

# Managing allegations of sexual misconduct in SA education and care settings guideline

This guideline is a recommended course of action under the operational policy framework. Any edits to this guideline must follow the process outlined on the [creating, updating and deleting operational policies](#) page.







## A

This document is very closely adapted from Chapter 15 of the *R a C . . . 2012 2013 Re f l de e de Ed ca . I . .*. The adaptations give effect to recommendation 39 of the Report that the guideline be applicable to government, Catholic and Independent education sectors. Grateful acknowledgment is made of the advice provided by the Hon Bruce DeBelle AO QC in his drafting of Chapter 15, specifically his setting out of the application of various laws to the considerations to be made by education and care sites when responding to allegations of sexual misconduct

## FOREWORD

The South Australian government and non-government education sectors have jointly developed policies of a child protection nature since an agreement established in 2004. The policies and practices developed under that agreement help ensure that staff, children and parents can expect the same standards of child protection practice no matter which sector they access. This document joins that collection of guidelines and affirms that learning about child safety in education and care settings will continue to be shared across the government and non-government sectors.

This document is very closely adapted from Chapter 15 of the *Review of the 2012-2013 Report of the Commission of Inquiry into the Catholic and Independent Education Sectors*. The adaptations give effect to recommendation 39 of the Report that the guideline be applicable to government, Catholic and Independent education sectors. Grateful acknowledgment is made of the advice provided by the Hon Bruce DeBelle AO QC in his drafting of Chapter 15, specifically his setting out of the application of various laws to the considerations to be made by education and care sites when responding to allegations of sexual misconduct by adults against children or young people.

An important feature of these incidents is that they involve the concerted and coordinated efforts of a number of professionals from different agencies. For this reason, it is unlikely that a site leader will undertake responses to an incident of this kind in isolation from other professionals. Site leaders can expect a high level of support and advice from their relevant sector office.

Education and care settings are expected to be safe environments for everyone who attends them. A range of processes and systems are utilised by the education sectors to prevent unsuitable individuals from working or volunteering in those settings. As leaders of the education sectors, we strongly support the ongoing development of legislative schemes to enable the most thorough assessments of an individual's suitability to work or volunteer with children and young people.

However, the best screening schemes are unlikely to remove all possibility of an adult exploiting their role in order to offend against children or young people. Education and care communities can help in limiting this risk by recognising and reporting an inappropriate adult behaviour towards children and young people. The introduction that follows strongly reinforces this responsibility and outlines the place of this guideline alongside other child protection responsibilities.

Finally, allegations against adults of sexual misconduct towards children and young people are complex matters. This guideline cannot do this





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# SECTION 1: Introduction

## 1.1 A



Managing an allegation of adult sexual misconduct is a highly complex task for a site leader to face. This guideline document is designed to provide site leaders, their parent community and their respective sector offices with improved clarity about the actions to be taken and matters that require considerations at each stage. It is important to remember that the obligation to report and respond to allegations of sexual misconduct applies irrespective of whether the





## 2.1 U



Teachers and site leaders owe to the children and young people in their care a duty to take reasonable care to protect them from a reasonably foreseeable risk of harm or injury. That duty is not necessarily confined to events on the site or during site hours. In addition to observing sector policy, staff must comply with a number of statutory duties or obligations.

See: A duty of care (see e.g. ...)

