

## Changes in NSW to the Reportable Conduct Scheme and Mandatory Reporting commencing March 2020 and information about Reportable Crimes obligations

This explanatory note is especially directed to clergy to inform you about important recent legislative changes affecting clergy, agencies and parishes within the Archdiocese of Sydney and our various reporting obligations.

The three attached **Fact Sheets** explain these changes and the new obligations which simplify the child protection system, introduce more accurate definitions of sexual misconduct, extend the reportable conduct scheme and *expand the mandatory reporting obligation to people in religious ministry* and to those providing religious based activities to children (for the purpose of these guidance materials a child is a person aged under 18 years). This note does not replace the Archdiocese's Child Safeguarding Policy.

### **“REPORTABLE CONDUCT”**

#### Reporting Inappropriate Employee Conduct to the Children's Guardian

The Reportable Conduct Scheme is an allegations based scheme that now covers all religious bodies, *including parishes and Church agencies* (previously parishes were only involved in the scheme through their link to a school). The Scheme provides a framework for the Office of the Children's Guardian to oversee how organisations investigate and report on certain conduct identified as reportable allegations and reportable convictions made against people within the organisation that work with children.

- 1) **WHAT KIND OF CONDUCT:** “Reportable Conduct” covers a range of behaviours which include sexual offences, sexual misconduct, ill-treatment of a child, neglect of a child, assault against a child, an offence under section 43B or 316A of the Crimes Act 1900 (Failure to Protect and Failure to Report) and behaviour that causes significant emotional or psychological harm to a child. The reportable conduct may simply be alleged or may already be subject of a criminal conviction.
- 2) **WHOSE CONDUCT:** Anyone engaged by a religious body where that person holds, or is required to hold, a WWCC for the purposes of their work with the religious body. This includes clergy, an individual employee, a volunteer, a contractor or subcontractor and includes conduct that occurs during the person's work for the church, as well as conduct outside of the work place (e.g. at home), and also includes historic matters.
- 3) **WHO MUST REPORT:** Anyone engaged by a religious body (paid or unpaid) is obliged to report what they know or believe to be reportable conduct of colleagues who work (paid or unpaid) with children.
- 4) **WHEN TO REPORT:** The timeframe for reporting has been shortened from 30 days to 7 business days. Therefore, it is important for you to contact the Safeguarding and Ministerial Integrity Office immediately on becoming aware of reportable conduct allegations or convictions.
- 5) **HOW TO REPORT:** Reports will be made to the Safeguarding & Ministerial Integrity Office who will assess the information and where required report to the NSW Office of the Children's Guardian on behalf of the Archbishop who is the “Head of Entity” for all activities in the Archdiocese under civil law. See **Fact Sheet: Reportable Conduct Scheme**

## “MANDATORY REPORTING”

### Reporting a Child at Significant Risk of Harm to Department of Communities and Justice

In NSW mandatory reporting obligations have been extended to people in religious ministry and people providing religious based activities to children. This means that clergy and many agency and parish personnel who work with children are now mandatory reporters. See [Fact Sheet: Mandatory Reporting](#)

- 1) **WHAT KIND OF CONDUCT:** A mandatory reporter must make a report when they have reasonable grounds to suspect that a child or young person is at risk of significant harm. Legislative grounds for intervention cover young people up to 18 years of age, but it is not mandatory to report suspicions of risk of harm in relation to young people aged 16 and 17 years. It is mandatory to report suspicions of risk of harm in relation to children under the age of 16 years.
- 2) **WHO ARE MANDATORY REPORTERS:** In NSW mandatory reporters now include persons who deliver services wholly or partly to children as part of their professional work or other paid employment and those in management positions in organisations that deliver those services. It has now been expanded to include persons in religious ministry or persons providing religious based activities to children in both paid and unpaid child related roles.
- 3) **HOW TO REPORT:** Mandatory reporters are required to report to the Child Protection Helpline as outlined in the Protocol: Reporting a Child who is at Risk of Significant Harm to the Department of Communities and Justice. For support in making a report, contact the Safeguarding and Ministerial Integrity Office.

