged with 56 counts of indecent dealing with children and eight counts of sexual assault (with eight child complainants). The employee was convicted on all counts.
- A 42-year-old male teacher asked an eight-year-old girl to come to his classroom at lunchtimes, where he allegedly touched her vagina on two occasions. The teacher was charged with five counts of indecent dealing with children under 12 years of age. Although the teacher was found not guilty on all counts, he has been suspended pending the outcome of an ongoing Education Queensland investigation.

Table A6 – Age and gender of student: incidents involving inappropriate physical contact

Student	16 or 17 years	Under 16 years	Age unknown	TOTAL
Male	0	9	0	9
Female	3	16	4	23
TOTAL	3	25	4	32

Inappropriate non-physical behaviour

In eight cases in the sample, the alleged major incident was behaviour not involving physical contact with the student. The behaviour was recorded as:

- a teacher showing a student a pornographic magazine
- a 'significant' social relationship with a student
- two cases of unwelcome sexual comments, gestures, looks or written material
- a student was seen leaving the principal's office adjusting her clothing and often observed spending time alone with the principal behind 'locked doors'
- a student accessed pornography from the teacher's email
- a teacher told a student, who had rash on his wrist, that the rash might spread so he should take his pants off; the teacher left the room but returned 'quickly'
- a teacher pulled the zipper of his pants up and down in front of a female student in class.

Location of incident

Information was available on the location of the alleged major incident in 50 of the cases examined. As would be expected, most of the less serious incidents occurred in the classroom, and most of the more serious incidents, such as sexual intercourse, occurred in more private locations outside the school — such as the employee's home or car. See table A7.

Table A7 — Location of the alleged major incident

Location	Frequency	Percentage
School classroom	15	30.0
The employee's home	8	16.0
School grounds	7	14.0
Holiday location	4	8.0
The student's home	3	6.0
The employee's office or room	3	6.0
Employee's car	3	6.0
Storeroom	1	2.0
School bus	1	2.0
Numerous locations	5	10.0
TOTAL	50	100

Note: The location of the incident was not reported on 23 of the files.

Students in the sample were more likely to be the subject of inappropriate behaviour from teachers at their own schools than from other types of employees at those schools or from employees at another school. This probably relates to the trust which most students would have in their teachers, and the fact that teachers would generally have a greater opportunity to develop a closer relationship with students than would other employees.

Endnotes

- 122 See appendix B for a list of criminal offences relevant to the incidents examined.
- 123 In one case, a janitor at a special school allegedly showed pornographic material to two students (a male, age unknown and a 12-year-old female). In the other case there was an allegation of inappropriate touching/handling by an employee of five Grade 11 girls in a photography class dark room.
- 124 The longer an employee has worked for Education Queensland, the more difficult it was to determine his or her length of service from the file. The length of service to the time of the alleged major incident for many of the employees with lengthy service was coded as 'missing' data mainly due to incomplete records.
- 125 One complaint included allegations of inappropriate touching of a number of students in a school darkroom; one involved an employee showing a Playboy magazine to students.
- 126 For a discussion on 'I' notices see page 39.
- 127 For example, where a teacher and a student were in a *de facto* relationship.
- 128 Section 208 of the Criminal Code 'unlawful sodomy' which refers to sodomising a person under 18 or allowing a male person under 18 to sodomise him or her. If the child is under 12, the offender is liable to imprisonment for life, otherwise the penalty is a maximum of 14 years imprisonment.
- 129 Of all alleged major incidents relating to male students, 50% related to inappropriate physical contact. Of all alleged major incidents relating to female students, 45.1% related to inappropriate physical contact.

APPENDIX B: EXAMPLES OF RELEVANT CRIMINAL OFFENCES

ACT AND SECTION	OFFENCE	ELEMENTS OF THE OFFENCE	PENALTY
<i>Classification of Publications Act 1991</i>			
16	Leaving prohibited publication or child abuse photograph in or on public place	A person must not leave, or attempt to leave, a prohibited publication or child abuse photograph in or on a public place with intent to cause offence to another person or with reckless disregard to the offence that could be caused to another person	Restricted publication: 50 penalty units or imprisonment for three months; or Restricted publication (other than a child abuse publication): 300 penalty units or imprisonment for one year; or Child abuse publication or child abuse photograph: 600 penalty units or imprisonment for two years.
<i>Criminal Code (Qld)</i>			
208	Unlawful sodomy	Any person who: (a) sodomises a person under 18 years; or (b) permits a male person under 18 years to sodomise him or her; or (c) sodomises an intellectually impaired person; or (d) permits an intellectually impaired person to sodomise him or her; commits a crime.	The penalty is life imprisonment where the victim is: (a) a child under 12 years; or (b) a child, or an intellectually impaired person, who is to the knowledge of the offender: (i) his or her lineal descendant; or (ii) under his or her guardianship or care. If any other victim is under 18 years, the maximum penalty is 14 years imprisonment.
209	Attempted sodomy	Any person who attempts to commit a crime defined in section 208 is guilty of a crime.	The penalty is life imprisonment where the victim is: (a) a child under 12 years; or (b) a child, or an intellectually impaired person, who is to the knowledge of the offender (i) his or her lineal descendant; or (ii) under his or her guardianship or care. If any other victim is under 18 years the maximum penalty is seven years imprisonment.
210	Indecent treatment of children under 16	Any person who: (a) unlawfully* and indecently deals with a child under the age of 16 years; (b) unlawfully procures a child under the age of 16 to commit an indecent act; (c) unlawfully permits himself or herself to be indecently dealt with by a child under the age of 16 years; (d) wilfully and unlawfully exposes a child under the age of 16 years to an indecent act by the offender or any other person; (e) without legitimate reason, wilfully exposes a child under the age of 16 years to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter; (f) without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of a child under the age of 16 years, is guilty of an indictable offence.	Where the victim is under 12 years the penalty is 14 years imprisonment. Where the victim is 12 years and over the penalty is 10 years imprisonment. If the child is, to the knowledge of the offender, his or her lineal descendant or if the offender is the guardian of the child or, for the time being, has the child under his or her care, the penalty is 14 years imprisonment.

Note:*The word 'unlawfully' in this context refers to the possibility that the victim was married to the 'offender' at the time of the alleged offence. In that situation, the dealing would not be 'unlawful' even though potentially indecent. This is now extremely unlikely.

ACT AND SECTION	OFFENCE	ELEMENTS OF THE OFFENCE	PENALTY
<i>Criminal Code (Qld)</i>			
213	Owner etc. permitting abuse of children on premises	<p>Any person who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control of any premises, induces or knowingly permits any child under the prescribed age to be in or upon the premises for the purpose of any person, whether a particular person or not, doing an act in relation to the child (a 'proscribed act') defined to constitute an offence in section 208, 210 or 215 is guilty of an indictable offence.</p> <p>'prescribed age' means:</p> <p>(a) for an offence defined in section 208: 18 years;</p> <p>(b) for an offence defined in section 210 or 215: 16 years.</p>	<p>Where the victim is under 12 years:</p> <p>(a) the penalty is life imprisonment for an offence against sections 208 or 215 of the Criminal Code, and</p> <p>(b) the penalty is 14 years imprisonment for any other case.</p> <p>Where the victim is 12 years and over the penalty is 10 years imprisonment.</p>
215	Carnal knowledge of girls under 16	Any person who has or attempts to have unlawful carnal knowledge of a girl under the age of 16 years is guilty of an indictable offence.	<p>Where the victim is under 12 years the penalty is life imprisonment.</p> <p>Where the victim is under 12 years and the offender attempts unlawful carnal knowledge, the penalty is 14 years.</p> <p>Where the victim is 12 years and over the penalty is 14 years imprisonment</p> <p>Where the child is not the lineal descendant of the offender but the offender is the child's guardian or the child is under the offender's care, the penalty is life imprisonment.</p> <p>In the case of an attempt to have unlawful carnal knowledge and the child is not the lineal descendant of the offender but the offender is the child's guardian or the child is under the offender's care, the penalty is 14 years.</p>
217	Procuring young person etc. for carnal knowledge	A person who procures a person who is not an adult or is an intellectually impaired person to engage in carnal knowledge (either in Queensland or elsewhere) commits a crime.	Maximum penalty: 14 years imprisonment
218	Procuring sexual acts by coercion etc.	<p>A person who:</p> <p>(a) by threats or intimidation of any kind, procures a person to engage in a sexual act, either in Queensland or elsewhere; or</p> <p>(b) by a false pretence, procures a person to engage in a sexual act, either in Queensland or elsewhere; or</p> <p>(c) administers to a person, or causes a person to take, a drug or other thing with intent to stupefy or overpower the person to enable a sexual act to be engaged in with the person;</p> <p>commits a crime.</p>	Maximum penalty: 14 years imprisonment
219	Taking child for immoral purposes	<p>Any person who takes or entices away, or detains a child who is under the prescribed age and is not the spouse of that person for the purpose of any person, whether a particular person or not, doing an act in relation to the child (a 'proscribed act') defined to constitute an offence in s. 208, 210 or 215 is guilty of a crime.</p> <p>'prescribed age' means:</p> <p>(a) for an offence defined in s. 208: 18 years;</p> <p>(b) for an offence defined in s. 210 or 215: 16 years</p>	<p>Where the victim is under 12 years:</p> <p>(a) the penalty is life imprisonment for an offence against sections 208 or 215 of the Criminal Code, and</p> <p>(b) the penalty is 14 years imprisonment for any other case.</p> <p>Where the victim is 12 years and over the penalty is 10 years imprisonment.</p>