## 2.2 M



Section 31 Child and Young People (Safe) Act 19 ... care ... and ... g

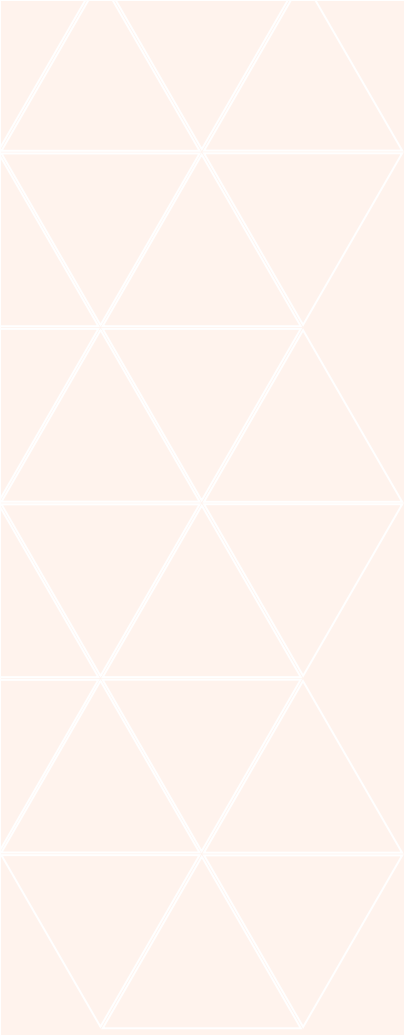
Before sending a letter to parents, the relevant sector office should inquire of the Registrar of the relevant court whether a suppression order exists. If an order exists, the sector office should examine the terms of the order and consider whether the order forbids the kind of letter under consideration. If there is any uncertainty about what is prohibited, legal advice should be sought.

It is still possible to give some information to staff, the governing authority and parents while complying with these restrictions. Section 3 of this guideline provides advice as to how and when that information is to be provided.

### 2.3.3 A ■ ■ ■

When allegations of sexual misconduct have been made, care must be taken to avoid stating anything that might defame the person against whom the allegations have been made. If a site wishes to send a letter before a person has been charged with an offence, it is desirable to obtain legal advice as to the terms of the letter to ensure that nothing is said that defames that person. If that person has been charged by way of arrest or summons, it is lawful to state that fact but nothing should be said that would suggest the person is in fact guilty of the alleged misconduct.





These reporting requirements vary across the three sectors:

- Department for Education: critical incident report system and Education Director
- Catholic Education SA: critical incident report through the relevant Schools Performance Leader
- Independent schools: school-based procedure.

The template provided in Appendix 3 should be used to document all information, discussions and observations relating to the incident. They should be signed, dated and placed in a confidential, secure site leader's file and provided to the sector office as required.

### 3.2.2 A ■

Under the Interagency Code of Practice, SA Police will provide the relevant sector office with the following information:

- the name, date of birth and address of the person who has been apprehended for offences by way of arrest or report
- details of the offences for which the person has been apprehended as set out in the charge sequencing report

The sector office should ensure that the site leader and other staff have made notes of any relevant events and conversations, using the record templates provided as Appendices 3 and 4, and ensure copies are placed on the sector office's central file.

In an Independent school, this will be the responsibility of the school principal.

**3.3 F**



**4**



Staff members may be profoundly impacted by sexual misconduct allegations. Consideration must continue to be given to the wellbeing of staff, particularly those who were in some way associated with the accused person (eg co-class teachers, friends, relatives), and to the site leader on whom the additional burden of ultimate responsibility for the safety of the site rests.

Particular care should be taken in explaining the restrictions that may be placed on the accused person to staff who are friends of the accused. Individual staff members may need specific help in knowing how to respond to requests for emotional or other support from the accused person without complicating their own obligations at the site or unwittingly complicating matters for the accused. It is reasonable and important that staff members are able to offer emotional support to others and that accused persons have access to the support of friends. However, staff will need clear guidance on how to respond to particular requests such as acting as a witness. Site leaders should seek sector office support in clarifying the advice they give in these circumstances.

As with any other kind of serious critical incident, the site or sector office may need to deploy additional personnel to the site to ensure that it can operate without placing staff wellbeing or the care of children and young people at risk. Staff members may not immediately appreciate the impact on their wellbeing so reminders about the availability of the relevant sector counselling service should be given to staff on a number of occasions in the weeks or months that follow. Important events such as the outcome of court proceedings can trigger new points of stress and need which the sector office must anticipate and monitor.

