



Employing authority notifications

INFORMATION SHEET

The Queensland College of Teachers (QCT) is established under the *Education (Queensland College of Teachers) Act 2005* (the Act) as the agency responsible for the regulation of the teaching profession. The Act requires an employing authority to notify the QCT about its dealings with allegations of harm, or likely harm, to a child because of the conduct of a teacher and also about certain dismissals.

The QCT assesses employing authority notifications and determines the most appropriate action to take including whether or not it will conduct an investigation or commence any practice and conduct proceedings against the teacher.

Section 81 of the Act provides protection from liability for employing authorities giving the required notices. If an employing authority gives notice as required, the employing authority is not liable, civilly, criminally or under an administrative process, for disclosing information contained in the notice.

Relevant sections of the Act

Section 76 - Requirement for employing authority to notify college about particular allegations

- (1) *This section applies if the employing authority for a prescribed school deals with an allegation of harm caused, or likely to be caused, to a child because of the conduct of a relevant teacher of the prescribed school.*
- (2) *The employing authority must, as soon as practicable after starting to deal with the allegation, give notice to the college of that fact.*
Maximum penalty – 40 penalty units.

Note - If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 228, to have also committed the offence.

- (3) *The notice must include the following –*
 - a) *the name of the employing authority and, if the name of the authority is different to the name of the prescribed school, the name of the prescribed school;*
 - b) *the name of the relevant teacher;*
 - c) *the day the employing authority started dealing with the allegation;*
 - d) *the allegation, particulars of the allegation and any other relevant information;*
 - e) *details about what actions the employing authority has taken to deal with the allegation.*

- (4) *For subsection (1) an employing authority deals with an allegation if the employing authority takes action in relation to the allegations including by –*
 - a) *investigating, inquiring into, or examining the allegation; or*
 - b) *referring the allegation to another entity to investigate, inquire into, examine or otherwise deal with.*

Section 77 - Requirement for employing authority to notify college about outcome of particular allegations

- (1) *This section applies if the employing authority for a prescribed school starts to deal with an allegation mentioned in section 76(1).*
- (2) *The employing authority must, as soon as practicable after the employing authority stops dealing with the allegation for any reason, give notice to the college of the outcome of the employing authority's dealing with the allegation.*
Maximum penalty – 40 penalty units.
Note - If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 228, to have also committed the offence.
- (3) *The notice must include the following –*
 - a) *the name of the employing authority and, if the name of the authority is different to the name of the prescribed school, the name of the prescribed school;*
 - b) *the name of the relevant teacher;*
 - c) *the day the employing authority stopped dealing with the allegation;*
 - d) *the allegation, particulars of the allegation and any other relevant information;*
 - e) *the findings made by the employing authority;*
 - f) *the outcome of the employing authority's dealing with the allegation and any reasons for the outcome;*
 - g) *if relevant, the employing authority's decision and reasons for the authority's decision.*

Section 78 - Requirement for employing authority to notify college about certain dismissals

- (1) *This section applies if -*
- an employing authority for a prescribed school dismisses a relevant teacher of the prescribed school in circumstances that, in the opinion of the employing authority, call into question the teacher's competency to be employed as a teacher; and*
 - a notice is not required to be given under sections 76 and 77.*
- (2) *The employing authority must, within 14 days after the day notice of the dismissal was given to the teacher, give notice of the dismissal to the college.*

Maximum penalty – 40 penalty units.

Note - If a corporation commits an offence against the provision, each executive officer of the corporation may be taken, under section 228, to have also committed the offence.

- (3) *The notice must include the following –*
- the name of the employing authority and, if the name of the authority is different to the name of the prescribed school, the name of the prescribed school;*
 - the name of the relevant teacher;*
 - the day notice of the dismissal was given to the relevant teacher and the day the dismissal takes or took effect;*
 - the reasons given by the employing authority for the dismissal.*

The following information will assist the employing authority to determine when and how a notification is required to be given to the QCT.

Employing Authority

Under the Act 'employing authority' is defined as '*for a school, means the person or entity responsible for the appointment of staff to the educational staff of the school*'.

QCT position

The term 'employing authority':

- refers to the person or entity who appointed the teacher to the educational staff of the school *rather than*
- the person or entity who continues to employ the teacher

The person or entity responsible for appointment requires authority to make the offer of employment and to appoint the person to a position as a teacher to a school.