ACT AND SECTION	OFFENCE	ELEMENTS OF THE OFFENCE	PENALTY
<i>Criminal Code (Qld)</i>			
221	Conspiracy to defile	Any person who conspires with another to induce any person, by any false pretence or other fraudulent means, to permit any person to have unlawful carnal knowledge with or of him or her commits a crime.	Maximum penalty: 10 years imprisonment
222	Incest	<p>(1) Any person who:</p> <p>(a) has carnal knowledge with or of the person's offspring or other lineal descendant, or sibling, parent, grandparent, uncle, aunt, nephew or niece; and</p> <p>(b) knows that the other person bears that relationship to him or her, or some relationship of that type to him or her; commits a crime.</p> <p>(2) Any person who attempts to commit the crime of incest is liable to imprisonment for 10 years.</p> <p>(3) It is immaterial that the act or attempted act of carnal knowledge happened with the consent of either person.</p>	<p>For an offence against subsections (1)(a) and (b) the maximum penalty is life imprisonment.</p> <p>For attempting to commit incest the penalty is 10 years imprisonment.</p>
228	Obscene publications and exhibitions	<p>(1) Any person who knowingly, and without lawful justification or excuse:</p> <p>(a) publicly sells or exposes for sale any obscene book or other obscene printed or written matter, or any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals; or</p> <p>(b) exposes to view in any place to which the public are permitted to have access, whether on payment of a charge for admission or not, any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals; or</p> <p>(c) publicly exhibits any indecent show or performance, whether on payment of a charge for admission to see the show or performance or not; is guilty of a misdemeanour, and is liable to imprisonment for two years.</p> <p>(2) In the case of an offence defined in subsection (1)(a) or (b), if the matter or thing is obscene or tends to corrupt morals by reason of depicting a person who is or is represented to be:</p> <p>(a) a child under the age of 16 years: the offender is liable to imprisonment for five years; or</p> <p>(b) a child under the age of 12 years: the offender is liable to imprisonment for 10 years.</p> <p>(3) In the case of an offence defined in subsection (1)(c), if a person appearing in the indecent show or performance is or is represented to be:</p> <p>(a) a child under the age of 16 years: the offender is liable to imprisonment for five years; or</p> <p>(b) a child under the age of 12 years: the offender is liable to imprisonment for 10 years ...</p>	<p>For an offence against subsections (1)(a), (b) & (c) the penalty is two years imprisonment.</p> <p>Where the subject of the publication or exhibition described in subsections (1)(a), (b) & (c) is:</p> <ul style="list-style-type: none"> between 12 and 16 years, the penalty is five years imprisonment, and under 12 years the penalty is 10 years.

ACT AND SECTION	OFFENCE	ELEMENTS OF THE OFFENCE	PENALTY
<i>Criminal Code (Qld)</i>			
229B	Maintaining a sexual relationship with a child	<p>(1) Any adult who maintains an unlawful relationship of a sexual nature with a child under the prescribed age is guilty of a crime.</p> <p>(2) A person shall not be convicted of the offence defined in subsection (1) unless it is shown that the accused person, as an adult, has, during the period in which it is alleged that he or she maintained the relationship in issue with the child, done an act defined to constitute an offence of a sexual nature in relation to the child, other than an offence defined in s. 210(1)(e) or (f), on three or more occasions and evidence of the doing of any such act shall be admissible and probative of the maintenance of the relationship notwithstanding that the evidence does not disclose the dates or the exact circumstances of those occasions.</p> <p>‘prescribed age’ means:</p> <p>(a) to the extent that the relationship involves an act defined to constitute an offence in s. 208 or 209: 18 years; or</p> <p>(b) to the extent that the relationship involves any other act defined to constitute an offence of a sexual nature: 16 years.</p>	<p>Penalty: 14 years imprisonment</p> <p>Where during the sexual relationship the offender commits an offence of a sexual nature which attracts a sentence of 14 years or more, the penalty is life imprisonment.</p>
351	Assault with intent to commit rape.	Any person who assaults another with intent to commit rape is guilty of a crime.	Penalty: 14 years imprisonment
352	Sexual assaults	<p>(1) Any person who:</p> <p>(a) unlawfully and indecently assaults another person; or</p> <p>(b) procures another person, without the person’s consent:</p> <p>(i) to commit an act of gross indecency; or</p> <p>(ii) to witness an act of gross indecency by the person or any other person;</p> <p>is guilty of a crime.</p>	<p>Maximum penalty: 10 years imprisonment</p> <p>Where the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person, the maximum penalty is 14 years imprisonment.</p> <p>A maximum penalty of life imprisonment will apply where:</p> <p>(a) immediately before, during, or immediately after, the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with any other person; or</p> <p>(b) for an offence defined in subsection (1)(a), the indecent assault includes the person who is assaulted penetrating the offender’s vagina, vulva or anus to any extent with a thing or a part of the person’s body that is not a penis; or</p> <p>(c) for an offence defined in subsection (1)(b)(i), the act of gross indecency includes the person who is procured by the offender penetrating the vagina, vulva or anus of the person who is procured or another person to any extent with a thing or a part of the body of the person who is procured that is not a penis.</p>

ACT AND SECTION	OFFENCE	ELEMENTS OF THE OFFENCE	PENALTY
<i>Criminal Code (Qld)</i>			
349	Rape	<p>(1) Any person who rapes another person is guilty of a crime.</p> <p>(2) A person rapes another person if:</p> <p>(a) the person has carnal knowledge with or of the other person without the other person's consent; or</p> <p>(b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or</p> <p>(c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.</p>	Maximum penalty: life imprisonment
350	Attempt to commit rape	Any person who attempts to commit the crime of rape is guilty of a crime.	Penalty: 14 years imprisonment

APPENDIX C: EDUCATION QUEENSLAND CODE OF CONDUCT AND CHILD PROTECTION POLICY

CODE OF CONDUCT

SECTION 1: PROCEDURES AND GUIDELINES

(Updated July 2000)

1. Policy Statement

Employees of the Department of Education are employed at public expense for the benefit of the community and are expected to act in the public interest. The purpose of a departmental-specific Code of Conduct is to ensure that all employees are aware of their ethical obligations and their use of public resources.

The Code of Conduct provides appropriate standards of official conduct, public sector relationships and behaviour, based on the five principles set out in the *Public Sector Ethics Act 1994*. They are respect for the law and system of government, respect for persons, integrity, diligence, and economy and efficiency.

2. Accountabilities

The Director-General of Education through principals and worksite managers will ensure that all employees:

- (a) have access to a copy of the Code of Conduct; and
- (b) receive adequate education and training in the use and application of the Code of Conduct and its links to the *Whistleblowers Protection Act 1994*.

3. Policy Source

Public Sector Ethics Act 1994

4. Contact

Persons requiring further information are invited to contact the Manager, Employee Relations Unit, Human Resources Branch, tel. (07) 3237 0226.

