

Industrial Relations News



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Welcome from the Executive Director

Welcome to the last edition of *Industrial Relations News* for 2016.

Term 4 of the 2016 school year is fast drawing to a close. At this time of the year, it is opportune to consider the employer's duty of care around work functions. This edition of *Industrial Relations News* contains advice on this matter.

Information is also provided on changes to the Working With Children Check (WWCC) and the Occupational Health & Safety (OHS) checklist is attached to assist principals with the start of the 2017 year in relation to OHS requirements.

With summer approaching and the prospect of extreme weather conditions, articles on managing excessive heat and risks associated with mosquito-borne diseases, are particularly relevant and included in this edition.

Finally an update on negotiations for the successor to the *Victorian Catholic Education Multi Enterprise Agreement 2013* [VCEMEA](#) is also provided.

For enquiries regarding any of the topics in this newsletter, please contact the Industrial Relations (IR) Unit on (03) 9267 0431. For any IR matters please email ceoir@cem.edu.au and for any OHS or WorkCover issues please email ohs@cem.edu.au.

Stephen Elder
EXECUTIVE DIRECTOR

Employer's Duty of Care – Work Functions

Festive season functions are a great opportunity to recognise the hard work of staff, celebrate achievements and allow colleagues to get to know each other in a social setting.

However, the combination of various factors including a relaxed atmosphere and the consumption of alcohol can lead to impaired judgement.

A function that is organised, sanctioned and funded by the employer will be considered a work activity, even if it held offsite and/or out of hours. Consequently, employers can be responsible for inappropriate behaviours at work functions. As such, most aspects of the employment relationship will continue to be relevant, including occupational health and safety (OHS), workers compensation, discrimination, bullying and harassment.

In practical terms, this could mean that the employer could be held liable for OHS breaches for failing to provide a safe workplace and meet the appropriate duty of care. Any injuries arising from a function may lead to compensable claims under WorkCover and inappropriate conduct or comments could lead to harassment or discrimination claims.

Employees should also understand that the school's usual standards of expected behaviour apply at the function. In the event that an employee engages in inappropriate conduct, then they may be subject to disciplinary procedures consistent with Clause 13 of the [VCEMEA](#).

Fair Work Commission

The Fair Work Commission (FWC) recently upheld the unfair dismissal claim of a team leader who swore at managers and sexually harassed colleagues on the night of his work Christmas party. The FWC criticised the employer for failing to:

- take responsibility for ensuring Responsible Service of Alcohol (RSA)
- properly communicate expected standards of behaviour
- investigate the inappropriate behaviour with procedural fairness.

See the *Christmas Party Sacking Unfair* article as reported in [Industrial Relations News August 2015 edition](#) regarding a successful unfair dismissal case outlined above.

What can employers do to prepare?

The IR Unit provides the following advice to safeguard against inappropriate staff behaviour at end of year functions:

Before:

- Prior to the function, the employer should review all relevant policies and procedures to ensure they are up-to-date and contain the standards of behavior, responsibilities and expectations of all employees.
- Remind staff individually in writing of their behavioural responsibilities (including those contained in school policies) in advance and pin a reminder to the noticeboard.
- Audit the venue beforehand for possible hazards and cordon off potential risk areas if possible.
- Specify the function's start and finish times in advance and make sure that you stick to these times (in particular the finish time). If there is no advertised end time for a work function and employees continue the celebrations at another venue after the work function, this could potentially be seen as a continuation of the work function.
- Nominate a Designated Appropriate Person(s) (DAP) to address any issues promptly and to bring the function to an end if need be. The DAP(s) should refrain from the consumption of alcohol during the function.
- Specify a dress code for the party such as smart casual. Open-ended footwear should be avoided.

During:

- The focus of the catering should be on the food which should ideally be healthy and prepared and served professionally.