Reporting processes must enable the relevant 'employing authority' to comply with the notification requirements of the Act.

In many cases the 'appointer' and the 'employer' will be the same person or entity and the authority may be vested in one person or in a board. The employing authority will depend on the type of school in question (see table below).

School audits

The QCT has specific regulatory compliance enforcement functions under the Act (section 231) and undertakes audits to ensure compliance with the Act.

School type	Employing authorities
State schools	The Director-General or delegate. Independent Public Schools (IPS), school councils may not enter into contracts and therefore cannot appoint a person to a position as a teacher in a school and could not be an employing authority.
Independent (non-State) schools	Will depend on the rules for how the particular school operates such as the terms of the governing body's constitution, and the effect of delegations, if any, to staff of the school (e.g. the principal) of authority to appoint teachers.
Catholic schools	For diocesan based schools, the Bishop for the relevant Diocese or the Executive Director or Director of the Catholic Education Office of that Diocese who may be delegated the responsibility for the employment of staff. Independent Catholic schools, the authority/responsibility for appointment and employing of teacher in Religious Institute schools will depend on the rules that dictate how the particular school operates such as the constitution and any delegations of authority.
Grammar schools	The board of trustees for that school.

Harm

The meaning of 'harm' is defined in the Act under section 7.

Section 7 Meaning of Harm

- (1) *Harm, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.*
- (2) *It is immaterial how the harm is caused.*
- (3) *Harm can be caused by-*
 - a) *physical, psychological or emotional abuse or neglect; or*
 - b) *sexual abuse or exploitation.*
- (4) *Harm can be caused by-*
 - a) *a single act, omission or circumstance; or*
 - b) *a series or combination of acts, omissions or circumstances.*

QCT position

Where an employing authority is able to identify significant detriment (harm) to a child and attribute the harm to the conduct of a teacher, regardless of the circumstances leading to the harm, the employing authority should consider whether it has dealt with the allegation/s for the purposes of a mandatory report to the QCT.

Harm to a person can be observed by particular signs and symptoms (effects), however, those signs and symptoms will not be evident in every person harmed. In addition, similar harm/s will not result in the same signs and symptoms in every person. Further, harm (the effect of a trauma/injury) can be significantly delayed.

With the possible exception of physical harm, it may be difficult in some circumstances to identify harm to a child and further attribute that harm to a particular event, person or behaviour.

The Queensland Civil and Administrative Tribunal (QCAT) has determined that the consideration of harm to children extends further than the child subject to the conduct by the teacher. It follows therefore that the consideration of harm caused, or likely to be caused, must extend to any child/ren who may have witnessed the conduct, may be aware of the conduct or may suffer harm for any other reason because of the conduct.

Likely harm

Sections 76 and 77 of the Act also require an employing authority to consider '*...harm caused or likely to be caused ('likely harm') to a child ...*' Likely harm is not defined in the Act.

QCT position – 'likely harm'

Where it is not possible to identify harm it is necessary to consider 'likely harm.' It may be practical to do this by identifying particular types of behaviour, circumstances and/or events that have the potential to cause harm to children.

Where the employing authority identifies that the the conduct of a teacher has harmed or has the potential to cause harm to a child, whether that harm is likely to be realised immediately or at some later date in the future and regardless of the circumstances leading to the harm, the employing authority should consider whether it has dealt with the allegation/s for the purposes of a mandatory report to the QCT.

Decision maker for harm and/or likely harm

QCT's position

The person with the authority and responsibility, to make mandatory notifications, to the QCT.

However, the QCT acknowledges that the decision maker may wish to obtain information from other sources prior to making the decision.

Detriment versus significant detriment

There are many types of behaviour which would not satisfy the behaviour generally expected of a teacher. Some of those behaviours may cause detriment to a child but may not, depending on the context and circumstances, cause significant detriment (harm) to a child. Therefore, while those behaviours may prompt disciplinary action from the employing authority they would not trigger a mandatory notification to the QCT.

For example, some of the following behaviours would have no detriment, some detriment or significant detriment to a child depending on the circumstances of the behaviour/s, for example consideration to the vulnerability of the child/ren (including age), the frequency of the behaviour, whether the child was the subject of the behaviour or had knowledge of the behaviour and any escalation of behaviour.