A sensitive plan of support may need to be developed with and for relatives of the accused person who make their needs known to the site leader or sector office. Each circumstance will differ but the site leader and sector office will need to consider the best ways to support relatives who identify their needs, including the provision of counselling and the option of alternative placements if requested.

In some instances, relevant information may need to be shared between the sector office and site leaders so that appropriate monitoring of an employee's or enrolled student's safety and wellbeing is maintained. The impact on relatives of media coverage or letters to the community should be anticipated and protected against wherever possible. The details of support plans for relatives should be provided





## Informing staff

An accused person is 'charged' with an offence once a charge has been laid before the court. This can occur by way of arrest by police, or after an accused person has been reported by police and summonsed to attend court.

If a person has been reported by police and has not received a summons to attend court, refer to Stage 1.

Following the arrest or charging of a member of staff, the site leader should convene a meeting of staff for the purpose of:

- informing them that a member of staff has been arrested and to name that person and the offence
- informing them of changes to staff required by the absence of the accused person
- informing them that the accused person is not permitted on the site
- asking staff to inform the site leader if the accused person is seen at or near site grounds so that the site leader may take appropriate action
- informing them that, if they have any information that will assist the police investigation, to report that information to police as soon as possible

*No other victims*

If the result of the risk assessment is that there is no suspicion that there might be other victims, a letter should be sent to all parents at the site stating that fact.

The letter should inform parents that a person connected to the site has been arrested and/or charged and the offences with which they have been charged. The letter should not

( )

After the accused person's first court appearance (provided that no suppression order has been made), there are no restrictions on informing staff, members of the governing authority or parents of the fact that the accused person has been charged with a sexual offence. Any information given to people in those groups can name the accused person and state the offence with which the accused person has been charged. However, it should be noted that publication of any information that may identify a victim is prohibited under section 71A(4) of the Evidence Act.

### Informing parents of previous students

In consultation with the sector office and where appropriate based on the risk assessment undertaken earlier, a site leader should ascertain the names of children or young people who in previous years would have been in contact with the accused person. Having done so, the site leader should send a letter to the parents of those children or young people whose addresses are known or to the young people themselves if they are now adults. This information should be given to those parents in accordance with Stage 2 above.

### Informing other sites

Where the accused person has been employed at other education and care sites, the sector office will notify those other sites so that they can consider whether it is necessary to inform parents in the same way as described in Stage 2 above.

### Informing other authorities

This responsibility to inform other authorities about changes to the situation and actions taken varies across the three sectors but will include, as appropriate:

- relevant Minister (confirmed in writing)
- relevant Chief Executive/Director
- chairperson of the governing authority
- other education sectors, as per the Intersectoral Information Sharing Protocol
- the Education Standards Board in the case of early childhood and care settings
- any other agency/organisation where risks to children's or young people's safety are identified.

### 3.3.5 M ■ ■

The sector office should monitor the court proceedings and inform the site leader of the stage the prosecution has reached. In an Independent school, this will be the responsibility of the school principal. The site leader should inform parents by letter of any significant development in the prosecution. Any letters should be drafted in consultation with the sector office and should not name the accused person if their identity is prevented from publication by section 71A of the Evidence Act or by suppression order.

