



## Protocol: Reporting Inappropriate Conduct to the NSW Office of the Children's Guardian

*This protocol sets out the requirements of the Children's Guardian Act 2019 (NSW) in relation to dealing with Reportable Allegations and convictions considered to be Reportable Convictions relating to Clergy, Religious Appointees, Employees, Volunteers, contractors and any other persons who hold or are required to hold a WWCC clearance for the purpose of engagement with the Diocese. It also outlines the Diocese's expectations of Clergy, Religious Appointees, Employees, Volunteers and contractors.*

### Key obligation

Under the *Children's Guardian Act 2019 (NSW)*, the "head of relevant entity" is required to report any Reportable Allegations or convictions considered to be Reportable Convictions of employees (broadly defined to include Employees, Volunteers, contractors, Clergy and Religious Appointees of a Parish or Agency, or any other persons who hold or are required to hold a WWCC clearance for the purpose of engagement with the Diocese) to the NSW Office of the Children's Guardian.

### 1 Application of the Children's Guardian Act

- 1.1 Many non-government agencies that work with Children in NSW must comply with obligations to report to the NSW Office of the Children's Guardian certain types of conduct by Employees and certain convictions affecting Employees.

### 2 Who is the "head of relevant entity"?

- 2.1 The "head of relevant entity" is responsible for complying with the Reportable Conduct Scheme set out in the *Children's Guardian Act 2019 (NSW)*.
- 2.2 In the Diocesan context, the Diocese is a "relevant entity" to which the Reportable Conduct Scheme in Part 4 of the *Children's Guardian Act 2019 (NSW)* applies. The Bishop is the "head of relevant entity" for all Parishes and Agencies in the Diocese. The Bishop has delegated his responsibilities under Part 4 of the *Children's Guardian Act 2019 (NSW)* to the Vicar General in respect of the Parishes and Agencies of the Diocese other than Catholic Schools and CatholicCare.
- 2.3 In practice, the Safeguarding Office carries out the obligations of the Bishop under the *Children's Guardian Act 2019 (NSW)* relating to Parishes and Agencies other than Catholic Schools and CatholicCare and deals directly with the NSW Office of the Children's Guardian on behalf of the Vicar General and the Bishop.
- 2.4 Catholic Schools is also a "relevant entity" to which the Reportable Conduct Scheme in Part 4 of the *Children's Guardian Act 2019 (NSW)* applies. The Executive Director of Catholic Schools has responsibility for Catholic Schools' compliance with the Reportable Conduct Scheme.

CatholicCare is also a "relevant entity" to which the Reportable Conduct Scheme in Part 4 of the *Children's Guardian Act 2019 (NSW)* applies. The CEO of CatholicCare is responsible for CatholicCare's compliance with the Reportable Conduct Scheme.

### **3 Who is an Employee for purposes of the *Children's Guardian Act 2019* (NSW)?**

- 3.1 For the purpose of the Reportable Conduct Scheme, an "Employee" of the Diocese includes any individual who holds, or is required by the religious body to hold, a WWCC Clearance.
- 3.2 This is a very broad definition that covers many persons who would not traditionally be considered Employees, such as contractors, Volunteers, and Clergy and Religious Appointees. In addition, it covers persons who do not have a role that has any face-to-face or physical contact with Children.
- 3.3 The breadth of this definition means that the conduct of persons such as Parish Priests (not traditional Employees) and a Parish financial administrator (not in a Child-related role) may be reportable to the NSW Office of the Children's Guardian.

### **4 Obligation to report**

- 4.1 The Safeguarding Office must notify the Children's Guardian of any Reportable Allegation or conviction considered to be a Reportable Conviction involving an Employee of the Diocese of which it or the Vicar General becomes aware:
  - a) A **Reportable Allegation** means an allegation that an Employee has engaged in conduct that may be Reportable Conduct, whether or not the conduct is alleged to have occurred in the course of the Employee's employment within the Diocese.

**Note:** that the threshold for reporting a Reportable Allegation is lower than what is required to make a finding of Reportable Conduct. If an allegation is, on its face, a Reportable Allegation, it must be reported.
  - b) A **Reportable Conviction** means a conviction in NSW or elsewhere, of an offence involving **Reportable Conduct**. It includes a finding of guilt even if the court did not proceed to a conviction.
- 4.2 "**Reportable Conduct**" includes the following conduct, whether or not a criminal proceeding in relation to the conduct has been commenced or concluded:
  - a) a sexual offence;
  - b) sexual misconduct;
  - c) ill-treatment of a Child;
  - d) neglect of a Child;
  - e) as assault against a Child;
  - f) an offence under s 43B of the *Crimes Act 1900* (NSW) for failing to reduce or remove the risk of a Child becoming a victim of abuse;
  - g) any offence under s 316A of the *Crimes Act 1900* (NSW) for concealing a Child Abuse Offence; or
  - h) behaviour that causes significant emotional or psychological harm to a Child.