5. Related policies

Whistleblowers Protection Act 1994

Financial Administration and Audit Act 1977

Financial Management Standard 1997 (NB: Supersedes Public Finance Standards 1990)

Public Service Act 1996 (supersedes *Public Service Management and Employment Act 1988*)

Public Service Management Regulations 1988

Public Service Regulation 1997

Office of the Public Service Directive 18/97 — Performance Management (NB: Supersedes Public Sector Management Standard for Discipline)

Office of the Public Service Commissioner Directive 32/99 — Grievance Resolution (NB: Supersedes Public Sector Management Standard for Grievance Procedures)

Office of the Public Service Directive 11/96 — Appeals Directive (Includes amendments 14/97 and 16/97) (NB: Supersedes Public Sector Management Standard for Fair Treatment of Employees)

Office of the Public Service Directive 5/97 Recruitment and Selection (NB: Supersedes Public Sector Management Standard for Recruitment and Selection)

State Purchasing Policy

HS-10: Workplace Health and Safety — Curriculum — Core Module

HS-17: Child Protection (HS-17 replaces HR 03/1: Allegations of Physical and Sexual Abuse of Students Made against School Staff and HR 03/2: Sexual Harassment)

Part 1

Introduction

- 1.1 The Department of Education's mission is to provide quality education services for all state school students in Queensland. As an employee of the department, you play a key role in helping achieve this mission.
- 1.2 Those of us who work in the public sector are employed at public expense for the benefit of the community and are expected to act in the public interest. This means acting in accordance with the law and the policy intentions of the elected government under the direction of the Minister for Education.
- 1.3 While the vast majority of employees behave ethically, others may be unaware that they are not following the principles of the Code of Conduct. The purpose of this code is to ensure that all employees are aware of their ethical obligations, especially in relation to how they act in their jobs and their use of public resources.
- 1.4 The code applies to all permanent and temporary full-time and part-time employees and casual employees of the Department of Education, including those on leave. Volunteers who exercise powers and control resources on behalf of the department, such as Parents & Citizens committee members, are also required to support its values.
- 1.5 The Code of Conduct provides appropriate standards of official conduct, public sector relationships and behaviour, based on principles and obligations set out in the *Public Sector Ethics Act 1994*. The code provides guidelines for ethical conduct; it does not override existing legislation.
- 1.6 The *Public Sector Ethics Act 1994* defines the following five ethics principles as the basis of good public administration:
 - (a) Respect for the law and system of government
 - (b) Respect for persons
 - (c) Integrity
 - (d) Diligence
 - (e) Economy and efficiency

Part 2

Ethical Principle 1 — Respect for the Law and System of Government

Responsibilities

- 2.1 As an employee of the Department of Education, you have a responsibility:
 - (a) to exercise powers lawfully;
 - (b) to carry out lawful instructions;
 - (c) to respect the spirit and the letter of the law;
 - (d) to be responsive to the mandate of the government of the day;
 - (e) to provide information and assistance to a Parliamentary Committee, where authorised to do so by a Government Minister.

Lawful and Unlawful Instructions

- 2.2 As a departmental employee, you work in a system based on the principles of responsible parliamentary government, the convention of ministerial responsibility and the rule of law. In the course of your duties, you are expected to comply with all reasonable, lawful work instructions.
- 2.3 If you consider that an instruction is unreasonable or unlawful, you may be justified in refusing to comply with it.

Challenging an Official Instruction

- 2.4 When you believe an instruction is unreasonable or unlawful, you should communicate this to the person giving the instruction and provide a reasonable opportunity for him/her to respond. If you still object, you may seek advice at a higher level (your principal/manager, District Director, Director or Director-General of Education). You may also choose to use the internal grievance procedure.

- 2.5 In the interim you should carry out the instruction unless there is a danger to a person's health or safety, a suspected crime is in progress or has occurred, or there is evidence of official misconduct. In such cases, you should notify an appropriate authority (e.g. your principal/manager, the Director-General of Education, the police or the Criminal Justice Commission).
- 2.6 You should accept that you may not personally agree with all decisions made by your principal/manager. You may hold personal views that differ from those of the elected government. Such views, however, should not interfere or be seen to interfere with the performance of your duties. Your views must not take precedence over government policy.
- 2.7 Principals/managers, on the other hand, should be open to positive and constructive questions about their instructions and respond appropriately.

Disclosure of Fraud, Corrupt Conduct, or Maladministration

- 2.8 You should disclose to an appropriate authority (e.g. your principal/manager, the Director-General of Education, the police or the Criminal Justice Commission) suspected or known fraud, corrupt conduct, or maladministration by another public sector employee. You will be protected by the *Whistleblowers Protection Act 1994* regarding public interest disclosures if such disclosures are made in the appropriate way. Employees should also be aware, however, that those making false or vexatious allegations will not be protected by the Act.

Part 3

Ethical Principle 2 — Respect for Persons

Responsibilities

- 3.1 As an employee of the Department of Education, you have a responsibility:
 - (a) to be responsive to the reasonable demands of the public and other officials;
 - (b) to avoid patronage and favouritism, and act fairly and equitably;
 - (c) to be tolerant of other people's views which may differ from your own.

Respect for the Dignity, Rights and Views of Others

- 3.2 The individuals who make up our department come from a wide range of backgrounds and hold a variety of views and expectations. As an employee, you should maintain open and honest communication and treat your colleagues, students, parents, local school community and the public fairly, equitably, sensitively and consistently. You also have a particular responsibility to students in our schools to set an example by your actions.

Procedural Fairness ('Natural Justice')

- 3.3 All employees are entitled to benefit from the principles of natural justice. Natural justice requires that a fair decision is reached by an objective decision maker. It ensures that decisions affecting an individual's rights and interests are reached only after the individual has been made aware of the allegations made against him/her. It also ensures that the individual has had the opportunity to present his/her claims in relation to the allegations and the proposed decisions affecting them.
- 3.4 Natural justice also requires that the decision maker does not have a personal interest in the matter. Care should be exercised to exclude real or perceived bias from the process.

Personal Behaviour in the Workplace

- 3.5 Your behaviour, language and dress at work reflect the respect you have for yourself and for others. You should act, dress and communicate appropriately.

Ethical Principle 3 — Integrity

Responsibilities

- 4.1 As an employee of the Department of Education, you have a responsibility:
- (a) to use the powers, influence, and resources available to your official position properly; and
 - (b) to maintain proper confidentiality of official information.

Conflict of Interest

- 4.2 As a departmental employee you hold a position of trust. In fulfilling this role you are required to maintain and enhance public confidence in the integrity of state education. Should there appear to be a conflict between your private interests and your duty, that confidence is put at risk.
- 4.3 A conflict exists when your private interests have the potential to interfere or conflict with the proper performance of your official duties. For example, a conflict of interest would probably exist if you were privately paid to provide tuition to students from your own classes outside the workplace.

Declaration and Registration of Personal Interests

- 4.4 In making a decision that may entail a conflict of interest, you must declare to your principal/manager any personal or immediate family interests that are significant and relevant to that decision. You must also declare any apparent conflict of interest.

Gifts and Benefits

- 4.5 The use of your official position to seek, encourage the offer of, or accept any form of personal benefit or gift in connection with your duties may compromise, or be seen to compromise, your capacity to perform your duties impartially.
- 4.6 Normal customary hospitality or the giving of gifts in accordance with social custom, such as gifts from students at Christmas, or when you retire or leave the workplace, are token gifts of appreciation or gifts of a symbolic nature. As they are usually of nominal value and do not suggest any future obligation, they can be accepted.
- 4.7 Where a gift is of more than nominal value, such as free travel and accommodation, there is a potential to compromise your integrity and therefore that of the department. It is a registrable gift and should be declared. If you are unsure whether a gift is of nominal or registrable value, discuss it with your principal/manager.
- 4.8 You may still be able to accept the gift if you can demonstrate that there is no expectation of future benefit to the giver.

Criminal Charges and Convictions

- 4.9 You are required to notify your principal/manager if you have been charged with or convicted of an indictable offence.
- 4.10 If an employee has been charged with an indictable offence, the Director-General of Education will decide whether the charge directly affects the proper performance of the employee's duties. This decision is not to consider the guilt or innocence of the employee but to ensure the effective operation of the department.