- Alcohol should only be served by the holder of a Responsible Service of Alcohol (RSA) certificate – ideally a professional bartender – with last drinks served at least 30 minutes prior to the end of the function.
- The DAP(s) should maintain sobriety to observe proceedings at the function and intervene in a timely manner where untoward behaviour is likely to occur.
- A clearly intoxicated person is not to be served alcohol or allowed to access it.
- Low alcohol and non-alcoholic beverages including water should be readily available and displayed.
- Food should be refrigerated prior to the function. Buffets should be avoided as they present a particularly high risk of food poisoning.
- Finish the work function at the advertised cessation time. Make attendees aware that all post-function activities are considered to be non-work related.
- Consider providing a minibus or Cabcharge vouchers to staff who are affected by alcohol when departing, or to those who request a Cabcharge.

After:

- Conduct a de-briefing post function to capture any learnings from the DAP(s) and others at the function.
- Follow up any allegations or evidence of employee misconduct that emerge from the function in the same manner as any other complaint that would arise ordinarily.
- Employers should ensure procedural fairness and adherence to Clause 13 of the VCCEMA in the investigation of complaints regarding any alleged inappropriate behaviours.

Please contact the IR Unit on 03 9267 0431 or email ceoir@cem.edu.au with any IR queries and email ohs@cem.edu.au with any OHS or WorkCover issues.

Working With Children Check Changes

The Victorian Government has recently announced changes to the Working With Children Check (WWCC) application process that will come into effect on 5 December 2016.

New proof of identity requirements for all Check applicants

The existing 100 point system will be replaced with the introduction of electronic identity verification and new Proof Of Identity (POI) documents. The list of acceptable POI documents will expand, adding many commonly held cards and documents. POI documents will be classified as either primary or secondary.

Secure electronic verification interstate applicants

Victorian applicants will have the option of securely verifying their identity online using two primary documents. Then only one acceptable photo identification document will need to be presented at a participating Australia Post outlet to finalise the application. If an applicant is unable to have their identification verified electronically, or they choose not to, in-person verification at a participating Australia Post will still be possible. In this case, applicants will need to present multiple POI documents at the counter to finalise the application.

Victorian applicants will no longer need to supply their own photo. Australia Post will provide a digital photo free of charge.

Interstate applicants

The identity verification process for interstate applicants does not change with applicants needing to present POI documents.

Further details

Full details regarding the forthcoming WWCC changes including a list of POI primary and secondary documents are on the [What's new](#) page of the Working With Children Check website at www.workingwithchildren.vic.gov.au/home.

Child Safety Reminder

With the introduction of the Child Safety Standards, schools are now required to be compliant with [Ministerial Order No. 870](#) on Child Safe Standards.

[Ministerial Order No. 870](#) sets out the minimum requirements for schools in relation to child safety. Child Safe Standard No. 4 and clause 10 of [Ministerial Order No. 870](#) relate to staff screening, selection, supervision, training and other human resources practices that reduce the risk of child abuse by new and existing personnel.

The IR Unit has prepared a number of resources to assist schools in meeting these minimum requirements. The resources include the [Guidelines on the Engagement of Volunteers in Catholic Schools](#).

These Guidelines provide a step-by-step guide to assist principals and employers with the process of selecting and engaging volunteers within schools.

Recommended approach for existing volunteers

The [Ministerial Order No. 870](#) makes a distinction between the legislative requirements in relation to new and existing volunteers. An existing volunteer is one who has volunteered at the school in the previous 12 months.

In order to comply with the Child Safe Standards and ensure child safety, it is recommended that principals:

- Ensure there is a satisfactory [description of the role](#) in place for each existing volunteer position. *Feedback obtained from school leaders is that some network groups are starting to work together on developing role descriptions for volunteer roles that are common between schools.*
- Request that the volunteer complete the [volunteer application form](#) for school records.
- Ensure that the volunteer has a Working with Children Check (WWCC).
- Ensure the volunteer has passed a Police Check (if relevant).
- Meet with the volunteer for a general discussion about child safety. It is recommended that schools hold Volunteer Child Safety information

sessions with groups of volunteers which will provide the school with the opportunity to address its existing volunteers in a group setting environment. A group information session is recommended as an adequate way to ensure that current volunteers are aware of the Child Safe Standards and the schools Child Safety Policy. This session will also give the volunteers an opportunity to ask any questions they may have regarding the school's Child Safety Standards.

