

# **2020 Code of Conduct Review**

## **Submission to the NSW Department of Education**

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**Prepared by: Federation of Parents and Citizens Associations  
of New South Wales**

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## Introduction

Federation of Parents and Citizens Associations of New South Wales (P&C Federation) is thankful to the NSW Department of Education (the Department) for this opportunity to contribute to this revision of the Code of Conduct (the Code). P&C Federation supports the position of individual educational and developmental needs met by a range of differential services expressed through appropriate and well-planned curricula, programs and environments conducted by sensitive and well-trained personnel in conjunction with parents<sup>1</sup> and families.

The core belief of P&C Federation is that the education of our children and youth is the most fundamental means of ensuring individual and collective success and, as a result, our greatest national resource. We also support the concept that it is primarily the responsibility of governments to ensure education is well rounded and fully funded.

P&C Federation is a representative voice for public education in NSW. With over 1700 member associations our understanding of the issues within education is broad and carries with it the voice of a very large body of parents and carers.

## Format of the Code of Conduct

P&C Federation sees the current format of the code as overly complex. Having viewed the *NSW Police Force Code of Conduct and Ethics* and *Standards of Professional Conduct Booklet*, it is a much more simplified format and much easier to read. Considering the size and diversity of the workforce, such a format would be considered advantageous.

### Recommendation

Model the Code on the NSW Police Force Code of Conduct, by providing a professional conduct booklet with sufficient detail and guidance in an accessible format.

## Social Media

### Comments

P&C Federation believes that while every individual has a right to publish content in a personal capacity, they also hold a responsibility to uphold the values and reputation of the organisation they are employed by. This is tricky space to define, as individuals will have different interpretations as to what that responsibility is. The real difficulty arises when those reading published content start to assume the individual is speaking on behalf of the organisation.

### Recommendations

1. Ensure that employees understand their right to publish in a personal capacity.
2. Follow this with clear statements defining an employee's responsibilities for what they publish in a personal capacity.

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<sup>1</sup> "Parent" refers to anyone with legal care of a child, such as a parent, carer or legal guardian

3. Include advice that when making personal statements or statements on behalf of an organisation other than the Department (e.g. a union or professional organisation), they must clearly identify which organisation those views are representative of.
4. We agree that the Department should encourage employees to deal with workplace concerns through normal channels.

## Appropriate Use

The interaction of departmental staff and students on social media is a complex area that requires a clear set of standards that separates educational use from social engagement. P&C Federation is supportive of a strong stance that protects a student's privacy and maintains professional boundaries.

### Recommendations

1. Very clear guidance on the appropriate usage of electronic communications in all its forms when it relates to interactions with students.
2. Employees using social media to communicate with children are expected to address inappropriate conduct or poor behaviour as if it were in the classroom.

## Reportable Conduct

The Code prohibits staff from developing sexual or other non-professional relationships with students, however it is ambiguous about whether it applies only to employees and students in the same school, or to an employee and student in the NSW Government school system irrespective of location.

Section 22.8 of the Code reminds employees of "*the law prohibiting sexual relations between a teacher and their student under the age of 18 years*", however this law only applies to teachers and students in the same school.

### Recommendation

Amend the Code to make explicit that employees not engage in intimate or sexual relationships with any student, irrespective of their location or school setting.

## Grooming

The Discussion Paper notes that current grooming laws only apply to victims under the age of 16, and the Discussion Paper suggests amending the Code to ensure that it "*highlights special care offences and grooming offences and clearly identifies that conduct of this nature against any student under 17 years of age is sexual misconduct.*" This would still exclude 17-year-old and even 18-year-old students, despite the fact they may be considered to have reached the age of majority.

Sections 22.6 and 22.7 of the Code lists behaviour which would compromise or breach professional relationship boundaries, although they focus on a limited range of behaviour such as using sexual innuendo, having intimately personal conversations or giving students gift of a personal nature.

Section 8 and Annexure 1 of *Professional Boundaries: Guidelines for Tasmanian Teachers* outlines behaviours that could compromise or breach professional relationship boundaries, or be early indicators of such behaviour, which may be a model for an amended Code of Conduct in NSW.