### REPORTING CRIMES TO THE NSW POLICE:

Note also that in June 2018 the NSW Government introduced reforms to strengthen child sexual abuse laws. See [Fact Sheet: Reporting Crimes to the NSW Police](#)

#### FAILURE TO REPORT OFFENCE:

All adults in NSW, including clergy, are required to report information to the police if they know, believe or reasonably ought to know that a child has been abused. The Safeguarding and Ministerial Integrity Office will assist Archdiocesan personnel to report to the police. Note: In the State of NSW this obligation does not currently apply to information acquired by clergy during the Sacrament of Penance. It does apply to clergy in all other situations.

#### FAILURE TO PROTECT OFFENCE:

An adult, including clergy, working in the Archdiocese of Sydney involved in child-related work will commit an offence if they know another adult working there poses a serious risk of abusing a child and they have the power to reduce or remove the risk and they negligently fail to do so.

#### NOTE THAT DIFFERENT ALLEGATIONS OR CONCERNS MAY NEED TO BE REPORTED IN SEVERAL WAYS

The **Reportable Conduct Scheme** concerns alleged offenders, those who might have harmed a child. Allegations of historical sexual abuse involve reportable conduct if the alleged offender is still alive, holds a WWCC and is engaged in child related work. This Scheme aims to ensure that those engaged in child related activities within institutions do not pose a risk to children.

**Mandatory Reporting** obligations to the Department of Communities and Justice (DCJ) concern a current risk of harm to children and young people. Historical allegations once victims are adults would not involve mandatory reporting unless there is a current risk to other children identified. A

report to the Children’s Guardian may be necessary if the allegation relates to someone currently engaged in public ministry or working for the organisation.

**Reporting to the Police** is required when someone has knowledge, believes or reasonably ought to know, that a child abuse offence or serious indictable offence has been committed.

**There may be situations where reports need to be made to the police, to DCJ and to the Office of the Children’s Guardian.**

**Given these various possibilities, clergy and Church workers are advised to always seek the advice of the Safeguarding and Ministerial Integrity Office.**

## CANONICAL RESPONSIBILITIES OF A PARISH PRIEST

The Archbishop is ‘Head of Entity’ in relation to the Office of the Children’s Guardian and has overarching responsibility in respect of the Reportable Conduct Scheme. Notwithstanding this, the Parish Priest or Administrator has canonical governance obligations in relation to safeguarding and reporting. In the Archdiocese of Sydney these are:

- 1) To confirm with the assistance of the Archdiocesan Office for Safeguarding & Ministerial Integrity the roles in the Parish that are properly child-related, and to ensure that those engaged in those roles have a current and verified WWCC. A WWCC should never be required of those who do not exercise a child-related role proper. **See Fact Sheet: Who needs a Working with Children Check?**
- 2) Ensure there is a current Child-Related Activity Parish Register (or WWCC Register) of all those involved in child-related activity. The Child-Related Activity Parish Register shall contain the following information
  - a. WWCC verification
  - b. WWCC exemptions noted
  - c. Ministry Role
  - d. Safeguarding Induction completed
- 3) Submit a copy of the Child-Related Activity Parish Register to the Office for Safeguarding at the same time as the Visiting Clergy Audit.
- 4) Apprise all those involved in child-related activity in the Parish of their obligations in terms of Mandatory Reporting, Reporting Crimes to the NSW Police and the Reportable Conduct Scheme
- 5) Require all new entries on the Child-Related Activity Parish Register to enrol in the online Safeguarding Induction Training as directed in the Training Policy.
- 6) Notify immediately the Vicar General and the Safeguarding and Ministerial Integrity Office of any allegation of misconduct towards a child by any person involved in a child-related activity.
- 7) Accept the cost of the Investigation as a Parish expense

The Archbishop is the “Head of Entity” and has overarching responsibility for child protection in the Archdiocese. He delegates authority to the Vicar General and, in practice, the Safeguarding and Ministerial Integrity Office reports to the Office of the Children’s Guardian and otherwise fulfills requirements of the Reportable Conduct Scheme. The Safeguarding and Ministerial Integrity Office assists priests and agency staff to report allegations of crime to the police and to make reports regarding risk of significant harm to the Department of Communities and Justice. The Safeguarding Office is available to assist and advise in relation to any safeguarding or child protection concern.