- Explain to whom the volunteer should report child safety concerns to.
- Provide the volunteer with a copy of the school's child-safety policy, code of conduct and the *CECV Commitment Statement to Child Safety*.

Schools are not required to perform reference checks on existing volunteers.

The Industrial Relations Unit has developed a [template](#) document to support schools in meeting these requirements. This communication document informs existing volunteers of the school's commitment to child safety and of the requirements of the Child Safe Standards in reference to Volunteers.

Further information, template letters and other resources on Child Safety are available from the [CECV website](#) under *Industrial Relations / Child Safety*.

Principal Checklist Reminder

The [Principal's End of Year Checklist](#) identifying the key requirements of the *Victorian Catholic Education Multi Enterprise Agreement 2013 (VCEMEA)* has been provided to schools to assist principals with their end of school year and start of school year obligations.

Information on salaries and allowances for the 2017 school year can be found in [Implementation Guide Part 3C](#) – Salary and Allowance (2017 school year).

Further information can be found on the [CECV website](#) at www.cecv.catholic.edu.au under *Industrial Relations / Communications / Implementation Guides*.

VCEMEA Negotiations Update

Bargaining for the next enterprise agreement to replace the *Victorian Catholic Education Multi Enterprise Agreement 2013* [VCEMEA](#) is continuing since its commencement in Term 3, 2016.

During October and November 2016, a further nine meetings have been held, following five meetings that occurred during Term 3.

The CECV is continuing to monitor the progress of negotiations occurring between the Department of Education and Training (DET) and the Australian Education Union (AEU). These negotiations are ongoing, and the DET and AEU are yet to conclude negotiations for a new enterprise agreement.

Information on Enterprise Bargaining can be found in the [Frequently Asked Questions](#) on the [CECV website](#) under *Industrial Relations / Enterprise Bargaining*.

Fixed Term Employment Cessation Date

Principals are reminded that fixed term employment contracts for the 2016 school year should end on **29 January 2017**. This date corresponds with the end of the Term 4 Christmas and New Year break and represents the end of the 2016 school year.

Fixed term contracts should not cease on 20 December 2016 (the gazetted end date of Term 4) or earlier. This may create the perception that the period of engagement for a fixed term employment contract is set to avoid the payment of entitlements (such as school holiday pay and personal leave portability) which would otherwise be payable and accrue to an ongoing employee.

Fixed term contracts that cease on 20 December 2016 or earlier should be varied to end on 29 January 2017 and any necessary adjustments made to school holiday pay.

Policy Training for Next Year

With the 2016 school year fast drawing to a close, it is timely to plan your school policy training for 2017. To this end, it is important to check whether your school policies are up-to-date and effectively implemented.

Inductions and 'refresher' training

The induction of new employees, requires schools to continually provide policy and procedure documents, along with training based on this material. Schools should also provide 'refresher' training to existing employees on a regular basis, especially if there has been a recent introduction of new school policies.

The following areas of policy for which training should be provided include:

- Child Safety
- Anti-Bullying
- Anti-Discrimination
- Social Media
- Occupational Health and Safety.

Template Policies

The IR Unit have template policies for use by schools which outline the requirements and obligations of employees in relation to the following industrial relations issues:

- [Child Safety](#) (Further information and other resources on Child Safety are available from the [CECV website](#) under *Industrial Relations / Child Safety*).
- [Anti-Bullying](#) (to be used in conjunction with the [Anti-Bullying Guide](#) and [Anti-Bullying Checklist](#)).
- [Workplace Equal Opportunity](#) includes guidance notes regarding Anti-Discrimination.
- [Social Media](#) (includes guidance notes for implementation, schools should also refer to the CECV video [Responsible Use of Social Media for School Staff](#)).
- [OHS Policy Template](#) includes guidance notes.

It is recommended that schools review existing policies in these areas.

The template policies and associated guidance materials are available on the [CECV website](#) under *Industrial Relations / Policies and Guidelines*.

OHS Policy Briefing

Schools are responsible for providing and maintaining a working environment that is safe and without risks to individual health and welfare. This responsibility extends to all employees, students, parents, contractors and other visitors to the school site.