Disclosure of Official Information

- 4.11 You should disclose official information or documents acquired through your work only when required by law, in the course of your duty, or when properly authorised by your principal/manager. If you are unsure whether disclosure is appropriate, discuss your concerns with your principal/manager.

Confidentiality

- 4.12 You may sometimes have access to information of a personal, commercial, political or strategic nature that is not available to the general public. This information may be about other employees, students, schools or government policy. You should respect the rights of the government and the provider of the information to keep this information and knowledge confidential. You may supply at any time

information that is generally available to the public.

- 4.13 Employees in schools and volunteer workers may have access to confidential information about a student's behaviour, performance or family background. You are expected to respect the confidentiality of that information and knowledge.

Professional Codes of Conduct

- 4.14 Employees who work in a professional capacity in our department such as teachers, guidance officers, employee advisers, physiotherapists, occupational therapists, speech therapists, auditors and accountants may have obligations or conventions related to their profession.
- 4.15 While genuine occupational requirements of your work will be recognised, you are reminded that you have a primary obligation to the department's Code of Conduct. If you believe that a conflict arises between your professional code and the department's Code of Conduct, you should raise your concerns with your principal/manager and your professional association so that justification may be determined.
- 4.16 It should be understood that the obligation to disclose known or suspected fraud, corrupt conduct or maladministration overrides other professional obligations.

Public Comment

- 4.17 Public comment includes public speaking engagements, comments on radio and television, and expressing views in letters to the newspapers or in books, journals or notices. You may make public comment and enter into public debate on political and social issues. Make clear what your personal views are and that they are not official views of the government or the department.
- 4.18 You may contribute to public discussion of government policy or administration in an official capacity if providing information on government policy is part of your duties, or you have been authorised by your regional executive director or the Director-General of Education to do so.

Party-political, Professional, Trade Union and Voluntary Association Activity

- 4.19 You may engage in party-political, professional, interest group, voluntary organisation and trade union activity.
- 4.20 If you are an elected workplace representative or official of a trade union, professional association or voluntary organisation, such as the QCPCA, you are not required to seek official permission before expressing publicly that body's views on a matter. But make it clear that your comments are made on behalf of the union, association or organisation that you represent.

Personal Relationships between Employees and Students

- 4.21 All employees must be aware of interpersonal situations that could influence professional judgments. If you work in a school, your duties place you in a position of trust with students.
- 4.22 As well, teachers have a responsibility to protect the interests of students; to respect the trust involved in the teacher-student relationship; to accept the constraints and obligations inherent in that responsibility; and to assess student work fairly, objectively and consistently.
- 4.23 Fulfilling these responsibilities protects both employees and students and enhances the overall quality of teaching and learning.

Intellectual Property and Copyright

- 4.24 Intellectual property can be an invention, original work, the results of scientific research or a product development that can be protected. Ownership is determined by consideration of the circumstances in which the intellectual property was conceived, researched and developed.
- 4.25 If you are unsure about copyright or intellectual property issues, seek advice from the department's copyright officer or from Executive and Legal Services Branch.

Ethical Principle 4 — Diligence

Responsibilities

- 5.1 As an employee of the Department of Education, you have a responsibility:
- (a) to perform your duties to the best of your ability;
 - (b) to carry out your duties in a professional, competent and conscientious manner, always seeking to improve your own performance and the department's service delivery to schools and students.

Performing your Duties/Duty of Care

- 5.2 High standards of performance and a focus on client service are encouraged. As a departmental employee, you are expected to exercise due care, particularly if members of the public or clients rely on the information or advice provided. You are expected to act responsibly and be accountable for your official decisions and conduct.
- 5.3 You have a legal duty to take reasonable care to avoid causing injury to another person. When you are supervising students, the standard of care required at law is that you take such steps as are reasonable in the circumstances to protect a student from reasonably foreseeable injury. All teachers are expected to exercise the degree of care that a reasonably skilled and experienced teacher would take in the circumstances.

Provision of Accurate and Complete Information

- 5.4 You are required to provide your principal/manager with advice that is honest, impartial and comprehensive, irrespective of your personal views. If you are unable to do so, discuss it with your principal/manager.
- 5.5 When providing advice or information, whether to your principal/manager, colleague or the public, ensure that it is accurate and complete. Prompt responses help promote efficient work practices.

Other Employment

- 5.6 You may undertake additional paid or voluntary private employment, including private practice of your profession, outside your workplace provided that:
- (a) no conflict of interest exists or is likely to exist in the future;
 - (b) your private employment does not affect the performance of your official duties or interfere with the responsibilities of your office;
 - (c) your private employment does not bring the department into disrepute.
- 5.7 If you are unsure whether your additional employment conflicts with your work responsibilities, discuss it with your principal/manager.

Use of Intoxicants

- 5.8 Excessive use or abuse of medication/drugs, or other intoxicants, may impair work performance and affect the performance and safety of others and is unacceptable. Help is available to employees with medication, drug and alcohol problems through the Employee Assistance Service in regions and in central office.

Private Use of Communication Systems

- 5.9 You may occasionally need to make and receive private telephone calls or faxes during the course of your daily work. Keep the length and frequency of these calls to a minimum.
- 5.10 You should not, during work hours, make private use of public information services networks, such as the Internet.

Leave of Absence

- 5.11 Any type of leave (such as sick, recreational, core-time, long-service, maternity, study, special) must be authorised by an appropriate authority.

Part 6

Ethical Principle 5 — Economy and efficiency

Responsibilities

- 6.1 As an employee of the Department of Education, you have a responsibility to:
- (a) use public resources efficiently and effectively for official purposes;
 - (b) make decisions relating to the use of public resources that are reasonable, are appropriately authorised and can withstand public scrutiny;
 - (c) treat government property with due care and ensure it is secured against theft and misuse.

Public Resources

- 6.2 Public resources include property, facilities, materials, equipment, financial resources, human resources, knowledge, intellectual property and official information.
- 6.3 Resources are provided to the department for the provision of educational services to students. All employees have a responsibility to ensure that resources are used to maximise benefits to students and the department.

Use of Government Property and Facilities for Private Purposes

- 6.4 You should be economical and avoid waste and extravagance in your use of resources such as school and office facilities and equipment, including motor vehicles. It is appropriate to use departmental or school resources in your personal time for work-related purposes, such as lesson preparation by teachers.

Non-government and Community Use of Government Resources

- 6.5 Government or departmental resources, such as school buildings, grounds and sporting equipment, can be made available for community use where this does not interfere with the department's business. Do this following approved asset management and user-charging policies.

CHILD PROTECTION POLICY

Health and Safety HS-17: Child Protection

(updated January 2000)

Preface

- Policy Statement
- Accountabilities
- Source
- Related Information
- Contact

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2. Allegations of or Information about Official Misconduct Concerning Any Employee
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 - Receiving the Information/Allegation
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3. Situations Where it is Suspected Students may be in need of Protection from Situations Outside of the State Educational Institution Environment
 - Reporting
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Section 2: Schedule

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PREFACE

Policy Statement

All students have a right to protection from harm. Education Queensland has a laudable record of providing safe and supportive learning environments for our students. Our staff have long recognised that to maximise each student's potential, protection from harm and the risk of harm, irrespective of the cause of the harm, is fundamental. In holding the welfare and interests of our students to be paramount in the learning process, staff of Education Queensland have acted and will continue to act to ensure students have a secure and nurturing environment in which to grow and learn.

Education Queensland is committed to providing a safe and supportive learning environment for its students.

Any behaviours that jeopardise that environment have no place in an organisation which is committed to learning outcomes for all students.

Accountabilities

This policy is based on the following principles:

- (a) Students must be protected from all forms of harm, including bullying, harassment and intimidation which is based on gender, culture or ethnicity, or on any impairment the person may have.
- (b) Education Queensland is to operate in cooperation with other relevant agencies and in partnership with educational communities in matters concerning child protection.
- (c) Employees must report all behaviours that can reasonably be considered harmful to students, as well as instances where it is reasonable to believe that a student has been harmed or requires protection from harm.
- (d) Employees must ensure their behaviour towards and relationships with students reflect the highest standards of care for students, are not unlawful, and comply with the conduct requirements prescribed in the Code of Conduct and Guidelines for Ethical Behaviour applicable to Education Queensland employees.
- (e) Employees must accept that failure to behave in a manner consistent with the requirements of this policy may result in criminal proceedings and/or disciplinary action being taken against the employee under the *Public Service Act 1996*.