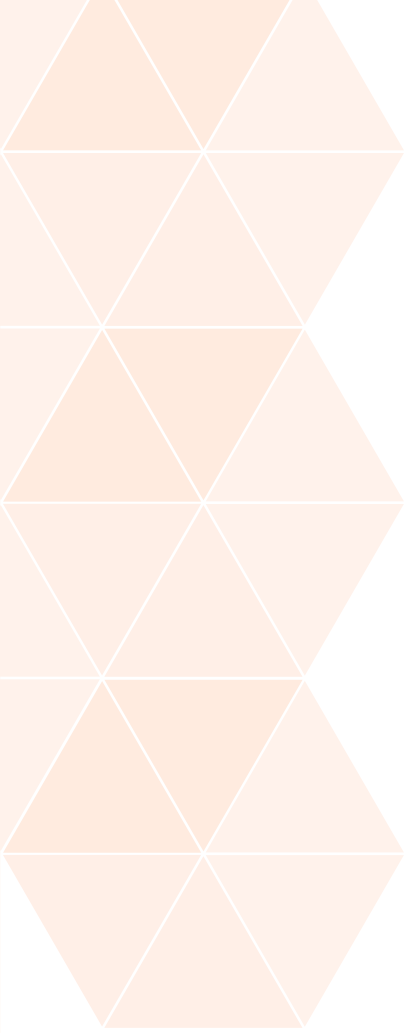
### 3.3.6 R ■ ■

All media inquiries should be referred to the relevant sector's

## APPENDIX 1: Checklist for site leaders

Note: The following checklist is a guide only. It is not intended to be used as a substitute for the relevant policies and procedures. It is intended to be used as a guide only. It is not intended to be used as a substitute for the relevant policies and procedures.

1. Attend to immediate welfare needs of victim. (Section 3.2.1)
2. Receive report of allegation and make notes of complaint. (Appendix 3)
3. Call SA Police on 131 444 to report allegations. Obtain appropriate police contact number for parents to use, and seek advice re steps 4, 5 and 6.
4. If SA Police approves, take steps to preserve evidence. (Section 3.2.1)
5. Following SA Police/sector office advice, prevent accused person from having access to children and young people. (Section 3.2.1)
6. Following SA Police advice, contact parents of victim, taking into consideration victim's views. (Section 3.2.1)
7. Notify CARL on 131 478 or by eCARL.
8. Inform victim and victim's parents of counselling and support options. Inform social worker if victim is under the Guardianship of the Chief Executive Department for Child Protection. Document allegations, meetings and support and safety plan. (Section 3.3.2 and Appendices 3, 4 and 6)
9. Follow sector reporting procedures regarding critical incidents and contact sector office. (Section 3.2.1)
10. Communicate with accused person in relation to sector specific leave as per sector office guidance. (Section 3.2.2)
11. Consider the support needs of relatives of the accused person who work or are enrolled at the site and who identify their needs. (Section 3.3.2)
12. Consider the support/advice needs of staff, in particular those closely associated with the accused and victim. (Section 3.3.2)
13. In consultation with the relevant sector office, provide written offer of counselling support to victim and victim's family and formalise offer. (Section 3.3.2)



# APPENDIX 3: Record of allegation

Name of person making the allegation (complainant) \_\_\_\_\_  
Date and time that allegation was reported \_\_\_\_\_  
Age, gender and role of complainant \_\_\_\_\_  
Name of accused person \_\_\_\_\_  
Role of accused person \_\_\_\_\_  
Name of victim (if not the complainant) \_\_\_\_\_  
Age and gender of victim \_\_\_\_\_

R

Name of person making the allegation (complainant)

Date and time that allegation was reported

Age, gender and role of complainant

Name of accused person

Role of accused person

Name of victim (if not the complainant)

Age and gender of victim

### Allegation details

Do not interrogate the victim. Complete in direct speech what was reported to you.

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Name: (person who received the complaint)

\_\_\_\_\_

Signature:

\_\_\_\_\_

Date:

\_\_\_\_\_

# APPENDIX 4: Record of meeting

Name: T. J. Edwards, Defective Engineering Co. Ltd. Meeting  
Address: 123 Main Street, London, UK

Date of meeting

Location of meeting

Attendees

Include full names and titles of attendees

Attendees: J. S. P. C. A., M. J. E. f. M. a. c.

Purpose of meeting

Example: Discussion of the 'Mac' case

Discussion of the 'Mac' case

Discussion of the 'Mac' case

Discussion of the 'Mac' case

Actions taken to date

Example: Policy updated, email sent

Contact names and contact details

Include all relevant contact details

Example: Contact with P. C. A., contact with SAP. e. g. f. c. e.