Creating a safe workplace can be achieved through the implementation of risk prevention and reduction strategies that are integrated into all school activities. A consultative, cooperative approach between employees and management on OHS issues is encouraged.

Training should be conducted on OHS policy for all staff when it is introduced. New staff should receive training on this policy as part of their induction. It is advisable that all staff receive regular refresher training on the policy (recommended annually). It is also important that the School ensures that contractors or volunteers who work at the School are made aware of the policy.

The School should ensure that a copy of the OHS policy is provided to all new staff during their induction and that copies are readily available to all staff and contractors, such as via the School intranet, Google Apps for Education folder and displayed on the OHS Noticeboard in the staffroom.

Further information:

WorkSafe has a useful handbook for workplaces on their website: [OHS in Schools – A practical guide for school leaders](#) at www.worksafe.vic.gov.au.

[OHS Policy Template](#) for schools to use can be found on the [CECV website](#) under *OHS & WorkCover / Resources / OHS Management for School Leaders*.

Managing Excessive Heat

As summer approaches, it is important to manage the risks posed by excessive heat.

Some suggested strategies for managing excessive heat conditions:

- Ensure staff know how to recognise the symptoms of heat stress including headache, fainting, confusion, nausea and vomiting.
- Ensure first aid officers are available, with processes in place to manage symptoms of heat stress for students and staff.
- Ensure monitoring of students to maintain adequate hydration especially those with special needs.
- Encourage students and staff to stay hydrated by providing regular drink breaks, with water being the most suitable fluid to drink.
- Outdoor or sporting activities may need to be modified or postponed, as required.

OHS guidelines can be found on the [CECV website](#) under *OHS & WorkCover / A – Z / Excessive Heat*.

OHS Checklist

To assist in preparing for 2017, attached to this newsletter is a useful checklist to deal with Occupational Health and Safety (OHS) issues and ensure your school is compliant under OHS Legislation. Principals are encouraged to use this checklist as an aid in ensuring they are OHS ready for the 2017 school year.

Health Hazards from Mosquitoes

Recent heavy rainfall across the state has led to ideal breeding conditions for mosquitoes. Current and predicted weather conditions, particularly in the northern part of the state, suggest that high numbers of mosquitoes will continue well into the summer months.

Dusk and dawn is when most mosquitoes are more active but some will also bite during the day

Schools are advised of important protection measures to prevent spread of diseases carried by mosquitoes. Most mosquitoes found in Victoria do not carry diseases, but are more of a nuisance.

There are simple steps students and staff can do to help protect from mosquito-borne diseases:

- Wear long, loose-fitting clothes if mosquitoes are around.
- Cover up as much as possible.
- Use an effective mosquito repellent on all exposed skin.
- Prevent mosquito breeding around your own home.
- Prevent mosquitoes from getting inside by using fly screens on windows and doors.
- Use mosquito coils or insecticide candles in small, outdoor areas (especially on school camp).

How to control mosquitoes around the school:

- Remove any stagnant water around the school especially after school holidays so mosquitoes cannot breed.
- Ensure any rain water tanks or water storage devices are sealed.
- Repair any broken windows or flyscreen to reduce entry points.
- Keep doors and windows closed where possible
- Clean guttering and storm water pits.

- Undertake routine maintenance.
- Use a long-acting surface spray in areas where mosquitoes like to rest.
- Use ceiling or floor fans to reduce the chance of bites.

For more information resources can be found on the Victorian Government's [Better Health website](#)

Return to Work Templates

Under workers compensation legislation, employers are required to provide return to work information to staff members.

The information required is the [Return to Work Information Template](#) and [Steps to Resolving RTW issues](#).

It is recommended that you provide a copy to any staff claiming workers compensation. Place a copy where staff can access them such as on OHS noticeboards or the school intranet. For further assistance on this or any worker compensation matter, please contact the Industrial Relations Unit on (03) 9267 0431 or via email ohs@cem.edu.au.

Summary of Communications

Friday 18 November, Workcover [Claims Lodgement](#)

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