All principals must:

- (a) ensure they are conversant with relevant legislation;
- (b) ensure that their own behaviour neither encourages nor supports behaviour in others which may undermine the intentions of this policy;
- (c) ensure that all employees for whom they are responsible understand and fulfil their responsibilities within this policy;
- (d) ensure that all employees know that they must not, in any circumstances, engage in sexual conduct of any nature with a student who is enrolled in a state educational institution where they are employed. It is irrelevant whether the sexual conduct is consensual or non-consensual, or condoned by parents or caregivers. The ages of the student or employee involved are also irrelevant;
- (e) ensure that all employees know that they must not, in any circumstances, engage in sexual conduct of any nature with any other student with whom there exists a professional relationship of trust and a duty of care. It is irrelevant whether the sexual conduct is consensual or non-consensual, or condoned by parents or caregivers. The ages of the student or employee involved are also irrelevant;
- (f) make it clear that victimisation of students or others making a complaint will not be tolerated;
- (g) ensure that student management practices are administered in a manner which maintains the student's dignity;
- (h) report the receipt of and particulars of the allegations from any person, including an anonymous source, made against an employee to Education Queensland's Liaison Officer to the Criminal Justice Commission (refer to Contact (b)), and document the receipt of and particulars of the allegations;
- (i) if, on receiving advice from an employee, they suspect a student is in need of protection from a situation outside of the immediate state educational institution environment, contact either the:
 - (i) Queensland Police Service's Child Abuse Investigation Unit (refer to Contact (c)(i)); or
 - (ii) Department of Families, Youth and Community Care (refer to Schedule 2); and
- (j) not inform parents/caregivers that a situation detailed in (i) has been reported;
- (k) ensure that strategies and management practices are in place in state educational institutions so that employees, students and educational communities can adopt proactive approaches to child protection (refer to paragraphs 5.1 to 5.2).

All Managers, Education Services, at the District Office, receiving knowledge of an allegation of official misconduct made against a principal, must:

- (a) report the receipt of and particulars of the allegations to Education Queensland's Liaison Officer to the Criminal Justice Commission (refer to Contact (b));
- (b) inform the District Director of this report; and
- (c) unless otherwise directed, not inform the principal of the allegations.

All employees must:

- (a) report any allegation made against or information about an employee which could constitute official misconduct, or other conduct which could constitute or does constitute a criminal offence, to the principal or if the allegation is made against or the information is about the principal, to the Manager, Education Services at the District Office;
- (b) make an oral or written statement to the principal/Manager, Education Services, and keep appropriate records if it is reasonable to suspect that a student is in need of protection from a situation outside of the immediate state educational institution environment; and
- (c) make an oral or written statement to the principal/Manager, Education Services, and keep appropriate records if allegations have been made, or it is reasonable to suspect a student is being or has been the subject of unwelcome behaviour such as harassment, intimidation, bullying or other like behaviour, which does not fit the above categories.

Source

<i>Children Services Act 1965</i>	<i>Child Protection Act 1999</i>
<i>Criminal Justice Act 1989</i>	<i>Criminal Code Act 1899</i>
<i>Criminal Code</i>	<i>Anti-Discrimination Act 1991</i>
<i>Public Service Act 1996</i>	<i>Whistleblowers Protection Act 1994</i>
<i>Public Sector Ethics Act 1994</i>	<i>Education (General Provisions) Act 1989</i>

Related Information

CS-01: Gender Equity in Education

LL-05: Court Appearances of Employees of Education Queensland — including Subpoenas

LL-06: Crown Acceptance of Legal Liability for Actions of Crown Employees

LL-09: Police Investigations in State Educational Institutions

SM-06: Supportive School Environment

Behaviour Management Plan

Anti-Racism Policy

Code of Conduct and Guidelines for Ethical Behaviour applicable to Education Queensland Employees

Contact

- (a) Persons requiring further information should contact the relevant District Office.
- (b) For clarification as to whether or not the actions of Education Queensland employees should be reported, contact Education Queensland's Liaison Officer to the Criminal Justice Commission (Manager, Judicial and Administrative Review Unit, Executive and Legal Services Branch) tel. 3235 4212, fax 3237 0634.
- (c) If, on receiving advice from an employee, they suspect a student is in need of protection from a situation outside of the immediate state educational institution environment, contact either the:
 - (i) Queensland Police Service's Child Abuse Investigation Unit, tel. 3364 6430; or
 - (ii) Department of Families, Youth and Community Care (refer to Schedule 2).
- (d) Resource materials are available from the Positive Parenting Coordination Unit, Department of Families, Youth and Community Care, tel. 3224 7588.

SECTION 1: PROCEDURES

1. Definitions

- 1.1 A child is an individual under 18 years of age.
- 1.2 A child protection agency refers to agencies with responsibility for investigating reported cases of harm done or being done to children. In Queensland child protection agencies are the:
 - (a) Queensland Police Service; and
 - (b) Department of Families, Youth and Community Care.
- 1.3 An employee is any person employed by Education Queensland.
- 1.4 Harassment, intimidation and bullying involves the abuse of power with the intention of causing distress to the other person(s), or for personal gain or gratification. Behaviours may include repeated behaviour that can be covert and subtle, and be social, psychological, verbal, physical and/or sexual in nature.
- 1.5 Harm to a child is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing. It is immaterial how the harm is caused. Harm can be caused by:
 - (a) physical, psychological or emotional abuse or neglect;
 - (b) sexual abuse or exploitation; or
 - (c) domestic or family violence.
- 1.6 Official misconduct (as stated in section 32 of the *Criminal Justice Act 1989*) is:
 - (a) conduct of a person, whether or not the person holds an appointment in a unit of public administration, that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or of any person holding an appointment in a unit of public administration; or
 - (b) conduct of a person while the person holds or held an appointment in a unit of public administration —
 - (i) that constitutes or involves the discharge of the person's functions or exercise of his or her powers or authority, as the holder of the appointment, in a manner that is not honest or is not impartial; or
 - (ii) that constitutes or involves a breach of the trust placed in the person by reason of his or her holding the appointment in a unit of public administration; or
 - (c) conduct that involves the misuse by any person of information or material that the person has acquired in or in connection with the discharge of his or her functions or exercise of his or her powers or authority as the holder of an appointment in a unit of public administration, whether the misuse is for the benefit of himself or another person;
and in any such case, constitutes or could constitute—
 - (d) in the case of conduct of a person who is the holder of an appointment in the unit of public administration — a criminal offence, or a disciplinary breach that provides reasonable grounds for termination of the person's services in the unit of public administration.
- 1.7 Principal refers to the principal or officer in charge of a state educational institution.
- 1.8 A state educational institution is a state educational institution established under the *Education (General Provisions) Act 1989*.
- 1.9 A student is any person, regardless of age, who is enrolled in a state educational institution.

2. Allegations of or Information about Official Misconduct Concerning Any Employee

Reporting

- 2.1 Section 37 of the *Criminal Justice Act 1989* places a statutory requirement on the Director-General of Education, to refer to the Criminal Justice Commission all matters that the Director-General of Education suspects involve, or may involve, official misconduct by employees. Such matters include allegations received from anonymous sources.

