

# Suspension of registration or permission to teach for unacceptable risk of harm

## GUIDELINE

### Assessing matters for potential suspension of registration or permission to teach for unacceptable risk of harm

This guideline provides a framework for assessing matters relevant to the QCT Policy 'Suspension of registration or permission to teach for unacceptable risk of harm' under sections 7, 49 and Schedule 3 of the *Education (Queensland College of Teachers) Act 2005* (these assessment cases are referred to as s49 suspension throughout this guideline).

Each case for s49 suspension will be different and must be considered in the light of the evidence available. This guideline is not intended to be a fixed standard or checklist. Instead, it provides a series of questions and prompts designed to assess each case on its merits. In all s49 suspension assessments, the QCT's paramount concern is for the welfare and best interests of children.

In assessing s49 suspension cases, the QCT aims to:

- uphold the standards of the teaching profession
- maintain public confidence in the teaching profession
- protect the public by ensuring that education in schools is provided in a professional and competent way by approved teachers.

### When to apply this guideline

This guideline is relevant when the QCT receives information suggesting that a teacher poses an unacceptable risk of harm to a child and should not work as a teacher. In this situation, the QCT must assess the evidence and suspend the teacher's registration if the QCT reasonably believes (see the discussion below on 'reasonable belief') that the teacher poses an unacceptable risk of harm to children.

This guideline should be read in conjunction with the QCT policy: 'Suspension of registration or permission to teach for unacceptable risk of harm'. The policy outlines the QCT's stance on the issue and relevant definitions from the legislation.

### Procedure for applying this guideline

This guideline must be implemented in a methodical, thoughtful manner, using the QCT s49 suspension procedure. QCT staff must keep relevant records throughout the decision-making process.

### Types of conduct that may warrant consideration for s49 suspension

Teacher conduct that may be relevant for s49 suspension is based on the legislative definition of harm and involves a detrimental effect of a significant nature (not 'harm' in the colloquial sense.) It ranges from the most serious conduct (with the potential to cause serious harm to a child) to conduct that may seem less serious but is still likely to cause harm.

In considering a s49 suspension, the QCT will consider both the seriousness of the conduct and the potential risk of harm. For example, where the teacher's conduct is particularly serious, a minimal risk of harm will usually be sufficient for the QCT to conclude that the teacher poses an unacceptable risk and should be suspended. Where a teacher's conduct is less serious, the risk of harm may still warrant suspension.

Examples of conduct which would warrant consideration of s49 suspension include (but are not limited to):

- sexual matters
- inappropriate use of media
- physical violence
- behaviours or conduct that cross the professional boundary.

### Timing for assessments

The QCT must assess and decide on s49 suspension cases as soon as practicable. In most cases, the QCT will make a decision within 48 hours of assessing the information.

Once the suspension decision is made, the QCT will prepare a suspension notice. The time required to prepare the suspension notice will vary according to the complexity of the circumstances. In most cases, the QCT will issue the suspension notice between 24 and 72 hours after making the suspension decision.

Where the QCT issues a suspension notice, the following timeframes will normally apply:

- within 24 hours, the suspension will be effected on the Register of Teachers available to the public
- within 24 hours, the notice of the suspension will be sent to the teacher (usually sent on the day the notice is signed)
- within 48 hours, the notice of the suspension will be sent

to the teacher's employing authority, the principal of the school where the teacher is employed, and the Queensland Government Blue Card services

- within 72 hours, the QCT will refer the suspension to the Queensland Civil and Administrative Tribunal (QCAT).

## Steps in assessing evidence for a s49 suspension

Assessing evidence for an s49 suspension involves four steps:

1. Gather information
2. Assess harm or risk of harm
3. Decide on the outcome
4. Review the risk assessment during ongoing investigation.

## Gather information

The QCT's Professional Conduct Unit is responsible for gathering information relevant to the case. The following prompts may support this process:

- Significance – is there evidence of a detrimental effect (or the potential for a detrimental effect) of a significant nature on the child's physical, psychological or emotional wellbeing?
- Circumstances and type of current or potential harm – does the evidence suggest a specific harm or multiple harms? \*
- Frequency/chronicity – are there multiple incidents? Is there any pattern to the incidents? \*
- Severity – has the severity of the incidents increased over time? \*
- Recency and duration – when did the incident/s occur? How long have any concerns been held? \*
- Likelihood – what is the likelihood of harm occurring in the future? \*
- Source of notifications – who provided the notification? Are there multiple sources alleging similar concerns? Are there reports from professionals? \*
- Physical harm – if the harm is physical, what is the nature and location of the injury (for example, what part of the child's body)? What implements were used to inflict the injury?
- Emotional harm – if the harm is emotional, what statements were made to the child? What were the actions and circumstances of the harm? What behavioural indicators were displayed by the child?
- Sexual harm – if the harm is sexual, what was the teacher's access to the child?
- Future harm – if the harm is yet to occur, what are the risk factors that suggest a likelihood of future harm?

