

Class or Kind Agreement

This Class or Kind Agreement outlines additional provisions for certain education sector employers regarding notifying findings of relevant employment proceedings to the Commission for Children and Young People.

1. Coverage

1.1 This Agreement refers to the following employers ONLY:

- NSW Department of Education and Training;
- TAFE Commission of NSW;
- Members of the NSW Catholic Commission for Employment Relations that have an employment relationship with employees in that sector;
- Independent schools in situations where an allegation of reportable conduct has been investigated by an investigator accredited by the Association of Independent Schools of NSW.

1.2 This Agreement covers the following employees ONLY:

Teachers, principals, teachers in promotion positions, and teachers' aides (who are directly supervised by a teacher); who are employed to work directly with children and young people aged under 18 years in a classroom or school setting; provided that the person is employed by an employer listed at clause 7.1 above.

2. Rationale for coverage

This Agreement covers only the employees listed above because of:

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

Teaching is a nurturing profession. Teachers are significant in children's lives and the relationships involved are highly valued by children, especially when teachers give them someone to turn to for help.

Physical contact is an essential part of the teacher-student relationship especially with younger children. The very high volume of interactions between children and their teachers each day means that the possibility of inappropriate professional behaviour occurring, or for misunderstandings to form, is higher than in most other employment settings.

There is a formal education system in place for teachers that instils professional standards in them. University courses require student teachers to meet set requirements in child development, communicating with children and classroom and behaviour management techniques before teacher qualifications can be awarded. Universities also require that each student

teacher undergoes a period of supervised practice as a teacher. Reaching a satisfactory standard in these areas is an essential pre-requisite before teacher qualifications are awarded.

Ongoing professional training and development strengthens teachers' professionalism with regard to working with children, and includes a focus on behaviour management. Teacher professionalism will also be enhanced by the standards which will be introduced by the establishment of the NSW Institute of Teachers. The Institute will guide NSW teachers' development at all stages of their careers and establish a framework of professional standards, including standards relating to classroom and behaviour management and effective communication with students.

The majority of teachers are employed by a small number of employers who are able to put in place systemic employment practices and achieve consistency of process and decision making. Complaints about teachers are oversighted by the Ombudsman under Part 3A of the *Ombudsman Act 1974*. This provides independent and external oversight of the management of complaints about teachers' behaviour in relation to students.

3. Additional provisions for education employees

All employers are subject to the conditions regarding the notification of relevant employment proceedings set out in the Working With Children Check Guidelines at section 5.3. In addition, there are two additional discretions available to the education sector employers listed at clause 1.1 of this Agreement.

3.1 Findings

Where an allegation is made against an employee regarding physical assault, an employer may make one of the following findings at the completion of employment proceedings:

- (a) assault occurred,
- (b) assault did not occur,
- (c) there is some evidence that assault occurred however the allegation is not sustained because of insufficient evidence,
- (d) inappropriate professional behaviour occurred
- (e) there is some evidence that inappropriate professional behaviour occurred, however the allegation is not sustained because of insufficient evidence.

The employer **must** notify the Commission for Children and Young People when the following findings are made:

- (a) assault occurred, or
- (b) there is some evidence that assault occurred, however the allegation is not sustained because of insufficient evidence.

The employer need not notify the Commission for Children and Young People when the following findings are made:

- (a) assault did not occur,
- (b) inappropriate professional behaviour occurred, or
- (c) there is some evidence that inappropriate professional behaviour occurred, however the allegation is not sustained because of insufficient evidence.

Teachers are required to manage students' behaviour and sometimes they use inappropriate professional behaviour. This may involve inappropriate physical contact with a child or the throwing of a light object at a child. Some force may have been used but it is not excessive given the age or size of the child relative to the teacher, nor has it caused physical harm. Such behaviour management does not meet professional standards however it is not reportable to the Commission. These matters are categorised as "inappropriate professional behaviour".

3.2 Ombudsman audit of findings in relation to a completed relevant employment proceeding

The Ombudsman may, in accordance with s.25B of the *Ombudsman Act 1974*, audit findings of "inappropriate professional behaviour" made by any employer in relation to a completed relevant employment proceeding.

4. Notifying Category One matters as Category Two

Where an employer listed at 7.1 above considers a particular Category One matter to be a minor physical assault, he or she may choose to notify this matter to the Commission for Children and Young People as Category Two.