- 2.2 The definition of what constitutes official misconduct includes behaviour which could be determined to be a criminal offence, or a disciplinary breach that provides reasonable grounds for termination of the employee's services in the unit of public administration. However, allegations must be reported, regardless of whether in the opinion of the person hearing the complaint, the alleged behaviour does not suggest a criminal offence has been committed or the alleged behaviour would result in the termination of the employee's services.
- 2.3 Even if it is eventually determined that the allegations made against an employee do not constitute official misconduct, the employee could still be disciplined under the *Public Service Act 1996* under grounds set out in section 87 of the Act. For example, an employee may be disciplined because they have:
 - (a) displayed disgraceful or improper conduct in an official capacity, or disgraceful or improper conduct in a private capacity which reflects seriously and adversely on the public service; or
 - (b) breached the Code of Conduct applicable to Education Queensland employees if they fail to respect the trust involved in teacher-student relationships, or do not understand or fulfil their duty of care responsibilities.
- 2.4 Disciplinary action determined in accordance with section 88 of the *Public Service Act 1996* may still be to terminate the services of the employee, reduce the officer's classification level, impose a monetary penalty on the employee, or enact another penalty prescribed under the Act.
- 2.5 The person making allegations or providing information should be advised by the person to whom the complaint is made, that the matter will be referred to the principal, except when the allegations involve the principal.
- 2.6 When allegations involve the principal, the person to whom the complaint is made will refer the complaint to the Manager, Education Services, District Office, and the person making the allegation or providing information advised accordingly.
- 2.7 The principal or the Manager, Education Services, must report the matter to Education Queensland's Liaison Officer to the Criminal Justice Commission (refer to Contact (b)). The Liaison Officer determines what course of action is to be taken in relation to the investigation of the matter according to the approved criteria of the Criminal Justice Commission.
- 2.8 If a parent/caregiver makes a complaint on a student's behalf, state educational institution personnel must not seek further information from the student once the initial report is made, as this may prejudice any police investigation that occurs.
- 2.9 In instances where the person against whom allegations have been made is not an Education Queensland employee, e.g. a volunteer worker, there is no need to contact Education Queensland's Liaison Officer to the Criminal Justice Commission. The relevant Police Unit must be contacted and they will report to the Criminal Justice Commission where appropriate.
- 2.10 The principal must not inform the person against whom the allegations have been made or any other state educational institution-based personnel of actions taken or that a complaint has been made.

Receiving the Information/Allegation

- 2.11 The person to whom a student makes a complaint (teacher, principal or other employee) should listen attentively in a non-judgmental manner and record the free and spontaneous words uttered by the student in relation to the allegations. If clarification is required, the use of leading or closed questioning should be avoided.
- 2.12 Parents/caregivers, students and other adults making or reporting allegations should be advised to maintain confidentiality of all information except to those who are authorised to investigate the matter.

Central Office Responsibilities

- 2.13 Education Queensland's Liaison Officer to the Criminal Justice Commission determines whether the matter should be referred to the Queensland Police Service and/or the Criminal Justice Commission, or investigated internally if the matter is not pursued by the relevant external agencies.

- 2.14 Employee Relations Unit of the Human Resources Branch is responsible for providing advice and taking necessary action in relation to the relocation of employees to non-school worksites or their suspension from duty during any disciplinary investigations.
- 2.15 Employee Relations Unit is to arrange for appropriate notations to be made on personnel files.

Police Investigation

- 2.16 After the police have commenced investigations, and contacted the person against whom the allegations are made, the principal may advise the person concerned of support mechanisms available. The principal may also provide/arrange support and/or counselling for the student(s) and other employees affected by the situation.
- 2.17 State educational institution personnel should cooperate with the police in conducting their investigations. The aim of state educational institutions and the police is to respond quickly, efficiently and sensitively to establish the facts of the matter and effect its resolution.
- 2.18 Should problems or concerns arise regarding the conduct of the investigation, the principal should alert Education Queensland's Liaison Officer to the Criminal Justice Commission (refer to Contact (b)).
- 2.19 Following an investigation, the principal should also transmit the outcomes of any police actions to the Manager, Education Services, in the District Office, immediately and in writing.

Role of Queensland Police Service

- 2.20 The role of the police is to investigate allegations as quickly as possible taking into account any associated issues at the particular state educational institution.

3. Situations Where it is Suspected Students may be in need of Protection from Situations Outside of the State Educational Institution Environment

Reporting

- 3.1 In keeping with the spirit of the *Child Protection Act 1999*, employees are obligated to report to the principal cases where it is reasonable to believe a student has suffered or may require protection from harm.
- 3.2 If an employee suspects a student of any age may require protection from harm because of a situation outside the state educational institution, the employee must report the matter to the principal.
- 3.3 In order to help students in need of protection from harm, employees need to be aware of the physical, emotional and behavioural indicators often found in 'harm' cases. These indicators are particularly significant if they are severe and/or consistent over time. Detailed information about the physical, emotional and behavioural indicators is contained in the booklet, *Child Abuse — A Guide for Management*. This resource describes significant mistreatment which may result in harm as:
 - (a) physical abuse and excessive punishment;
 - (b) emotional abuse;
 - (c) emotional deprivation;
 - (d) physical neglect and/or inadequate supervision; and
 - (e) sexual abuse and exploitation.

These forms of abuse may be present singly or in any combination. (Resource materials are available from the Positive Parenting Coordination Unit, refer to Contact (d)).
- 3.4 Where an employee has concerns or is unsure as to whether or not observations should be cause for concern, it is particularly important for the person to discuss such concerns and observations with the principal.
- 3.5 Without disclosing the names of any person involved, employees may also contact the staff of the Department of Families, Youth and Community Care (refer to Contact (c)(ii)) simply to discuss a situation where there is concern about a student and doubt about the appropriateness of reporting the matter. It is the role of

these two agencies to investigate the matter, identify the source of the harm, assess its significance and undertake protective measures for the student.

- 3.6 The principal must then report the matter on behalf of that employee to the Department of Families, Youth and Community Care, or to the Queensland Police Service (refer to Contact (c)). However, the specific employee concerned must be available to give a first-hand account of the situation.
- 3.7 The role of employees in the detection of harm of a student is not an investigative one. State educational institution-based employees must not undertake investigations beyond satisfying themselves that they have reasonable grounds to suspect that a student has been, or is at risk of, harm. The employee or principal is not obliged to obtain proof, establish the cause of the harm or assess its severity.
- 3.8 Where an employee is suspected of harming a student, the procedures outlined in paragraphs 2.1 to 2.20 must be followed.
- 3.9 Once a report has been made, the employee is not required to take further action, beyond the requirement to exercise a duty of care. However, if appropriate, the person concerned should maintain a record of any further observations of the situation.

Record keeping

- 3.10 Education Queensland recommends that state educational institution-based employees keep anecdotal records of observations focusing on the persistence of indicators over time and the severity of effects.
- 3.11 Anecdotal records must be recordings of observable events rather than opinion. They may include the dates and times of observations, and the exact wording used by the child if any relevant statements are made spontaneously.
- 3.12 Anecdotal records, if taken, must be kept by the employee in a secure location, not placed on a departmental file.

Information to Parents/Caregivers

- 3.13 The principal or employee must not inform parents/caregivers that the matter has been reported. This is the responsibility of the Queensland Police Service or the Department of Families, Youth and Community Care where applicable.

Evidence

- 3.14 The investigation of these matters is an extremely complex and sensitive process. In some cases a number of reports and subsequent interviews may be involved before adequate protection can be offered to the student.
- 3.15 If an employee's knowledge is considered relevant, that person may be requested to give evidence voluntarily, or even in the first instance, by subpoena.
- 3.16 If the person declines to give evidence voluntarily, the person may be served with a subpoena, requiring the person to give evidence at the time and place stated in the subpoena, which must be obeyed. If a subpoena is served, refer to LL-05: Court Appearances for Education Queensland Employees — Including Subpoenas.

Interviews in State Educational Institutions

- 3.17 In investigating cases of alleged harm, officers from the child protection agencies may request permission to interview students at state educational institutions. In most cases students need to be interviewed before the matter is discussed with the parents/caregivers. This is to ensure that the interests of the child are protected.
- 3.18 The responsibility for informing parents/caregivers of such interviews rests with the investigating officers from the Queensland Police Service and the Department of Families, Youth and Community Care and not with the principal of the state educational institution.
- 3.19 Any person making an inquiry or complaint concerning an investigation or an interview with a student by child protection officers must be promptly referred to the appropriate department, with the explanation that it is the responsibility of that department to answer such inquiries or complaints.

Confidentiality

- 3.20 The identity of the person reporting the matter, whether a state educational

institution employee or a member of the public, must not be revealed to any person or officer of any department without that person's knowledge and consent.