## 5 Reportable Allegations

### 5.1 Current Allegations

All Reportable Allegations must be reported to the Children's Guardian as soon as practicable, and no later than 7 business days after the Vicar General becomes aware of the matter.

### 5.2 Historical allegations

- a) Conduct that would constitute a Reportable Allegation or a conviction that may be a Reportable Conviction, which occurred prior to the commencement of the *Children's Guardian Act 2019* (NSW), is captured by the *Children's Guardian Act 2019* (NSW).
- b) On that basis, historical Reportable Conduct must also be reported to the Children's Guardian in accordance with this Protocol.

## 6 Reportable Convictions

- 6.1 All convictions that are considered to be Reportable Convictions must be reported to the NSW Office of the Children's Guardian as soon as practicable and no later than 7 business days after the Vicar General becomes aware of the matter.
- 6.2 From time-to-time, the Safeguarding Office or the Vicar General may become aware that an Employee has been convicted of a Child-related offence. Depending on the nature of the conviction and the status and role of the Employee, such a conviction may be a Reportable Conviction for the purposes of the *Children's Guardian Act 2019* (NSW).
- 6.3 In most cases where the Safeguarding Office or the Vicar General become aware of a Reportable Conviction, it will be because of contemporaneous events and there will be little if any difficulty in identifying whether or not the conviction should be reported to the NSW Office of the Children's Guardian.
- 6.4 Where the Safeguarding Office or the Vicar General receive information about a conviction that is vague or incomplete (for example where there is a rumour or other unsubstantiated report of a historical conviction), it may be difficult to determine whether or not the conviction is a Reportable Conviction. Options include seeking clarification from the relevant Employee or taking other steps to verify the truth or otherwise of the information. In any case, if there is a possibility that the conviction is a Reportable Conviction, the information must be reported to the NSW Office of the Children's Guardian.

## 7 Exemptions

- 7.1 Reportable Conduct in the context of the Diocese does **not** extend to:
  - a) conduct that is reasonable for the purposes of the discipline, management or care of Children, having regard to the age, maturity, health or other characteristics of the Children and to any relevant codes of conduct or professional standards; and

- b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures.

## **8 Diocese's Policy and Procedure**

### **8.1 Notification to Parish Priest or Agency Head**

- a) The Diocese requires that all Clergy, Religious Appointees, Employees and Volunteers must immediately report all allegations or complaints involving any inappropriate or unsafe conduct by another contractor, Clergy, Religious Appointee, Employee, Volunteer or person who holds or is required to hold a WWCC clearance, towards or in the presence of Children to their Parish Priest or Agency Head (whichever is relevant). The Parish Priest or Agency Head must then immediately notify the Safeguarding Office (see section 8.2 below).
- b) If that conduct constitutes a Serious Indictable Offence or Child Abuse Offence, the relevant member of Clergy, Religious Appointee, Employee or, Volunteer, member of the Clergy or Religious Appointee has a personal obligation to report to the NSW Police in accordance with the *Protocol: Reporting serious indictable offences to the NSW Police*. In practice, the Safeguarding Office reports to the NSW Police and provides a copy of the report to the Parish Priest or Agency Head.
- c) No Employee, Volunteer, contractor, member of the Clergy, or Religious Appointee, should attempt to undertake their own investigation.

### **8.2 Notification to the Safeguarding Office**

- a) Upon notification by an Employee, Volunteer, member of Clergy, Religious Appointee of an allegation or complaint, the Parish Priest or Agency Head (whichever is relevant) must report the matter to the Safeguarding Office, regardless of whether:
  - i) there has been a formal complaint or allegation from the alleged victim or their parent or guardian; or
  - ii) the relevant allegation has been made anonymously or confidentially.
- b) A non-exhaustive list of matters that must be reported by Parish Priests and Agency Heads includes:
  - i) allegations of inappropriate or unsafe conduct towards or in the presence of Children relating to members of Clergy or Religious Appointees;
  - ii) allegations of inappropriate or unsafe conduct towards or in the presence of Children relating to themselves;
  - iii) allegations of inappropriate or unsafe conduct towards or in the presence of Children relating to Employees, Volunteers or contractors of the Parish or Agency;
  - iv) historical allegations involving any of the above categories;
  - v) allegations or complaints involving any of the above categories where the Child concerned may have "consented" to the alleged conduct; and

- vi) allegations or complaints involving any of the above categories where there may be insufficient detail about either the Respondent or alleged victim to identify them.
- c) If the Parish Priest or Agency Head has concerns about whether the relevant conduct is reportable, they should contact the Safeguarding Office.
- d) No Parish Priest or Agency Head should attempt to undertake their own investigation.
- e) For further details, refer to *Protocol: Managing Safeguarding Complaints*.