This discretion is only available where it relates to a finding of physical assault. The discretion does not affect the obligation of an employer to notify the Commission of completed relevant employment proceedings against an employee involving:

- (a) sexual assault of a child; and/or
- (b) ill-treatment or neglect of a child; and/or
- (c) behaviour that psychologically harms a child; and/or
- (d) sexual misconduct; and/or
- (e) acts of violence committed by the employee in the course of employment and in the presence of a child.

5. Commission review of category one matters notified as category two

The Commission may review the employer's decision to notify a Category One matter as a Category Two, as set out in 7.2 above.

Should the Commission determine that an inappropriate decision has been made, and a matter is of a kind or severity that warrants consideration in employment screening, then the matter will be moved to Category One.

Such reviews will be undertaken on a case by case basis. In order to conduct a review, the Commission will obtain details of those proceedings from the employer and the employee in order to review the matters and determine whether they should be moved to Category One.

The review process will consider such criteria as:

- The type and severity of the matters,
- The age of the child,
- The length of time between the various matters,
- Whether the employer has issued previous or subsequent warnings to the employee about their behaviour,
- Whether the finding was the result of a complaint or a self-referral,
- Whether the matters indicate a pattern of behaviour that is of concern,
- Whether there are other relevant records held on the person,
- The attitude of the person towards the matter – including, in particular, whether they have taken responsibility for the behaviour that was found, and whether they have learned from the experience,
- Other mitigating circumstances.

The employer will have the right to make a submission if the Commission is considering moving a matter into Category One.

Any person transferred from Category Two to Category One will be notified by the Commission for Children and Young People. The Commission will also notify the employer that provided the original report.

