

The De La Salle Brothers response to allegations of child sexual abuse and/or serious breaches of professional behaviour against any current member of the De La Salle Brothers and/or other nominated personnel of the De La Salle Brothers.

1. Introduction

It is acknowledged that each allegation that requires a response and possible further workplace and/or disciplinary action will be quite different. These procedures have been compiled to advise how investigations, specifically internal workplace proceedings may be conducted. They are guidelines only and in applying them one should always bear in mind the primary objectives of any relevant legislation and/or Catholic Church of Australia guidelines or protocols in respect to such matters. This document should be provided to any member of the De La Salle Brothers who are subject of an internal investigation of allegations of sexual and/or serious misconduct.

2. Nature of allegations to which this policy applies

Allegations against Religious (and/or other nominated personnel of the De La Salle Brothers) of the following nature:

- i. Complaints of abuse: sexual abuse (including child sexual abuse); physical and emotional abuse as defined by the *Towards Healing* protocol¹.
- ii. Serious breaches of professional behaviour – including violations of *Integrity in Ministry*².
- iii. All allegations subject to reporting obligations under relevant State legislation involving children and/or vulnerable adults.

3. Receipt of and clarification of the allegation

- i. All allegations of sexual and/or serious misconduct against a member of the De La Salle Brothers are to be notified to the Professional Standards Manager as soon as practicable. In some instances, the allegation/s may be received via third parties such as: police (criminal matters), solicitors (civil claims) and/or the Professional Standards Office of the Catholic Church. It is the responsibility of the

¹ Refer *Towards Healing* protocol – definitions of sexual abuse, physical and emotional abuse – January 2010

² Refer *Integrity in Ministry* – a document of Principles and Standards for Catholic Clergy & Religious in Australia – June 2004

Professional Standards Manager to advise the Brother Visitor of each matter.

- ii. The Professional Standards Manager is to obtain as much detail about the allegation/s as possible, including:
 - the name of the alleged victim and contact details,
 - the name of the person who is the subject of the allegation,
 - brief details and circumstances of the allegation/s e.g. the nature of alleged abuse/serious misconduct, where and when it occurred,
 - in criminal investigations: the name of the investigating police officer/location and telephone number,
 - clarification of the process under which the allegation will be managed and/or investigated e.g. criminal, *Towards Healing* or internal workplace investigation, and
 - whether or not counseling and/or support mechanisms are required to be put in place for the alleged victim.
- iii. The Professional Standards Manager is to record all the details of the information received and commence a file under the name of the person who the allegation/s is against.

Note: Should any allegation/s be made against the Brother Visitor and/or the Professional Standards Manager, that matter should be brought to the attention of the De La Salle Brothers Consultative Committee, as soon as practicable, for decisions about further action to be taken.

4. Risk assessment

3.1 Initial response of the Professional Standards Manager

After receipt of the allegation, the Professional Standards Manager is responsible for carrying out an initial risk assessment prior to the formal investigation of the allegation. This initial risk assessment should be transparent and documented. The purpose of the risk assessment is to identify and minimise the risk:

- i. to a child/children or vulnerable adult who are alleged to have been victims of the alleged sexual abuse and/or serious misconduct;
- ii. to the person against whom the allegation has been made;

- iii. to other children or vulnerable adults with whom the member may have contact;
- iv. to other stakeholders e.g. schools
- v. The De La Salle Brothers and/or other incorporated bodies

That initial risk assessment, for example, may result in the person subject of the allegation being temporarily relieved of some duties or being required to avoid children. Where the allegation relates to child sexual abuse and/or other serious issue of professional misconduct, action will be taken to immediately stand down the individual from Ministry.

The factors that may be considered during the risk assessment include:

- i. the nature of the allegation and when the alleged sexual abuse and/or serious misconduct occurred;
- ii. the vulnerability of children and/or adults;
- iii. the nature of the position occupied by the member;
- iv. the level of supervision of the member;
- v. prior allegations against/disciplinary history of the member;
- vi. safety of the member;
- vii. any comments made by the member about the allegation;
- viii. other investigative processes, including the police and/or the *Towards Healing* protocol.

3.2 The Consultative Committee

In accordance with the *Towards Healing* protocol, the leaders of the Brothers institutes of the Catholic Church in Australia are to have established and shall maintain an External Professional Standards Resource Group (the Consultative Committee) that

shall have an advisory role in matters concerning professional standards³.