### **Recommendations**

1. The Code should highlight that special care and grooming offences conducted against any student, regardless of age, is considered sexual misconduct.
2. The Code could be expanded somewhat to highlight other inappropriate behaviour, such as:
  - a. Engaging in a role along the lines of ‘friend’ or ‘personal counsellor’ (unless there is a legitimate role designated).
  - b. Organising meetings with a student alone outside school without a valid professional context and appropriate school/parent permissions.
  - c. Initiating or permitting inappropriate physical contact by or on a student.
3. The Code could also outline patterns of behaviour which may constitute early warning signs of grooming, such as:
  - a. Preferential treatment for no valid educational purpose (e.g. by spending excessive extra time with a student, buying the student lunch or other items).
  - b. Focussing on an emotionally vulnerable student.
  - c. Excessively flattering remarks on a student’s appearance.
  - d. Getting involved in a student’s home life, for example by gaining the trust of the student’s family and becoming involved in the life of the family.

### **Imbalance of Power**

P&C Federation would agree that the NSW guidance material lacks clarity when referring to the imbalance of power between a teacher and a student. In our experience there is also a significant issue with the imbalance of power between staff which can impact on the duty of care of students, especially if a more senior staff member uses the imbalance to silence another employee from reporting improper behaviour or the more senior member uses their position to coerce others to participate in inappropriate behaviour.

### **Recommendations**

1. That the Code explicitly mentions the inherent power imbalances between staff (not just teachers) and students, as this underpins much of content about reportable conduct and duty of care.
2. The Code should also make clear that non-staff adults at schools, such as volunteers or contractors, are expected to act in accordance with the Code.

### **Intimate relationships with former students**

The matter of intimate relationships between staff and former students is a fraught one, although not one in P&C Federation’s remit. We would say that there is a genuine risk that such relationships may

result from conduct of a staff member while the former student was at school (i.e. while a student is at school, a staff member uses their position to foster a future relationship with that student once the student leaves school).

### **Recommendations**

1. Strengthen the Code's guidance on grooming behaviour, as per our recommendations in the previous section.
2. Adopt the advice of the Teachers Registration Board of Tasmania that *"Teachers should be wary of entering such a relationship with any young adult who was formerly a student of theirs, particularly in the early years after the cessation of the teacher-student relationship."*

## **Lawful Workplace Directions**

The 'Fair Warning, Fair Action' (FWFA) process is substantially more elaborate than that required in other workplaces. P&C Federation would agree that the requirement to give three directions by a Principal before any further action can be taken is cumbersome and is likely to have a prolonged impact on students as a result of the potential length of the process. It is often the case that while trying to balance the managers' need to be able to deal with poor conduct in the workforce and the employees right to fairness, students are often the losers.

FWFA could be retired and the Code could be revised to:

- Explicitly state the Department's expectation that employees comply with all reasonable and lawful directions.
- Incorporate an employee's right to seek a review of a direction.
- Outline a fair process for issuing directions.
- Provide clarity around the authority of workplace managers to issue directions and refer related breaches to the Professional and Ethical Standards Directorate (PES) for possible disciplinary action.
- Provide a pathway for the immediate consideration of a breach of direction for investigation.

### **Recommendations**

1. Abolish the FWFA.
2. Make sure that any policy and related documents:
  - Clearly communicate the Department expectations to employees.
  - Explain the legal right of an employer to issue a lawful direction and the legal obligation of an employee to follow it.
  - Clearly explain the employees' right to a review.
3. Develop a fair process that allows for fast consideration of breaches of direction, minimising the possibility of an escalation in behaviour and providing a level of impartiality for both parties.

## Bullying and Harassment

In the experience of P&C Federation and parents in general, bullying still occurs on a regular basis within schools. The behaviours reported to us include:

- Teacher to Student Bullying and Harassment
  - Singling out a child or group of children for repeated punishment.
  - Vilifying students in front of the class.
  - Stalking children in the playground day after day.
  - Continued verbal abuse or yelling.
  - Excessive use of detentions.
  - Taking personal issues out on students.
- Teacher to Teacher Bullying & Harassment
  - Senior staff pressuring junior staff to carry out actions a particular way.
  - Staff harassing other staff by phone, email or social media out of hours.
  - Junior staff harassing school executive members due to a perceived grievance.
  - Staff using physical and/or psychological intimidation to get their own way.

