



## Protocol: Reporting Reportable Crimes to the NSW Police

*This protocol sets out the requirements of the Crimes Act 1900 (NSW) in relation to reporting Reportable Crimes to the NSW Police. It also outlines the Diocese expectations of Clergy, Religious Appointees, Employees, Volunteers and contractors in relation to Reportable Crimes.*

### Key obligations

Under the *Crimes Act 1900* (NSW), it is an offence to conceal a Child Abuse Offence or a Serious Indictable Offence.

This protocol refers to those offences as Reportable Crimes. Reportable Crimes are required to be reported to NSW Police. Persons who fail to report these crimes face imprisonment.

### 1 What offences constitute Reportable Crimes?

- 1.1 A Child Abuse Offence includes a range of Serious Indictable Offences and other offences set out in the *Crimes Act 1900* (NSW), committed against a Child.
- 1.2 A Serious Indictable Offence is defined as a crime that is punishable by imprisonment for a period of 5 years or more.
- 1.3 There are a vast number of Child Abuse Offences and Serious Indictable Offences. A list of those crimes can be found in the **Table of Reportable Crimes**. Broadly speaking, Reportable Crimes that present at the Parishes and Agencies could include:
  - a) Physical Assault of a Child or Adult;
  - b) Sexual or Indecent Assault of a Child or Adult;
  - c) committing or engaging in a Sexual Act or Sexual Touching against or with a Child;
  - d) Grooming a Child for unlawful Sexual Activity;
  - e) the possession, dissemination or production of Child Abuse Material, which includes Child pornography and any material depicting a Child as a victim or torture or cruelty;
  - f) the recording or sharing of Intimate Images of a Child;
  - g) the recording or sharing of intimate images of an Adult without consent; and
  - h) stealing.

### 2 Obligation to report a Child Abuse Offence

- 2.1 Section 316A of the *Crimes Act 1900* (NSW) specifies that if an adult:
  - a) knows, believes or reasonably ought to know, that a Child Abuse Offence has been committed; **and**

- b) has information which might be of material assistance in apprehending, prosecuting or convicting the alleged perpetrator; **and**
- c) has no reasonable excuse not to bring that material to the attention of NSW Police or another appropriate authority,

that adult must bring that material to the attention of a member of NSW Police or another appropriate authority, as soon as practicable.

- 2.2 An adult who fails to report a Child Abuse Offence, risks being found guilty of the offence of concealment under section 316A of the *Crimes Act 1900* (NSW), and will face imprisonment.
- 2.3 This means that all Clergy, Religious Appointees, Employees, Volunteers and contractors over the age or 18 years, are under a **personal legal obligation** to report a suspected Child Abuse Offence to the NSW Police, whether or not the Suspected Person is affiliated with the Church.

### **Exemption**

- 2.4 An adult will have a reasonable excuse for failing to report information that they have about a Child Abuse Offence to NSW Police, if:
  - (a) they believe on reasonable grounds that the information is already known to NSW Police;
  - (b) they have reported the information to DCJ as part of a report that a Child is at Risk of Significant Harm, or they believe on reasonable grounds that another person has done so;
  - (c) they have reported the information to the NSW Office of the Children's Guardian as part of a Reportable Conduct or Reportable Allegation notification, or they believe on reasonable grounds that another person has done so;
  - (d) they have reasonable grounds to fear for their safety or any other person's safety (other than the perpetrator) if the information is reported to NSW Police;
  - (e) they obtained the information when they were under 18 years of age; or
  - (f) the alleged victim was an adult at the time that the person became aware of the information and they believe on reasonable grounds, that the alleged victim does not want the information to be reported to NSW Police.
- 2.5 Determining whether there is a reasonable excuse depends upon individual circumstances. In civil law, Clergy are not exempt from reporting allegations disclosed in confession. However, because of the Seal of Confession, it may be that a court would find that Clergy have a 'reasonable excuse' for not reporting allegations if this information is disclosed in confession.

## **3 Obligation to report Serious Indictable Offences**

- 3.1 Section 316 of the *Crimes Act 1900* (NSW) specifies that if a person:
  - a) knows or believes a Reportable Crime has been committed; **and**
  - b) has information which might be of material assistance in apprehending, prosecuting or convicting the alleged perpetrator; **and**
  - c) has no reasonable excuse not to bring that material to the attention of the NSW Police or another appropriate authority,

that person must bring that material to the attention of a member of the NSW Police or another appropriate authority.

- 3.2 A person who fails to report a Serious Indictable Offence risks being found guilty of the offence of concealment under section 316 of the Crimes Act 1900 (NSW), and will face imprisonment.
- 3.3 This means that all Clergy, Religious Appointees, Employees, Volunteers and contractors are under a **personal legal obligation** to report a suspected Serious Indictable Offence to the NSW Police, whether or not the Suspected Person is affiliated with the Church.

### **Exemptions**

- 3.4 A report is not required to be made to NSW Police:
  - a) by a Priest or other Religious Appointee if they learn of the matter during confession; or
  - b) if the person who suspects the offence has been committed has a reasonable excuse not to report the matter; or
  - c) If the information obtained relates to a sexual offence or a domestic violence offence, and the alleged victim was an adult at the time the information was obtained by the person, and the person believes on reasonable grounds that the alleged victim does not wish the information to be reported to police or another appropriate authority.

## **4 Diocese's Policy and procedures**

- 4.1 The Diocese requires that all Clergy, Religious Appointees, Employees, Volunteers and contractors must immediately report all suspected Reportable Crimes to the NSW Police by contacting their Police Area Command (PAC). In practice, the Safeguarding Office assists with reporting to the NSW Police and it will provide a copy of the report made so that the individual has evidence that his or her personal obligation to report has been fulfilled.
- 4.2 If any Clergy, Religious Appointees, Employees, Volunteers and contractors has concerns about whether:
  - a) the suspected offence is a Reportable Crime;
  - b) they have the required knowledge or belief that the offence has been committed;
  - c) the information they have will be of material assistance to the NSW Police; or
  - d) they have a reasonable excuse not to report the information to the NSW Police, they should immediately seek advice from their Parish Priest or Agency Head. If the matter needs to be referred further for advice as to whether it is reportable, it should be referred to the Safeguarding Office.
- 4.3 No Clergy, Religious Appointee, Employee, Volunteer or contractor should attempt to undertake their own investigation before reporting the matter.

### **Related documents**

1. Table of Reportable Crimes
2. Guidance Document: What Constitutes a Reportable Crime?

3. Flowchart: Reporting Inappropriate Conduct
4. Fact Sheet: What is a Reportable Crime?