The Professional Standards Manager, as soon as practicable, should advise members of the De La Salle Brothers Consultative Committee of all allegations of sexual abuse and/or serious misconduct against a member of the De La Salle Brothers and any initial action that has been taken in respect of that allegation.

Where the Professional Standards Manager has completed an initial risk assessment (including risk management action) the Consultative Committee should review that risk assessment and assess any action that has been taken. In circumstances where the Professional Standards Manager has not undertaken a risk assessment, the Consultative Committee should assist the Professional Standards Manager to conduct such risk assessment and make recommendations to minimise any risks that have been identified. That risk assessment process is to be documented.

The documented risk assessment and any risk management action taken is to be filed. The storage of the file associated with the allegation and the risk assessment, where appropriate, should be kept separate from any personnel file of the person whom the allegation is against, with restricted access. That file should be kept indefinitely.

In cases where the risk assessment process results in a person being required to stand down from Ministry and/or his duties changed or restricted, that person should be informed in writing of that decision and any such restrictions to his duties and responsibilities.

Note: In matters that are being investigated by the Police, prior to any communication with the person subject of the allegation, the Professional Standards Manager (or person nominated to act on his behalf) should communicate with the Police as to whether or not they can provide any information about the allegation to that person and the nature of the information that can be provided.

³ Refer to *Towards Healing* – Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia 2010 – point 3.52 on page 14

4. Response after clarification of the allegations and risk assessment

As outlined in Point 2 – the allegation may be received via third parties such as the police, legal representatives and/or the Professional Standards Office of each respective State/Territory. If an alleged victim (and/or person acting on their behalf) makes direct contact with a member of the De La Salle Brothers that matter should be brought immediately to the attention of the Professional Standards Manager. The Professional Standards Manager should make contact with that person and refer them to the Professional Standards Office of the respective State/Territory for further information as to how the Catholic Church responds to such matters eg. *Towards Healing* or criminal/civil processes.

In those small number of cases where the Professional Standards Manager has that initial contact with the alleged victim and/or family member of the victim, the Professional Standards Manager should obtain the contact details of that person, some basic details about the allegation and provide that information to the Director, Professional Standards Office. The Professional Standards Manager in discussion with the Director, Professional Standards Office, shall determine who will provide that initial follow up response and support to the alleged victim and when that will occur.

4.1 Allegations being investigated by the Police (criminal)

In those matters where the Professional Standards Manager receives information that a member of the De La Salle Brothers is subject of a criminal investigation, the Professional Standards Manager shall make contact with the investigating police officer. The Professional Standards Manager should endeavour to obtain sufficient details about the alleged victim and the allegation/s to enable him/her to undertake an initial risk assessment.

In the event that the Professional Standards Manager assesses that some risk management action is required in respect to the person subject of a criminal investigation, he/she should discuss with the police what, if any, information about the allegation can be provided to that person.

All members of the De La Salle Brothers are to cooperate at all times with the police during any criminal investigation process that it becomes aware of.

At the conclusion of any police investigation or subsequent criminal court process against a member of the De La Salle Brothers, the Professional Standards Manager should table that matter for review by the Consultative Committee. The Consultative Committee is to consider:

- i. whether or not any further internal workplace investigation is required,
- ii. whether or not a return to work plan (Ministry) and/or a Safety Plan is required, or
- iii. other disciplinary action e.g. under Canon Law.

4.2 Allegations being managed under the *Towards Healing* protocol

In matters where the alleged victim has elected to have his/her complaint managed under the *Towards Healing* protocol, the Professional Standards Manager is to discuss each matter with the relevant Director, Professional Standards Office of each State/Territory and ensure that they cooperate and provide support to that process, where required⁴.

The Director, Professional Standards Office implements the process in respect to the investigation and/or assessment process of allegations that are managed and responded to under the *Towards Healing* protocol.

The Director, Professional Standards Office ensures that all allegations against Brothers that are notified to his/her office are notified to the relevant police command/area in each State/Territory.

At the conclusion of the *Towards Healing* process where an allegation/s has been made against a current member of the De La Salle Brothers, the Professional Standards Manager is to table that matter (including the assessment report) for review by the Consultative Committee. The Consultative Committee is to consider whether or not any workplace action, including return to Ministry plan and/or a Safety Plan is to be developed and implemented.