In addition to the mandatory reporting now required of Clergy by NSW law, clergy and religious should also note the provisions of the *motu proprio Vos Estis Lux Mundi* which require a cleric or religious who has a well-founded belief that a cleric or religious has committed certain crimes against the 6th commandment, including sexual abuse of a minor or a vulnerable person, to report this to the Ordinary.

## **CONFESSION**

Under NSW law a member of the clergy is entitled to refuse to divulge in court that a religious confession was made or the contents of a religious confession made in the member's professional capacity according to the ritual of the Church (i.e. Sacrament of Reconciliation). The following advice is offered in relation to the possible, though certainly rare, situations in which knowledge of child abuse arises within the celebration of the Sacrament of Reconciliation

### **If a child discloses abuse to you during the celebration of Confession:**

- 1) Reassure them that they did the right thing by telling you.
- 2) Explore with them whether there is a trusted adult that they can speak with who can help them work out what is the best thing to do. Explore who this is, how they might do this, when they might do it and what they would say.
- 3) Alternatively, invite the child to speak with you outside of the celebration of the sacrament; explain that you will be available shortly and you will be able to talk through the best way to proceed and get help for them. You cannot compel a child to speak with you and if the child has made their confession from behind a screen, you may not know the child's identity.
- 4) If a child does approach you outside the celebration of the sacrament, you must allow the child to initiate the conversation about abuse. You might simply ask, "Is there something in particular you wish to speak to me about?" You should not initiate the conversation on the basis of what you might have heard during the celebration of the sacrament, *nor may you discuss with anyone else*, or otherwise act on, what the child has told you within the sacrament, even if the child wants you to. Your purpose is simply to help the child (or adult) discuss the matter with someone else who will be able to assist them.

### **If an adult confesses to harming a child (physically or sexually):**

- 1) They should be counselled about the gravity of their actions, and exhorted to desist and to take all possible steps to obtain professional help and to speak with the police. Offer to meet the person outside the celebration of the sacrament so that you can help them report to the police and find support. Absolution should not be refused if you believe the person is genuinely repentant.
- 2) Likewise, if someone tells you during Confession that a third party is being abused or harmed by their partner, then remind them of the mandatory reporting obligations on all citizens which fall under the failure to report an offence, and offer to speak with them outside of the sacrament to help them identify support services.
- 3) Note that when a person speaks with you outside of the sacrament about something he or she mentioned within the sacrament, you are not free to discuss that with anyone else.
- 4) Review the arrangements and furniture for all confessionals in line with the recent archdiocesan decree. There should be the opportunity for anonymity and separation between priest and penitent, even when the penitent chooses to speak face to face.

**For further information or assistance, please contact the Safeguarding & Ministerial Integrity Office or the Vicar General at any time.**



## FACT SHEET: Reportable Conduct Scheme

Children's Guardian Act 2019 Part 4

### Information for Clergy, Agency and Parish workers in a child related role within the Archdiocese of Sydney

From 1 March 2020, the Reportable Conduct Scheme (The Scheme) will be transferred to the Office of the Children's Guardian from the NSW Ombudsman under the new *Children's Guardian Act 2019*. The Scheme covers all workers including Clergy, paid employees and volunteers providing services to children as well as contractors delivering services to children who hold or are required to hold a Working With Children Check in the Archdiocese of Sydney.

#### What is the Reportable Conduct Scheme?

The Reportable Conduct Scheme is an allegations-based scheme. The Scheme oversees how organisations investigate and report on certain conduct known as "reportable allegations" and "reportable convictions" made against Clergy, employees, volunteers or contractors who provide services to children. The Scheme covers religious bodies, in line with recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

A particular requirement of The Scheme is to ensure specified systems are in place for preventing, detecting and responding to reportable allegations or convictions. The goal of prevention is a critical element of The Scheme.

#### What is a Reportable Allegation or Reportable Conviction?

A reportable allegation is an allegation that a worker has engaged in conduct that may be reportable conduct. A reportable conviction means a conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.