### **8.3 Notification to the NSW Office of the Children's Guardian**

- a) The Safeguarding Office must then determine whether the matter is required to be reported to the NSW Office of the Children's Guardian. In making this determination, the Safeguarding Office may seek advice from the Office of the Children's Guardian.
- b) If the matter is reportable to the NSW Office of the Children's Guardian, the Safeguarding Office must notify the NSW Office of the Children's Guardian of the matter as soon as practicable and no later than 7 business days after it or the Vicar General become aware of the matter. A notification to the NSW Office of the Children's Guardian must be made online, using the 7-Day Notification Form on the NSW Office of the Children's Guardian website. The notification must include (but not be limited to) the following information:
  - (i) that the Safeguarding Office has received information about a Reportable Allegation or a conviction that may be a Reportable Conviction;
  - (ii) details of the conduct that is the subject of the report;
  - (iii) the name of the Employee and their date of birth and WWCC number;
  - (iv) the contact details for the 'relevant entity' being the Diocese and the 'head of relevant entity' being the Bishop. Given that the Safeguarding Office has delegated authority from the Bishop to report to the Children's Guardian, the notification should also include contact details for the Safeguarding Office;
  - (v) whether any notification has been made to Police or to the Department of Communities and Justice and any report reference number;
  - (vi) the nature of any initial Risk Assessment and/or risk management action being undertaken by the Safeguarding Office, Diocese, Parish or Agency;
  - (vii) the names of any other relevant entities with which the Employee is employed or engaged; and
  - (viii) any other information prescribed by the Children's Guardian.

### **8.4 If the Safeguarding Office decides that the matter is not reportable to the NSW Office of the Children's Guardian, or the NSW Office of the Children's Guardian**

indicates the matter does not fall within its jurisdiction, the Safeguarding Office will in consultation with the Vicar General and exercise its discretion to determine whether the steps in 8.5 and 8.6 below should still be completed.

### **8.5 Determine immediate actions in relation to the Respondent**

If the Safeguarding Office receives clearance from the NSW Police to engage with the Respondent, the Safeguarding Office will identify and assess the risks posed by the Respondent in their position or duties to the safety and wellbeing of a Child or Children under the care of the Diocese.

Once the potential risks have been identified, the Safeguarding Office will discuss risk mitigation with the Vicar General. The Safeguarding Office may, if necessary, consult with the Executive Director, Administration & Finance, Chancellor or General Counsel (as appropriate) to determine the appropriate action to mitigate those risks.

Factors to be considered in making this decision include, but are not limited to, the:

- nature and seriousness of the Safeguarding Complaint;
- vulnerability of the Children that the Respondent would be in contact with in their position or duties;
- nature of the Respondent position (e.g. level of contact with Children);
- level of supervision available for the Respondent;
- availability of support for, and supervision/monitoring of, the Respondent on a day-to-day basis if their duties are unchanged; and
- Respondent's disciplinary history.

In making a determination as to the appropriate action to mitigate risks, the Safeguarding Office must take into consideration both the needs of the Child (and/or the Complainant) and the Respondent.

Action to address risks may involve:

- a) asking the Respondent to stand aside from his or her position or duties where they may have contact with a Child or Children; or
- b) suspending the Respondent from their position or altering duties so that they are not permitted to have contact with Children, pending the outcome of a more thorough investigation.

Depending on the circumstances, the Vicar General may exercise his discretion not to stand the Respondent aside. The Vicar General may, if appropriate, consult with the Executive Director, Administration & Finance or the Chancellor and the General Counsel (as appropriate).

**Note:** A decision to stand aside a Respondent on the basis of a Risk Assessment should not influence the investigation, particularly the findings of an investigation. It merely reflects the seriousness of allegations or risks that have been identified pending a determination of facts by the investigator. Until the investigation is completed and a finding is made, any action, such as moving an employee to alternate duties, is not considered to be an indication that the alleged conduct by the Employee did occur.