In matters where the allegation/s of sexual abuse and/or serious misconduct against a Brother is substantiated, the Brother Visitor shall also adhere to the procedures of the *Towards Healing*

⁴ Refer *Towards Healing* – Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia – January 2010

protocol in respect to his response and action in relation to the accused Brother⁵.

4.3 Allegations against Brothers raised in civil claims (or not via Police or *Towards Healing*)

As outlined in point 2 – the Professional Standards Manager may become aware of an allegation against a member of the De La Salle Brothers that has been notified via a civil claim from an alleged victim’s legal representative. In such matters, the Brother Visitor and/or Professional Standards Manager would generally have engaged in discussions with the legal representative for the De La Salle Brothers about its legal response to such a civil claim and/or claims.

In addition to that civil legal response, the Professional Standards Manager is required to:

- i. undertake an initial risk assessment, as outlined in point 3,
- ii. notify such matter to the Consultative Committee for further review and risk assessment, where required,
- iii. in matters that are not subject of the *Towards Healing* protocol and/or a criminal investigation consider whether or not an internal workplace investigation is required to be commenced (refer point 5 below).
- iv. the commencement of any workplace investigation should be assessed in consultation with the De La Salle’s legal representative in the civil process and/or at the conclusion of any criminal process. The Professional Standards Manager may consider consulting with the Consultative Committee about such decision to instigate a workplace investigation of the allegation/s.

5. Internal workplace investigation process

The Brother Visitor and/or Professional Standards Manager is responsible for the decision to commence a workplace investigation of allegations of sexual abuse and/or serious misconduct that are not subject of *Towards Healing* and/or criminal investigation processes. A workplace investigation is a process to determine, where possible, whether or not the alleged sexual abuse/misconduct occurred. The evidence/information that is gathered during that investigation process is assessed and a finding made on the civil standard of proof (i.e. the balance of probabilities). The Professional Standards Manager is responsible

⁵ Refer *Towards Healing* – “Outcomes relating to the accused”, point 42 – pages 26-27

for determining who shall conduct such workplace investigation and the terms of reference for that investigation⁶.

The Professional Standards Manager should formally advise the person the subject of any allegation, in writing, that a workplace investigation has been authorised and the name of the person appointed to conduct such investigation. In addition, the person subject of the allegation shall be advised of the support mechanisms in place, where appropriate, for them during that investigation process.

NOTE: The point at which the person subject of the allegation is informed about the allegation (if not already occurred via prior risk management action) should be carefully considered.

Listed below are the fundamental steps in any workplace investigation process:

- i. Clarify the nature of the allegation/s.
- ii. Planning the investigation (considerations):
 - identify what needs to be done and what information does the agency need to gather and from where: e.g. witnesses and/or documents.
 - keep a record of this planning process. This can be a formal, typewritten document or simply running notes in the relevant file that address these points.
 - ensure that relevant external stakeholders have been informed of any workplace investigation e.g. legal representative of the alleged victim. In NSW – allegations of reportable conduct are required to be notified to the NSW Ombudsman (the risk assessment process should ensure relevant stakeholders are notified and any State legislative requirements have been met)
 - consider any actual or potential conflict of interests that may be held by the investigator, particularly in relation to the employee or the alleged victim.
 - where police have been involved, it is still the De La Salle Brothers responsibility to decide what action, if any, is taken concerning the person subject of the allegation at the conclusion of that criminal process.

⁶ In making such determination, the Professional Standards Manager should consider the nature of the allegations, the specialised investigation skills that may be required and any conflicts of interest. In some matters, the Provincial may consider it necessary to engage an external investigator to conduct its internal workplace investigations.

It is advisable to communicate with the police about its investigation and outcome and source information of that investigation, where possible⁷.

- iii. Information gathering:
- Direct evidence or information can be obtained from speaking with people (eg. the alleged victim, witnesses or the person the subject of the allegation)
 - Physical evidence can be obtained by collecting documents (e.g. historical school records, employment/service histories, floor plans, electronic communication etc), securing and inspecting objects (e.g. mobile telephones, computers) and inspecting locations of the alleged incident/s. This process could include taking relevant photographs and making drawings/diagrams of relevant locations.
 - Information can be obtained from people who have specialised knowledge in a specific field that the general public do not have e.g. medical practitioners, psychologists, and psychiatrists.