- 3.21 Child protection agencies operate under strict laws of confidentiality. Section 180 of the *Child Protection Act 1999* outlines the confidentiality provisions.
- 3.22 The child protection agency does not divulge the identity of the person reporting the matter except to others requiring the information to perform duties under the *Child Protection Act 1999*, if required by the Parliamentary Commissioner for Administrative Investigations, or if ordered by a court or tribunal.
- 3.23 Likewise, the amount of information that the child protection agency can give to the person reporting the matter is limited by these laws.

Support for the Student

- 3.24 Reporting is only part of the child protection process. The state educational institution has a responsibility to offer a long-term, supportive learning environment.
- 3.25 The following suggestions are offered as ways to support the student who may be in need of protection:
 - (a) Treat the student with respect and dignity.
 - (b) Be sensitive to the student's needs, feelings and concerns.
 - (c) Monitor the situation.
 - (d) Maintain confidentiality as far as practicable.
- 3.26 In some circumstances, consultation between the teacher and student's case worker from the Department of Families, Youth and Community Care (refer to Contact (c)(ii)) may be necessary. Immediate notification to the child protection agency is vital if any further incidents of harm are suspected.
- 3.27 Additional support and assistance may be available from personnel such as Education Queensland guidance officers and social workers or counsellors from other agencies.

Protection for Employees

- 3.28 The *Child Protection Act 1999* provides for the confidentiality of information supplied by the person making the report.
- 3.29 In the event of civil action being brought against an employee as a consequence of reporting, the employee will be provided with legal protection as offered by the policy governing Crown acceptance of the legal liability of Crown employees (refer to LL-06: Crown Acceptance of Legal Liability for Actions of Crown Employees).
- 3.30 Section 22 of the *Child Protection Act 1999* provides for the protection from civil liability for persons, who, acting honestly, notify or give information about suspected harm to a child. It also states that merely because the person gives the notification or information, the person cannot be held to have breached any code of professional etiquette or ethics, or departed from accepted standards of professional conduct.

Role of Child Protection Agencies

- 3.31 Under the coordinated interdepartmental approach to child abuse, officers of the Queensland Police Service and the Department of Families, Youth and Community Care are responsible for investigating and assessing any report of suspected harm or neglect from any source and to ensure the wellbeing and safety of the child.
- 3.32 The staff of the Department of Families, Youth and Community Care will consider all calls alleging harm with a view to consideration of the most appropriate response.
- 3.33 Under the *Child Protection Act 1999*, officers of the Department must immediately investigate suspected harm and assess the child's need for protection, or take other action the Chief Executive considers appropriate.
- 3.34 The Department of Families, Youth and Community Care has ongoing responsibility for children placed by the Courts in the care of that department.
- 3.35 While the safety of the child is always regarded as the most important consideration, the Department of Families, Youth and Community Care also aims

to assist the family functioning and restore the family unit. Removal of the child is thus regarded as the last resort.

- 3.36 In situations where a child cannot be returned home in the short term, safe placement will be arranged.

4. Responding to Complaints of Harassment, Intimidation and Bullying of Students

Reporting

- 4.1 Education Queensland has a responsibility to ensure that the rights of its students are safeguarded. These include the right to a learning environment free from discrimination and harassment.
- 4.2 Discrimination and harassment is in many cases considered unlawful. For example, the *Anti-Discrimination Act 1991* states that harassment includes incidents when a person subjects another person to an unsolicited act of physical intimacy; makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or makes a remark with inappropriate connotations relating to the other person.
- 4.3 Where allegations of harassment are received from students in relation to the behaviour of an employee, and the alleged behaviour could constitute official misconduct, the matter must be reported to Education Queensland's Liaison Officer to the Criminal Justice Commission (refer to Contact (b)).
- 4.4 There are several management options available in dealing with incidents of harassment, intimidation and bullying. They vary according to the situation, the people involved, and the wishes of the person experiencing the behaviour.
- 4.5 The following points are offered as possible procedures, but each case should be assessed on its merits. The principal may proceed as follows:
- (a) establish the details of the complaint including what the complainant wishes to occur to resolve the situation;
 - (b) speak to the person who caused offence and inform them of the complaint;
 - (c) interview any witnesses;
 - (d) speak to parents/caregivers of any students involved, as appropriate;
 - (e) advise all concerned of their rights and responsibilities, including the need to refrain from discussing the matter with other persons;
 - (f) attempt to find a resolution that is mutually acceptable to all concerned; and
 - (g) take any other preventative action which may be required.
- 4.6 If the principal, in the course of investigation, has reasonable grounds for believing that a complaint has not been made in good faith, they have discretion not to proceed any further. The complainant, however, is always free to pursue the matter further, either at the District level or through legal procedures.

External Complaint Management

- 4.7 A complaint of harassment, intimidation or bullying of a student will be dealt with outside the state educational institution when:
- (a) an attempt to resolve the matter within the state educational institution has not been successful and further action is warranted;
 - (b) it is the behaviour of the principal which has caused distress or offence;
 - (c) the matter has been referred to the police and/or the Criminal Justice Commission; or
 - (d) the student or a parent/caregiver on the student's behalf writes a formal complaint to the Children's Commissioner or the Anti-Discrimination Commissioner.
- 4.8 Responsibility for the management of the complaint outside the state educational institution lies with the Manager, Education Services, District Office.

5. Suggested State Educational Institution Management Approaches and Strategies to Ensure Child Protection

- 5.1 It is advisable that state educational institutions:
- (a) ensure all reports/complaints/allegations of bullying, harassment, intimidation

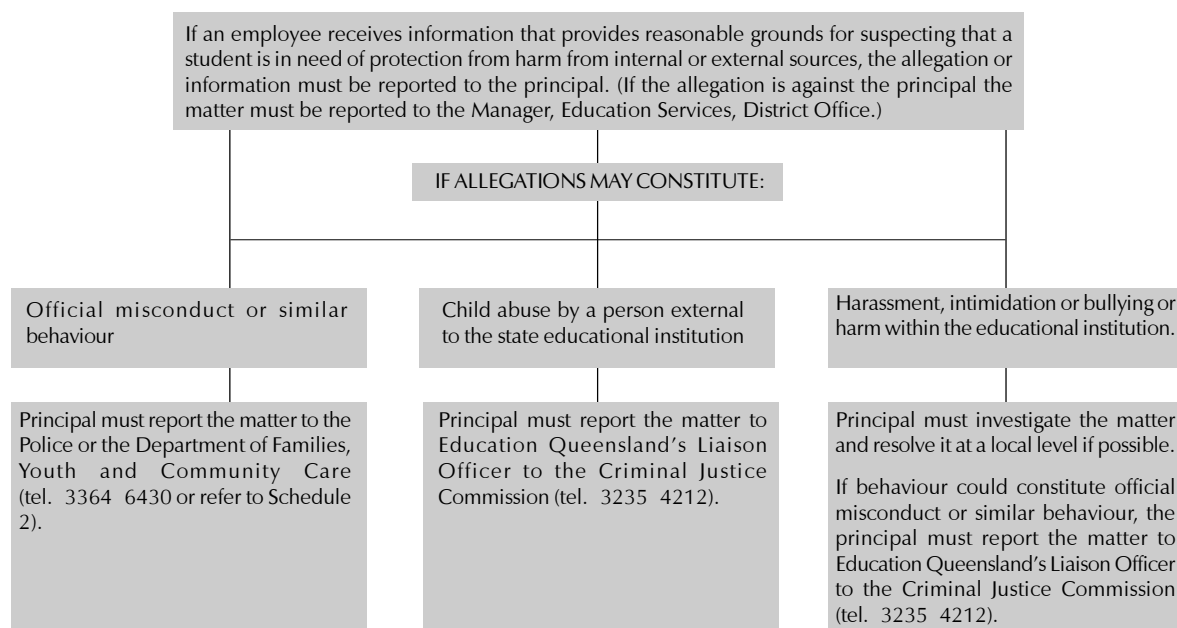
and harm to students including those which are based on gender, culture or ethnicity or on any impairment the person may have, are treated seriously and confidentially;