Under Canon Law, a member of Clergy or Religious Appointee as a precautionary measure be asked to stand aside in order to prevent scandal, to protect the freedom of witnesses, and safeguard the course of justice (Canon 1722). The Vicar General will consider any imposition or prohibition regarding the Respondent's place of residency during the course of the investigation.

Before taking steps in relation to any Respondent (such as altering duties or standing the person aside from their position pending investigation of the Safeguarding Complaint), the Respondent must be notified of the Safeguarding Complaint (police approval permitting).

### **8.6 Internal investigation pursuant to the *Children's Guardian Act 2019 (NSW)***

- a) The 'head of relevant entity' must, as soon as practicable after receiving information about a Reportable Allegation or a conviction considered to be a Reportable Conviction, investigate or arrange for an appropriately qualified external investigator to investigate the matter. The Safeguarding Office will appoint an investigator to investigate the matter.
- b) The investigator appointed by the Safeguarding Office, must make a finding that the conduct in question is sustained, not sustained or not reportable conduct based, on the balance of probabilities. The Safeguarding Office or investigator may take into account:
  - (i) the nature of the reportable allegation and any defence; and
  - (ii) the gravity of the matters alleged.
- c) The investigator must also consider whether the conduct in question is in breach of established standards within the Diocese, and may have regard to:
  - (i) professional standards;
  - (ii) codes of conduct, including any professional or ethical codes; and/or
  - (iii) accepted community standards.

During an investigation or a determination, a Respondent subject of a reportable allegation or a conviction considered to be a reportable conviction may give a written submission concerning the allegation or conviction for the purpose of determining what, if any, disciplinary or other action should be taken in relation the Respondent.

### **8.7 Investigation by the NSW Police**

- a) If the matter has also been reported to the NSW Police (see section 8.1) and the police have advised that any concurrent investigation by the Diocese is likely to prejudice the police investigation or a court proceeding, the Safeguarding Office must advise the Children's Guardian:
  - (i) that the Diocese will not conduct its investigation pending the conclusion of the police investigation; and
  - (ii) of the steps it is taking to manage risks in the interim
- b) If any internal investigation by the Safeguarding Office is suspended as a result of there being a concurrent police investigation into the matter, the Diocese will be exempt from providing an interim report to the Children's

Guardian on its investigation, for a period of 30 days after the suspension has ended.

### 8.8 Outcome and Reporting

- a) Within 30 days of receipt of the information about Reportable Conduct, the Safeguarding Office must:
  - (i) provide the Children's Guardian with a report on its investigation and outcome (**Entity Report**); or
  - (ii) provide the Children's Guardian with an interim report on its investigation, outlining the further action it intends to take; or
  - (iii) a reason for not providing a final Entity Report and an estimated time frame within which the report will be provided.
- b) The Safeguarding Office must include the following in an Entity Report:
  - (i) Information about the facts and circumstances of a Reportable Allegation and the findings that the investigator made about the Reportable Allegation, including whether it is considered to be Reportable Conduct, the evidence considered, and the basis on which a finding was made.
  - (ii) Information about the conviction considered to be a Reportable Conviction, including whether or not the investigator has determined that the conviction is a Reportable Conviction.
  - (iii) A copy of any written submissions provided by the Respondent.
  - (iv) Information about what action has been or will be taken in respect of the Respondent, and also in relation to any changes to systems or policies.
  - (v) Copies of any documents/evidence relevant to the report about the conduct and the investigation into it.
- c) The Respondent may, during the investigation or determination, provide a written submission to the investigator, in relation to the conduct in question in order to determine what disciplinary action should be taken against them (if any).

### 8.9 Actioning the Outcome

- a) While the investigator will make a finding of fact (i.e. did the conduct occur on the balance of probabilities), the person making decisions as a result of the investigator's report and findings is the Vicar General as delegate of the Bishop, or in some cases, the Bishop.
- b) For further details, refer to *Protocol: Managing Safeguarding Complaints*.

### 8.10 Requests from the NSW Office of the Children's Guardian

- a) The Safeguarding Office must comply with any requests for information from the NSW Office of the Children's Guardian relating to procedures in place at the Parishes and Agencies to prevent, respond to, and handle Reportable Conduct, as this is a requirement under the *Children's Guardian Act 2019* (NSW).



- b) If the Safeguarding Office is concerned about any request for information, it should seek advice from the General Counsel.

### **Related documents**

1. Guidance Document: What Conduct Must be Reported to the NSW Office of the Children's Guardian?
2. Fact Sheet: What Conduct Must be Reported to the NSW Office of the Children's Guardian?
3. Flowchart: Reporting Safeguarding Complaints
4. Protocol: Managing Safeguarding Complaints