Other issues to consider during the investigation process include:

- Ensuring that all people involved in the investigation are reminded of the importance of confidentiality.
 - Ensuring all interviews are adequately recorded, including details of the questions and responses (This includes the location of the interview), who was present and the start and finish times of the interview. Where possible, ensure records are verified, signed and dated by all involved).
 - Reviewing the initial assessment of risk through out the investigation and taking further action to address risks, if warranted.
- iv. Response to the allegation/s:
- The point at which the person subject of the allegation is informed of the allegation and investigation process is generally determined in the risk assessment and/or investigation planning stage.

⁷ In New South Wales, Chapter 16A of the the *Children and Young Persons (Care and Protection) Act 1998* allows “Prescribed Bodies” to exchange information that relates to a child’s or young persons safety, welfare or wellbeing. If the Brothers/Clergy is engaged in child-related employment, it may be possible to obtain the criminal brief of evidence that may assist and the information used in a work place investigation.

- Generally, when all relevant and available information has been obtained, the allegation should be put to the person subject of the allegation in writing and offered an opportunity to respond; whether at an interview and/or in writing.
 - The person subject of the allegation should be informed that they may have a support person or legal representative present in any interview about the allegation.
 - The interview should be adequately recorded. Where possible, ensure such records are signed and dated by all involved.
 - It may be necessary to re-interview the person subject of the allegation should new information come to light.
- iv. Preparation of an investigation report and making a preliminary finding:
- The investigator shall provide a written report to the Brother Visitor that outlines the information that was obtained, an analysis of that information and make a preliminary finding/s about whether the allegation/s is substantiated or not on the balance of probabilities.
 - The investigator may make recommendations to the Brother Visitor concerning any further action in respect to the person subject of the allegation given the preliminary finding/s made and/or other systemic issue identified.
- v. Review of the investigation process by the Brother Visitor and the Consultative Committee:
- The Brother Visitor and/or Professional Standards Manager will table that investigation report for review by the Consultative Committee.
 - The Consultative Committee is to consider: what investigative action was taken; the information gathered and the preliminary finding/s made. At that time, the Consultative Committee shall consider:
 - i. is there any further information available and/or that may potentially become available, that was not considered during the investigation e.g. outstanding civil processes, prior allegations and/or prior disciplinary action against the person subject of the allegation.

- ii. If so, consider what further action is required e.g. investigation remains open until such time that further information can be gathered and considered prior to any final finding/s being made.
 - iii. Consider whether or not updated risk management action and/or changes are required e.g. development of an interim return to work plan or Safety Plan; prior to the final finding being made.
- Where no further information is known and/or available, the Brother Visitor shall submit the investigation file and the preliminary finding/s for an independent review by the Judicial Review Panel.
 - At the completion of that Judicial Review, the Brother Visitor, or his delegate, shall determine whether or not any further action is required, prior to making his final finding to each of the allegations. (If necessary, the Brother Visitor may request the assistance of the Consultative Committee in making that final finding/s).
 - Once the final finding/s is determined, the Brother Visitor shall consider what, if any, further workplace action is required. The following should also be considered:
 - i. The alleged victim and/or their legal representative should be informed of the outcome of the investigation and the finding/s made.
 - ii. The person subject of the allegation should be informed of the final finding/s and any proposed workplace action being considered; including the implementation of a *Safety Plan* for the person subject of the allegation⁸.
 - iii. In unsubstantiated matters, the preparation of a return to work (Ministry) strategy.

⁸ Refer to the “Safety Plan” policy

6. Other considerations at the conclusion of a workplace investigation:

The Professional Standards Manager shall notify the Director, Professional Standards Office of the respective State/Territory that a workplace investigation has been concluded, the findings of such investigation and the action taken.

Other stakeholders are to be informed of the final finding/s. Those stakeholders may include legislated child protection agencies e.g. in NSW: the Office of the Children’s Guardian and the Ombudsman.

7. Confidentiality

The Brother Visitor, the Professional Standards Manager, members of the Consultative Committee and each person conducting a workplace investigation should maintain a high level of confidentiality throughout any investigation process and take steps to ensure that:

- All parties are advised of the need for confidentiality during the investigation.
- Systems are in place to deal with any breaches of confidentiality (for example: breaches are reported to the Professional Standards Manager and the development of a media response/action plan, in some instances)

Interim draft procedures updated by:

Kylie Starling
External Investigator/consultant
Date: 22 January 2015