Future actions

List future actions to be taken and person responsible

Set date for finalising the support and safety plan

Signature of site leader

Name:

Signature:

Signatures of other attendees

Name:

Signature:

Name:

Signature:



## APPENDIX 5: Sample letters to parents

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1:



The letter to all parents when there is no suspicion that there might be other victims would deal with the following topics:

1. a statement that the accused person has been arrested and charged but not naming the accused person
2. a statement of the offence with which the accused person has been charged
3. a statement indicating that the site does not suspect that there are other victims
4. an assurance that the Department/Catholic Education SA/Association of Independent Schools of South Australia will keep parents informed
5. a request to keep the matter confidential in order to protect the victim and the victim's family
6. contact numbers of support services for concerned parents
7. a statement that those who have questions or concerns may contact the site leader
8. a statement that the accused person has been removed from the site
9. an assurance that the site is managing the issue without impairing the provision of education and care at the site
10. a request that parents with information that may assist the police investigation to contact police and provision re at the site







# APPENDIX 6: Support and safety plan for child/young person

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Support categories	Support strategies	Responsible person/s
Internal support	<p>Who has discussed, as appropriate for age, all features of this plan with the child/young person?</p> <p>Has the child/young person been given full opportunity to share their view and has this view been respected to the fullest degree possible?</p> <p>What changes to the child/young person's routine are in place to support them?</p> <p>For example:</p> <ul style="list-style-type: none"> <li>- yard duty arrangements</li> <li>- before/after school</li> <li>- timetable</li> <li>- work expectations (special provisions if year 11/12)</li> <li>- attendance arrangements</li> <li>- site-based counselling support.</li> </ul> <p>What is the child/young person advised to do if they feel unsafe at any time at the site?</p> <p>For example:</p> <ul style="list-style-type: none"> <li>- advise yard duty teacher</li> <li>- move to front office</li> <li>- report directly to director/principal</li> <li>- go to counsellor's office</li> <li>- access nominated friend</li> <li>- contact parent/caregiver.</li> </ul> <p>Which adult at the site will be available for the child/young person to talk with and act as the 'support person'?</p> <p>How does the child/young person access the support person?</p> <p>What signs of stress in the child/young person will be reported immediately by staff to parents/caregivers?</p> <p>How will this communication be made and by whom?</p> <p>What is the agreed verbal response the child/young person will make to questions from others (eg staff, students, parents, friends)?</p> <p>What information is to be given to other relevant staff who must support the child/young person but for whom it isn't necessary or appropriate that they know the details of the underlying event?</p> <p>For example:</p> <ul style="list-style-type: none"> <li>- other class teachers</li> <li>- relief staff</li> <li>- yard duty staff</li> <li>- front office staff.</li> </ul> <p>Who is responsible for informing other relevant staff?</p> <p>Who will keep the child/young person's support person informed of upcoming events, such as court hearings?</p>	