Behaviours which may impact on emotional wellbeing include:

- Humiliating a child over poor effort on an assignment:
- Shouting/yelling
- Use of a 'scary face'
- Aggressive tone of voice
- Refusing access to the bathroom
- Swearing

Physical/aggressive behaviours include:

- Hitting
- Hitting/smacking with papers/books
- Throwing items at a child (balls, pen, duster)
- Restraining/manhandling
- Grabbing/gripping ears/limbs
- Threats of violence

Overfamiliar behaviours include:

- Flirting
- Acting as a confidante/counsellor
- Communicating via personal device (phone calls, sms etc)
- Touching hair/face/neck
- Discussing private life
- Meeting with students socially outside school

Employing authorities have policies which provide instructions, guidelines and/or procedures to support teachers to protect students from harm (student protection policies). Generally, policies set out acceptable, unacceptable and/or mandated behaviours to adopt when dealing with students/children. Further, the policies utilise a tiered classification system to distinguish between minor, moderate and major breaches.

While each matter should be regarded on a case by case basis with consideration to context and circumstances, a student protection framework can be applied as a practical indicator as to the significance of the detriment caused or likely to be caused to a child as a result of the teacher's behaviour.

Breach	Description
Minor breach	Detriment and/or likely detriment unlikely to be significant in the first instance (harm unlikely to occur unless repeated)
Moderate breach	Potential for significant detriment (likely harm)
Major breach	Harm likely to have occurred or to occur at some time

Relevant Information

Sections 76(3)(d) and 77(3)(d) require the notice to include 'any other relevant information'.

'Any other relevant information' will include any information held at the time the notice is given that is relevant to the allegations and includes the following material/information:

- a copy of the complainant or referral
- advice as to whether other authorities have been notified, what action was taken by the authority and relevant contact person details if known
- terms of reference for the investigation
- a copy of the investigation report
- any relevant policies, for example, the school student protection policy
- copies of all signed statements, record of interviews and other evidence
- names and contact details of all witnesses, including date of birth for any student witnesses
- a statement as to what other evidence is available
- a copy of the relevant disciplinary correspondence including submissions by the relevant teacher
- a copy of documentation supporting reasons for dismissal or resignation or other termination
- a copy of the final penalty letter, letter of termination or other documentation evidencing termination of the teacher's employment
- any documented evidence of a pattern of behaviour or history of similar allegations (including previous counselling, warnings, reprimands, directions or disciplinary action)
- information relevant to the exercise of the QCT's power to suspend registration or permission to teach pursuant to section 49 - including the current employment status of the relevant teacher
- material/information that might be obtained at any point prior to the final notification being given

When an employing authority deals with an allegation

Section 76(4) outlines when an employing authority should notify the QCT:

For subsection (1) an employing authority deals with an allegation if the employing authority takes action in relation to the allegations including by –

- investigating, inquiring into, or examining the allegation;*
- referring the allegation to another entity to investigate, inquire into, examine or otherwise deal with.*

QCT's position

An employing authority *takes action* in relation to an allegation (including investigates, inquires into and/or examines) including but not limited to when it:

- 1) Suspends or seconds or otherwise changes a teacher's normal duties following receipt of the allegations
- 2) Observes, utilises different teaching practices (e.g. tandem teaching or teacher aides) or otherwise monitors the teacher
- 3) Invites or accepts a resignation from the respondent teacher following receipt of the allegations
- 4) Initiates a formal or informal investigation into the matters
- 5) Conducts some preliminary inquiries into the matter including but not limited to:
 - a) asking a person/s (e.g. complainant, respondent, victim, witness etc) a question/s
 - b) requests, seeks out, accesses documentation or other records relating to the matter (e.g. previous complaints/incident records, attendance records, equipment lists, duty lists)
- 6) Reviews information (e.g. documents, photographs or electronic communication) for the purpose of ascertaining the reliability and/or credibility of the information and/or making a determination about how to deal with the matter

It does not include:

- 1) Discussions around the administration (process/procedure) for dealing with the allegations
- 2) Discussions around whether the elements around the reporting requirement have been met
- 3) Seeking information concerning how to manage the matters (e.g. referring to the student protection policy or other EA policies).

Importantly

- (1) An employing authority would not stop dealing with an allegation by virtue of a referral to another entity, it must as a minimum, make its own findings and decision about the allegations. This may include, making its own findings and decision based on the findings or decision of the entity which investigated, inquired into or examined the allegations.
- (2) The notification of the matter to the QCT under section 76 and/or section 77 is not a referral for the purposes of section 76(4).

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