SIGNED BY

GILLIAN CALVERT

**COMMISSIONER FOR CHILDREN
AND YOUNG PEOPLE**

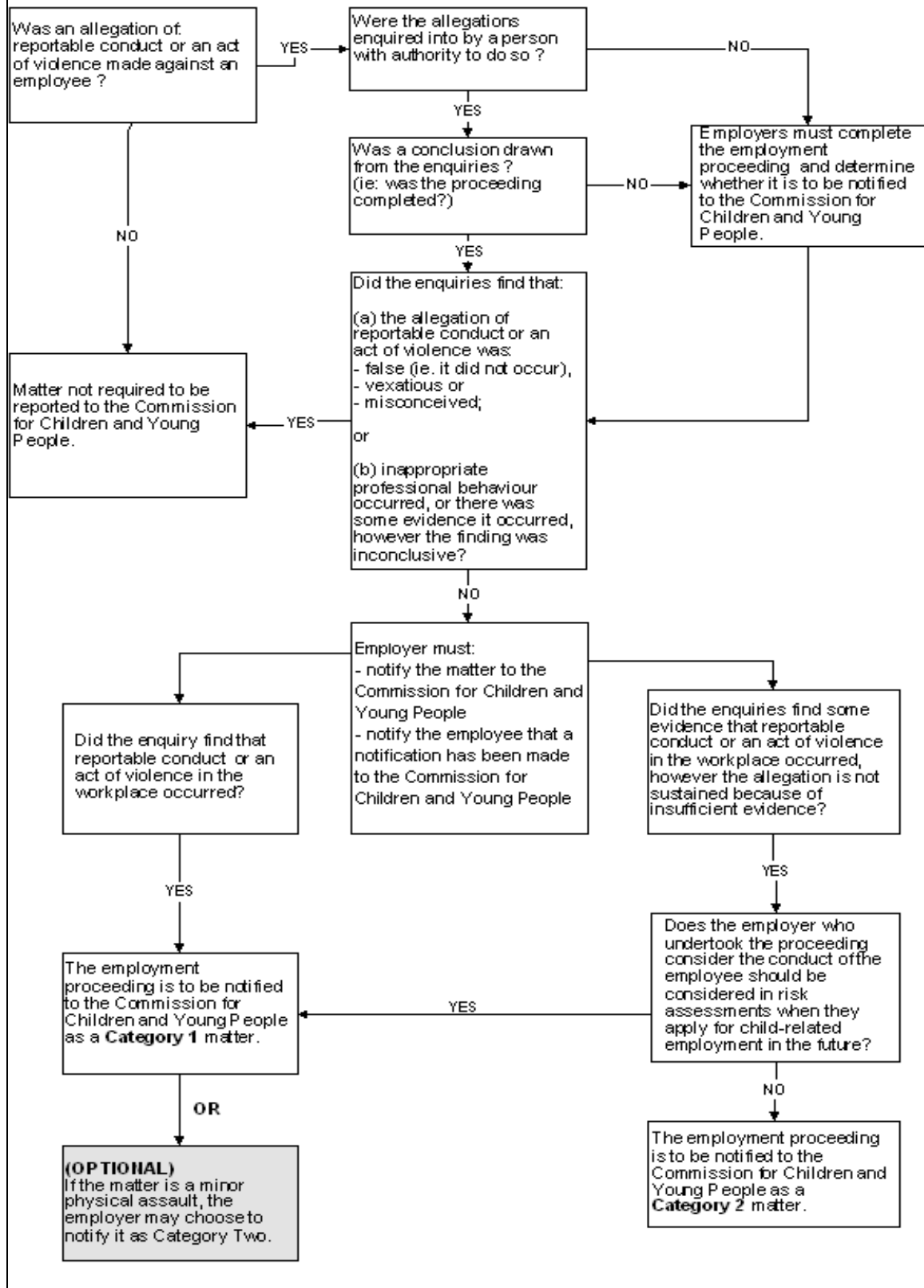
DATE

ANDREW CAPPIE-WOOD

**DIRECTOR-GENERAL
DEPARTMENT OF EDUCATION AND
TRAINING**

DATE

**5B Employer decision making flowchart
for education employers
covered by Appendix 5A ONLY**



RELEVANT EMPLOYMENT PROCEEDINGS NOTIFICATION FORM

***FOR USE BY EDUCATION EMPLOYERS COVERED
BY CLASS OR KIND AGREEMENT Section 8 only***

Under Section 39 of the *Commission for Children and Young People Act 1998* employers are required to provide details to the Commission for Children and Young People of any employee (either paid or unpaid) who has been the subject of relevant employment proceedings completed since 3 July 1995.

The employment proceedings that are considered relevant are all completed employment proceedings involving:

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

Employers must not notify the Commission for Children and Young People of employment proceedings which found such allegations to be false, vexatious or misconceived, or which found that reportable conduct or an act of violence did not occur. In addition, as an education employer covered by Appendix 5A in the Guidelines, you *need not notify* the Commission when the following findings are made in accordance with that Appendix:

- a) inappropriate professional behaviour occurred, or
- b) there is some evidence that inappropriate professional behaviour occurred, however the allegation is not sustained because of insufficient evidence.

Further information in relation to relevant completed employment proceedings are contained in the Working With Children Check Guidelines.

In notifying the Commission for Children and Young People, employers must determine whether the relevant employment proceeding is a Category One or Category Two employment proceeding. Information to assist employers in determining the category of the employment proceeding is provided in the Working With Children Check Guidelines.

As an education employer covered by the provisions of Appendix 5A, you have a further discretion to choose to notify a Category One matter as Category Two, *where the matter is a minor physical assault*. See Call or Kind Agreement, Section 8 for more information.

No additional details other than the information below are required by the Commission for Children and Young People.

EMPLOYEE DETAILS

First Name	Middle Name
Surname	
Previous names / aliases:	
Gender	Date of Birth
Place of Birth (city, state, country):	

EMPLOYER DETAILS

Employer/ Organisation name	
ABN:	
Address:	
Phone:	Fax:
Email address	
Name of relevant contact person	
Position of relevant contact person	
Date of completion of employment proceedings	
Is the above individual currently an employee of your organisation? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Category of relevant employment proceeding

(Please tick the appropriate box)

This is a Category One proceeding <input type="checkbox"/>	This is a Category Two proceeding <input type="checkbox"/>
This is a Category One proceeding that is a minor physical assault and that I wish to notify as Category Two <input type="checkbox"/>	

I certify that the above mentioned individual has been the subject of employment proceedings involving reportable conduct or an act of violence and that I have the authority to submit these details to the Commission for Children and Young People for employment screening purposes.

This information may be used for monitoring and auditing compliance with the procedures and standards for employment screening in accordance with Section 36 (1) (f) of the Commission for Children and Young People Act 1998.

_____	_____	_____	_____
Name	Position	Signature	Date

Note: This form must be forwarded to the Commission for Children and Young People only by employers and is not to be provided to any other person or organisation.

Please fax this form to the Commission for Children and Young People on (02) 9286 7201