In the case of teacher-student bullying or harassment, the current Code of Conduct and the Discussion Paper make little mention of bullying and harassment as they relate to teachers and students. This is an area of great concern to parents. Despite a process being in place to raise a complaint, it is generally not visible to parents. Many parents are also worried about the possible impact on their child should they complain, and others do not lodge complaints simply because they believe the school will protect the staff or not act on it. Unfortunately, a small minority of parents will use bullying or harassment against school staff to try to get the matter resolved to their satisfaction.

While there is a Staff Complaint Procedure, Staff Complaints Toolkit and Health and Safety bullying resources, we still hear of and experience staff to staff bullying. From interactions with staff over many years the main issues with putting in a complaint is that it is seen by many as a career limiting move or as exacerbating the behaviour. From a management perspective dealing with bullying and harassment is complicated by the ability of staff to go on stress leave and counter claim bullying and harassment from the manager.

Often the appetite for dealing with bullying and harassment is dependent on the amount of work it is likely to take to mediate and attempt resolution. In many cases the work involved and the likely problems that could arise creates a reluctance to engage in dealing with the behaviour. In some cases, the attitude towards bullying and harassment is one of complacency.

We are therefore doubtful that a revised code will have significant impact on bullying or harassment per se. However, by making the definitions clearer and the processes to deal with it more focused and less tolerant of poor behaviour there may be some impact.

## Recommendations

1. Explicitly call out bullying as inappropriate and not tolerated by the Department, specifically bullying by employees towards students.
2. Make it easier for staff and parents to understand what the Department sees as bullying behaviour by providing a clear definition of bullying, including teacher to teacher, manager to teacher and teacher to manager.
3. Make sure there is clear and unambiguous guidance for parents to be able to lodge a complaint, and that this guidance is available and clearly accessible on every school website.
4. Require mandatory action to be taken by workplace managers when bullying or harassment issues are raised.
5. Include workplace managers' legal right to direct and control how work is done, and their responsibility to monitor workflow, and give feedback and manage performance.
6. Provide additional support for all parties engaged in processes aimed at clarifying and addressing bullying.

## Accurate recording and reporting

The accuracy of reporting is critical in any serious investigation. The enforcement of a robust reporting system helps with the collection of evidence and supports the review of incidents, timelines and patterns of behaviour that could confirm breaches of the Code. While a robust reporting system is of significant benefit, the willingness of individuals to participate in coming forward to report incidents is a much more difficult issue to deal with. For the reasons discussed in the bullying and harassment section, many individuals may still be reluctant to become involved in or report incidents for fear of repercussions.

While we do not believe the Code will change this behaviour, P&C Federation still believes that there should be a requirement for employees to be truthful and candid when reporting information.

### Recommendation

That the Code explicitly require employees to be candid and truthful when reporting information.

## Flexible Working

With the advent of the COVID-19 pandemic, there has been a myriad of questions arising about the rights and expectations of employees working from home. Essentially, if you are working from home the expectations on your behaviour are the same as if you were at work.

P&C Federation supports the inclusion in the Code of the responsibilities of employees working flexibly as suggested in the Discussion Paper.

## **Managing Organisational Risk**

In our experience, the Department is poor at understanding and managing perceived or actual conflicts of interest. This is reflected to some degree in the Departments own policies, especially when it comes to the handling of complaints. Departmental employees frequently have a poor understanding of conflict of interest and this is especially problematic for those in positions of authority.

P&C Federation have repeatedly raised issues with potential conflicts of interest arising from line management dealing with issues of complaint against their colleagues. This issue will not go away until the Department offloads complaints to an independent authority.

### **Recommendations**

1. The Code have an explicit guidance around not only actual but perceived conflicts of interest.
2. Mandatory training in identifying and managing actual or perceived conflicts of interest especially for line management.