\* These factors may indicate cumulative harm. Information gathering should include current harm and all previous incidents of harm.

## Assess harm and risk of harm

The QCT is responsible for assessing harm and future risk of harm. Where the QCT concludes that a teacher poses an unacceptable risk of harm to children, the teacher's registration will be suspended.

In assessing the likelihood of harm, the QCT is informed by the Department of Communities and Child Safety Practice Guide,

which identifies that there is a higher likelihood of harm occurring if:

- there have been multiple reports of harm over time
- multiple sources have alleged similar issues
- concerns relate to multiple harms over time
- concerns have been received from professionals.

These prompts may support the assessment of harm and the risk of harm:

- Frequency of harm – how many incidents have occurred over time? Is there any knowledge of prior, unreported incidents? Have there been previous concerns?
- Type of harm – is the harm physical, psychological and/or emotional? Are there any indicators of other types of harm in addition to those notified?
- Severity – is the harm caused (or likely to be caused) significant? Will the harm be detrimental to the child's development and wellbeing?
- Duration – over what period of time did the harm occur? Is there any prior history of possible harm that did not reach the notification threshold? Does the history suggest a higher likelihood of the harm occurring? Have the impacts of harm accumulated over time?
- Probability – what is likelihood or probability of future harm?
- Vulnerability – how vulnerable is the child to future harm, taking into account their age, any disabilities, medical conditions and social isolation?
- Other relevant matters to be considered, such as:
  - escalation of teacher's conduct
  - length of time between the conduct's occurrence and the QCT's assessment, and the teacher's conduct during this time
  - dishonesty, concealment or acceptance of responsibility by the teacher
  - current employment and registration status
  - public perception
  - any Queensland Police Service investigation.

## Decide the outcome

Based on the evidence gathered, the QCT's Professional Conduct Unit will recommend an outcome to the Director of the QCT. The Director, acting on behalf of the Board, makes the final decision in cases of s49 suspension.

### All cases of s49 suspension must be considered on a case-by-case basis.

The evidence gathered by the QCT does not need to *prove* the alleged harm. The QCT's responsibility is to decide whether the teacher poses an unacceptable risk of harm. If the QCT decides to suspend the teacher's registration, the QCT must refer the suspension to QCAT for review.

The relevant question for the QCT to consider is whether there is sufficient evidence for the QCT to form a *reasonable belief* of risk of harm and to suspend a teacher's registration under section 49 of the Act.

### What is a reasonable belief in this situation?

A reasonable belief is a belief that an ordinary person of average intelligence and sound mind would hold. The belief should be based on all relevant known considerations and objectively assessed opinions.

A reasonable belief requires a stronger level of knowledge than a suspicion. Generally, a reasonable belief would be based on a report from the teacher's employer or a person making a complaint about the conduct of a teacher, and may contain notes of conversations from witnesses or witness statements.

A reasonable belief may be based on a combination of objective and subjective judgement: objective judgement based on the available facts and subjective judgement in that the person making the notification actually held the belief.

Speculation, rumour, gossip and innuendo are not enough to form a reasonable belief.

Reasonable belief will depend on:

- the known facts, circumstances and considerations relevant to the suspension decision
- the quality and strength of the evidence available to, or likely to be obtained by, the QCT
- the justification and reasons for determining that the risk of potential harm posed by the relevant teacher is unacceptable.

In cases of s49 suspension, risk does not need to be intentional. Harm which may occur inadvertently due to the teacher's failure to appreciate social norms and interpersonal boundaries must also be considered and may provide sufficient grounds for suspension.

In assessing the quality and strength of evidence, the QCT should consider who made the allegation, how the allegation was communicated, the credibility of any witnesses, and any conflicting statements from material witnesses. Allegations or information about investigations should be treated as reasonable and credible when they come from the Queensland Police Service.

There will be cases where practical implications arise out of the QCT's decision to suspend the registration of a teacher. Practical implications must not be considered in the QCT's decision-making process for a s49 suspension. However, practical implications may influence the QCT's decision to effect a suspension. Examples of practical implications may include concurrent investigations by the QCT and QPS, and any impact that QCT action may have on a police investigation.

### Review risk assessment during ongoing investigation

Assessments for a s49 suspension are made at a particular point in time, based on the evidence available.

During an ongoing investigation, the QCT should review its s49 suspension assessment and revisit stages in the decision-making process. Any new information should be incorporated into the evidence base and form part of any ongoing assessment.

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