#### The *Children's Guardian Act 2019* defines Reportable Conduct as:

- A sexual offence
- Sexual misconduct
- Ill-treatment of a child
- Neglect of a child
- An assault against a child
- An offence under section 43B or 316A or the *Crimes Act 1900* and
- Behaviour that causes significant emotional or psychological harm to a child.

#### What does it mean for you?

1. As a member of the clergy or worker (paid or volunteer) of the Archdiocese you are obligated to report alleged reportable conduct of colleagues who work with children.
2. The Scheme covers the conduct of workers towards children both at home and at work.
3. If an allegation of reportable conduct is made about your behaviour towards children, the Archdiocese must report to the Office of the Children's Guardian and initiate an investigation.

#### How to report an allegation of reportable conduct?

Reportable allegations or convictions against Clergy or workers may be received by the Priest of the Parish who in turn will report the concern to the Safeguarding and Ministerial Integrity Office. Alternatively you can report directly to the Safeguarding and Ministerial Integrity Office by emailing [safeguardingenquiries@sydneycatholic.org](mailto:safeguardingenquiries@sydneycatholic.org) or phone **02 9390 5810**.

#### More Information

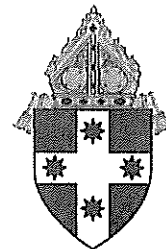
For further information on the Reportable Conduct Scheme you can visit the Office of the Children's Guardian website at [kidsguardian.nsw.gov.au](http://kidsguardian.nsw.gov.au)

If you have specific questions about the *Children's Guardian Act 2019* in relation to Reportable Conduct, you can email the Safeguarding and Ministerial Integrity Office at [safeguardingenquiries@sydneycatholic.org](mailto:safeguardingenquiries@sydneycatholic.org)

#### Further Resources:

Visit the Archdiocese Safeguarding website to access the Archdiocese Policy and Protocols including:

- Fact Sheet: What Conduct must be reported to the Children's Guardian
- Protocol: What Conduct must be Reported to the Children's Guardian
- Protocol: Reporting Inappropriate Conduct to the Children's Guardian



## FACT SHEET: Mandatory Reporting

Children and Young Persons (Care and Protection) Act 1998 (Care Act)

### Information for Clergy, Agency and Parish workers in a child related role within the Archdiocese of Sydney

#### What is mandatory reporting?

Mandatory reporting is the legislative requirement for selected classes of people to report suspected child abuse and neglect to government authorities. In NSW, mandatory reporting is regulated by the Care Act.

From 1 March 2020, amendments to the Care Act will commence and expand the mandatory reporter group to include Clergy, agency and parish workers in child related roles. These amendments are in line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

#### Who are mandatory reporters in NSW?

In NSW mandatory reporting obligations apply to persons who deliver the following services wholly or partly to children as part of their professional work or other paid employment and those in management positions in organisations that deliver those services<sup>1</sup>:

- Health Care
- Welfare (psychologists, social workers)
- Education (teachers, counsellors)
- Disability Services
- Children's Services
- Residential Services
- Law Enforcement
- Persons in religious ministry or persons providing religion based activities to children
- Registered psychologists

#### When is a mandatory reporter required to make a report?

A mandatory reporter must make a report when they have reasonable grounds to suspect that a child is at risk of significant

harm and those grounds arise in the course of, or from their work or role. A mandatory reporter has a duty to report, as soon as practicable, the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm<sup>2</sup>.

#### What constitutes Significant Harm?

- Circumstances that are causing concern for the safety, welfare or wellbeing of the child or young person to a significant extent which means the concern is sufficiently serious to warrant a response by a statutory authority (such as NSW Police Force or Community Services) irrespective of a family's consent.
- Is not minor or trivial and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare or wellbeing.
- The significance can result from a single act or omission or an accumulation of these.