Support categories	Support strategies	Responsible person/s
	<p>How will the child/young person's support person and the parent/caregiver contact person (see below) liaise with each other, if the one staff member does not undertake both roles?</p> <p>Has the child/young person consented to external professionals sharing information with the support person at the site, where relevant to the child/young person's safety and wellbeing?</p>	
<p>Parent/caregiver support and liaison</p>	<p>Who has provided parents/caregivers with counselling support services, verbally and in writing?</p> <p>Which staff member is the contact person for parents/caregivers on all matters associated with the support for the child/young person?</p> <p>How can parents/caregivers contact/access this staff member?</p> <p>What actions are being taken at home to help restore the child/young person's sense of safety and wellbeing?</p> <p>Are the actions at the site complementary to the parents/caregivers' actions?</p> <p>What signs of stress in the child/young person will parents/caregivers immediately report to the nominated parent/caregiver contact?</p> <p>Have parents/caregivers given permission for external professionals to share information with the support person at the site, where relevant to their child/young person's safety and wellbeing?</p>	
<p>Teaching and learning support</p>	<p>Are there any curriculum issues that need to be addressed?</p> <p>For example:</p> <ul style="list-style-type: none"> <li>- a proposed teaching plan that must be modified to avoid distress to the child/young person</li> <li>- the introduction of a teaching program in order to reinforce particular behaviour.</li> </ul> <p>Have these plans been discussed with other professionals supporting the child/young person?</p>	
<p>External support</p>	<p>Which other agencies or professionals are involved with the child/young person or his/her family?</p> <p>What is the nature and length of their support?</p> <p>For example:</p> <ul style="list-style-type: none"> <li>- How do they liaise with the site?</li> <li>- Have they contributed to the development of this plan/been given a copy?</li> <li>- Have they agreed to liaise with the site?</li> <li>- How is this liaison to occur and through which staff member?</li> </ul>	
<p>Plan review</p>	<p>When will the plan be reviewed?</p> <p>Who is responsible for setting a review date?</p> <p>How can the site, child/young person or parents/caregivers initiate a meeting outside of the scheduled review?</p> <p>Have parents/caregivers and child/young person been informed of whom they can raise concerns with if they are not happy with the actions of the site in providing support?</p> <p>Do they have the contact details?</p>	

Support categories	Support strategies	Responsible person/s





## **6. Charge determination**

A solicitor from the Office of the Director of Public Prosecutions (ODPP) will consider the evidence in the preliminary brief and determine if there is enough evidence to support the charges, or to support alternative major indictable charges. If so, a charge determination will occur, the charges will be confirmed, and the matter will proceed. If not, the preliminary brief will be returned to the police for further investigation or withdrawal of the charges.

## **7. Committal**

The committal stage commences once the ODPP has made a charge determination and involves two main hearings: a committal hearing and an answer charge hearing. If the accused pleads guilty at the committal hearing or at the answer charge hearing, the magistrate will transfer the matter to the District or Supreme Court for sentencing. In some circumstances, sentencing can take place in the Magistrates Court\*. If the accused pleads not guilty at the answer charge hearing, the magistrate will transfer the matter to the District or Supreme Court for trial.

## **8. Arraignment**

The first hearing in the District Court or the Supreme Court is called an arraignment hearing before a judge. If the accused has already pleaded guilty, the judge will either listen to sentencing submissions or adjourn the matter to a later date for submissions to be made. If the accused has pleaded not guilty, the judge will schedule a trial date, usually several months ahead. There can be further hearings between the arraignment and the trial date to make sure that prosecution and defence are ready for the trial.

## **9. Trial**

## 11. Appeals

The rights of appeal against a conviction or sentence are a little complicated. Broadly speaking, a defendant has to apply for permission to appeal against the conviction and the sentence. The appeal is heard by the Court of Criminal Appeal (CCA), which comprises three judges of the Supreme Court.

The ODPP has no right to appeal against a jury verdict of acquittal. The ODPP may, in certain circumstances, apply for permission to appeal against the decision of a judge acquitting a defendant. The ODPP may apply for permission to appeal against a sentence that is manifestly inadequate.

Where the CCA allows an appeal against conviction, the conviction will be quashed and the court will either order an acquittal or that the defendant be tried again.

In exceptional circumstances, the High Court of Australia will grant permission to appeal against a decision of the CAA.