- (b) monitor the teaching and learning environment to ensure that the behaviour of students, employees and others who work in and use state educational institutions supports Education Queensland policy;
- (c) provide ongoing opportunities for employees to develop skills and understanding in how to protect students in their care;
- (d) ensure that staff have access to, and are informed of, resources available to assist them, such as training, advice and counselling;
- (e) support the implementation at the classroom level of all protection programs and harm prevention curriculum which may be developed and ensure that students, while at state educational institutions, are provided with an environment in which they can feel and be safe;
- (f) ensure that, in planning at state educational institution level, issues relating to child protection are addressed in a way that complements the development and implementation of the curriculum in child protection and involves parents/ caregivers as active participants;
- (g) organise in-service on personal safety for state educational institution-based personnel in order to avoid potentially compromising situations (e.g. personal safety for students);
- (h) provide counselling and reallocate duties, if required;
- (i) ensure protective behaviour is included as a section in the state educational institution's policy on a supportive school environment;
- (j) disseminate information to the total educational community and workplace that these behaviours will not be tolerated under any circumstances;
- (k) monitor the state educational institution to ensure that high standards of behaviour are maintained and the desired behaviours modelled by adults;
- (l) publicise procedures for resolving complaints to all employees, students and voluntary workers;
- (m) put in place harassment contact officers;
- (n) develop their own awareness and professional expertise in the area;
- (o) take immediate action on complaints of this nature, in accordance with the procedures set out in this document;
- (p) make it clear that victimisation of students making a complaint will not be tolerated;
- (q) respond supportively to any student who makes a complaint of harassment;
- (r) arrange appropriate in-servicing of employees, students and others; and
- (s) utilise Education Queensland's complaint management strategies.

- 5.2 An important responsibility for principals is to make students aware of the options, both formal and informal, available to them when confronted with inappropriate behaviours. It is also important to build up their confidence in the resolution mechanisms available, and their confidence that complaints of this nature will be taken seriously and handled sensitively.

SECTION 2: SCHEDULE

1. Flow Chart — Reporting



2. Department of Families Youth and Community Care

Area Offices

Atherton	(07) 4091 1466	Maryborough	(07) 4123 9160
Beenleigh	(07) 3287 4422	Mt Gravatt	(07) 3343 4044
Bowen	(07) 4786 2644	Mt Isa	(07) 4743 3611
Bundaberg	(07) 4153 8117	Murgon	(07) 4168 1488
Cairns	(07) 4052 9500	Nundah	(07) 3866 0800
Charleville	(07) 4654 2577	Pine Rivers	(07) 3881 9888
Emerald	(07) 4982 2177	Redcliffe	(07) 3284 1000
Fortitude Valley	(07) 3252 8760	Redlands	(07) 3286 4633
Gladstone	(07) 4976 0714	Rockhampton	(07) 4938 4765
Gold Coast	(07) 5525 5888	Roma	(07) 4622 2811
Goodna	(07) 3818 2166	Stones Corner	(07) 3397 6151
Gympie	(07) 5846 4177	Sunshine Coast	(07) 5479 8100
Inala	(07) 3372 0200	Thuringowa	(07) 4723 1200
Ipswich	(07) 3280 1744	Toowoomba–Warwick	(07) 4688 4000
Logan City	(07) 3208 8255	Townsville	(07) 4722 1900
Longreach	(07) 4658 3012	Wynnum	(07) 3396 7055
Mackay	(07) 4951 5900		

REFERENCES

- Board of Teacher Registration Queensland April 1999, *Guidelines on the Acceptability of Teacher Education Programs for Teacher Registration Purposes*.
- 1996 *Code of Ethics*.
- 2000, 1999 *Annual Report*.
- Burge Report** see Winocur & Burge 1998.
- Committee of Sponsoring Organisations for the Treadway Commission 1992, *Internal Control — Integrate Framework*, American Institute of Certified Practising Public Accountants, Jersey City.
- Dunne M. & Legosz M 2000, 'The consequences of childhood sexual abuse' in Queensland Crime Commission, Queensland Police Service and Australian Key Centre for Ethics, Law, Justice & Governance, Griffith University Criminology Research Council June 2000, *Project Axis: Child Sexual Abuse in Queensland: Selected Research Papers*.
- Education Queensland, *Careers and Vacancies* [online] <www.education.qld.gov.au/corporate>.
- Education Queensland May 2000, *Allegations of Physical/Sexual Abuse Against Staff, Reporting Proforma*.
- 1998, *Child Protection Training Manual*.
- 1998, *Human Resources Policy: HR-17 Health and Safety: Child Protection Policy*.
- November 2000, *Department of Education Manual Legal and Legislation LL-13: Management of Public Interest Disclosures Under the Whistleblowers Protection Act*.
- January 2000 *Applying for Teacher Employment*.
- *Human Resources Policy: HR-04-3 Employee Induction*.
- January 1998, *Human Resource Workforce Management: Teacher Transfer Guidelines*
- 1997 *Human Resources Policy: HR-03/1 Allegations of Physical or Sexual Abuse of Students Made Against School Staff: Grievance Management* [rescinded 1998]
- 1997 *Human Resources Policy: HR-03/2 Sexual Harassment: Grievance and Appeal* [rescinded 1998]
- 1997 *Human Resources Policy: HR-05 Health and Safety: Suspected Child Abuse* [rescinded 1998]
- May 1999, *Resolving Complaints and Issues in Schools: A Guide for In-School Investigations*.
- Fleming J.M. 1997, 'Prevalence of childhood sexual abuse in a community sample of Australian women' *Medical Journal of Australia* vol. 166, no. 2.
- Independent Commission Against Corruption (NSW), *Practical Guide to Corruption Prevention: internal investigations module* [online] <www.icac.nsw.gov.au/pub_corruption_prevention>
- New South Wales Ombudsman [online] <www.nswombudsman.nsw.gov.au/child_protection>.
- New South Wales Department of School Education March 1997, *Child Protection: Procedures to be followed in response to allegations of improper conduct of a sexual nature by a staff member against a student, 97/018 (S.017)* [online] <www.schools.nsw.edu.au>.
- Office of Women's Policy, Department of Equity and Fair Trading February 2000, *Report of the Taskforce on Women and the Criminal Code*.

Ontario Report see Robins 2000.

Queensland Crime Commission and Queensland Police Service June 2000, *Project Axis Volume 1 Child Sexual Abuse in Queensland: The Nature and Extent*.

—— November 2000 *Project Axis Volume 2 Child Sexual Abuse in Queensland: Responses to the Problem*.

Queensland Law Reform Commission 2000 Report 55, part 1, *The Receipt of Evidence by Queensland Courts: The Evidence of Children*.

Robins, the Hon. S.L. 2000, *Protecting Our Students: A Review to Identify and Prevent Sexual Misconduct in Ontario Schools* Ontario Ministry of the Attorney General, Ontario, Canada.

Standing Committee of Community Services and Income Security Administrators (Cwth), Discussion Paper August 1996, *Development of Best Practice Standards for National Safety Screening of Persons Employed in a Paid or Voluntary Capacity with Children*.

Winocur, Dr S. & Burge J. June 1998, *A Report of an Investigation into the Management of Inappropriate Student–Teacher Relationships and Associated Departmental Policy and Procedures*, Education Queensland, Brisbane.

Legislation referred to in report

Acts Interpretation Act 1954 (Qld)

Anti-Discrimination Act 1991 (Qld)

Bail Act 1980 (Qld)

Child Protection Act 1999 (Qld)

Classification of Publications Act 1991 (Qld)

Commission for Children and Young People Bill 2000

Crime Commission Act 1997 (Qld)

Criminal Code 1899 (Qld)

Criminal Code (Canada)

Criminal Justice Act 1989 (Qld)

Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld)

Criminal Law (Sexual Offences) Act 1978 (Qld)

Criminal Law Amendment Act 2000 (Qld)

Drugs Misuse Act 1986 (Qld)

Education (Teacher Registration) Act 1988

Health Act 1937 (Qld)

Misconduct Tribunals Act 1997 (Qld)

Ombudsman Act 1974 (Qld)

Ombudsman Amendment (Child Protection and Community Services) Act 1998 (NSW)

Parliamentary Commissioner Act 1974 (Qld)

Police Service Administration Act 1990 (Qld)

Public Sector Ethics Act 1994 (Qld)

Public Sector Management Act 1988 (NSW)

Public Service Act 1996 (Qld)

Public Service Regulation 1997 (Qld)

Whistleblowers Protection Act 1994 (Qld)