## APPENDIX 8: Relevant legislation

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### **Children and Young People (Safety) Act 2017 (SA)**

[https://www.legislation.sa.gov.au/\\_\\_legislation/lz/c/a/children%20and%20young%20people%20\(safety\)%20act%202017/current/2017.25.auth.pdf](https://www.legislation.sa.gov.au/__legislation/lz/c/a/children%20and%20young%20people%20(safety)%20act%202017/current/2017.25.auth.pdf)

### **Criminal Law Consolidation Act 1935**

[https://www.legislation.sa.gov.au/\\_\\_legislation/lz/c/a/criminal%20law%20consolidation%20act%201935/current/1935.2252.auth.pdf](https://www.legislation.sa.gov.au/__legislation/lz/c/a/criminal%20law%20consolidation%20act%201935/current/1935.2252.auth.pdf)

### **Education and Children's Services Act 2019**

[https://www.legislation.sa.gov.au/\\_\\_legislation/lz/c/a/education%20and%20childrens%20services%20act%202019/current/2019.19.auth.pdf](https://www.legislation.sa.gov.au/__legislation/lz/c/a/education%20and%20childrens%20services%20act%202019/current/2019.19.auth.pdf)

### **Child Safety (Prohibited Persons) Act 2016**

[https://www.legislation.sa.gov.au/\\_\\_legislation/lz/c/a/child%20safety%20\(prohibited%20persons\)%20act%202016/current/2016.49.auth.pdf](https://www.legislation.sa.gov.au/__legislation/lz/c/a/child%20safety%20(prohibited%20persons)%20act%202016/current/2016.49.auth.pdf)

### **Evidence Act 1929**

[https://www.legislation.sa.gov.au/\\_\\_legislation/lz/c/a/evidence%20act%201929/current/1929.1907.auth.pdf](https://www.legislation.sa.gov.au/__legislation/lz/c/a/evidence%20act%201929/current/1929.1907.auth.pdf)


### **Summary Offences Act 1953**

[https://www.legislation.sa.gov.au/\\_\\_legislation/lz/c/a/summary%20offences%20act%201953/current/1953.55.auth.pdf](https://www.legislation.sa.gov.au/__legislation/lz/c/a/summary%20offences%20act%201953/current/1953.55.auth.pdf)

### **Criminal Procedure Act 1921**

[https://www.legislation.sa.gov.au/\\_\\_legislation/lz/c/a/criminal%20procedure%20act%201921/current/1921re55.auth.pdf](https://www.legislation.sa.gov.au/__legislation/lz/c/a/criminal%20procedure%20act%201921/current/1921re55.auth.pdf)





This guideline provides advice for leaders in education and care settings when responding to allegations of sexual misconduct by adults against children and young people. It outlines the actions to be taken and matters to be considered at different stages of the response. The guideline is designed to provide a transparent process to help support the people impacted by sexual misconduct incidents.

# Record history

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Policy officer: Manager, Critical Incident Response

Policy sponsor: Director, Incident Management Directorate

Responsible Executive Director: Chief Operating Officer

Approved by: Director, Incident Management Directorate

Approved date: 16 January 2024

Next review date: 16 January 2027

## Revision record

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Approved date: 16 January 2024

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Amendment(s): December 2023 version of guideline jointly developed by Department for Education, Catholic Education South Australia and Association of Independent Schools of South Australia. Key updates to reflect changes in legislation and policy, new court processes, relevant publications, and to update wording to align with contemporary standards.

Version: 2.1

Approved by: Director, Incident Management Directorate

Approved date: 16 May 2023

Review date: 16 May 2026

Amendment(s): No policy amendments required currently, policy can continue to be used. Contact details changed.

Version: 2.0

Approved by: Director, Incident Management Directorate

Approved date: 16 June 2020

Review date: 16 June 2023

Amendment(s): Reference to Section 26 of Education Act 1972 in section 3.3.7 replaced by Section 114 of the Education and Children's Services Act 2019 as of 1 July 2020. The Education Regulations 2012 or Children's Services Regulations 2008 become the Education and Children's Services Regulations 2020 as of 1 July 2020.

Version: 1.0

Approved by: Director, Incident Management Directorate

Approved date: 11 April 2019

Review date: 11 April 2022

Amendment(s): Change of department name and Chief Executives.

## Contact

Incident Management Directorate

Email: [education.IMDIntake@sa.gov.au](mailto:education.IMDIntake@sa.gov.au)

Phone: 8226 1604