#### Child or Young Person at Risk of Significant Harm<sup>3</sup>:

a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,

b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,

b1) in the case of a child or young person who is required to attend school in accordance with the *Education Act 1990*—the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young

<sup>1</sup> Children and Young Persons (Care and Protection) Act 1998 section 27(1) and (b)

<sup>2</sup> Children and Young Persons (Care and Protection) Act 1998 section 27(2)

<sup>3</sup> Children and Young Persons (Care and Protection) Act 1998 section 23(1)

person to receive an education in accordance with that Act,

c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,

d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,

e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,

f) the child was the subject of a pre-natal report under *section 25* and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

#### **What support is available to help mandatory reporters decide whether to make a report?**

Mandatory reporters are required to report to the Child Protection Helpline as outlined in the Archdiocese *Protocol: Reporting a Child who is at Risk of Significant harm to DCJ*. For support please contact the Safeguarding and Ministerial Integrity Office at **phone 02 9390 5810**

#### **New protections for reporters**

The Royal Commission found that protections for reporters of child sexual abuse varied throughout Australian jurisdictions and a lack of reporter protections can act as a barrier to reporting. To remove this barrier and comply with the Royal Commission's recommendations, additional protections for reporters have been inserted into the Care Act.

A new section has been inserted into the Care Act providing specific protections to reporters who make reports to institutions engaged in child related work. These reporters are protected from liability for defamation and civil and criminal liability. The section also provides that the report does not constitute a breach of professional etiquette or ethics or amount to unprofessional conduct<sup>4</sup>.

All reporters are now protected against retribution for making, or proposing to make, a report<sup>5</sup>.

#### **More Information**

For more information on mandatory reporting you can visit the Department of Communities and Justice website at **[dcj.nsw.gov.au](http://dcj.nsw.gov.au)**

Or access the Mandatory Reporter Guide at **[reporter.childstory.nsw.gov.au](http://reporter.childstory.nsw.gov.au)**

If you have specific questions about the Care Act in relation to mandatory reporting, you can email the Safeguarding and Ministerial Integrity Office at **[safeguardingenquiries@sydneycatholic.org](mailto:safeguardingenquiries@sydneycatholic.org)** or phone **02 9390 5810**

#### **Further Resources**

Visit the Archdiocese Safeguarding website to access the Archdiocese Policy and Protocols including:

- Fact Sheet: When is a child at risk of significant harm?
- Guidance Document: When is a child at risk of significant harm?
- Protocol: Reporting a Child who is at Risk of Significant Harm to DCJ

<sup>4</sup> Children and Young Persons (Care and Protection) Act 1998 section 29AAA from 1 March 2020

<sup>5</sup> Children and Young Persons (Care and Protection) Act 1998 section 29AB from 1 March 2020

# FACT SHEET: Reporting Crimes to the NSW Police

## Information for those ministering, working and volunteering in the Archdiocese of Sydney

The NSW Government has introduced reforms to strengthen child sexual abuse laws. The new laws are based on the Royal Commission's Criminal Justice Report. *The Criminal Legislation Amendment (Child Sexual Abuse) Bill 2018* made these changes and was introduced into the NSW Parliament in June 2018<sup>1</sup>.

### Important changes at a glance:

- Simplified offences and modernised terminology by transforming the offence of 'indecent assault' into **sexual touching** and the offence of 'act of indecency' into **sexual act**
- New offence of **failing to report** child abuse to police
- New offence of **failing to protect** a child from abuse
- New offence of **grooming a parent or carer** to access a child, and a broader offence of grooming children
- New offence of **sexual touching of a child aged 16 or 17 who is under special care**
- Amended offence of **persistent child sexual abuse of a child**
- New limited **similar age defence** and new limited **'sexting' defence and exception**
- New rule that courts sentencing historical child sexual offences **must apply current sentencing standards** and take into account our understanding of the lifelong impact and trauma of child sexual abuse
- New rule so an offender's **good character is not a mitigating factor** at sentencing for historical child sexual abuse matters
- Retrospective **repeal of an old limitation period under s78** that is prevented some victims from obtaining justice

### Failure to Report Offence

**All adults** in NSW are required to report information to the police if **they know, believe or reasonably ought to know** that a child (under 18 years) has been abused.

Failing to report information to police without a reasonable excuse is an offence punishable by up to two years' imprisonment. The penalty is five years if the person has accepted any benefit in exchange for failing to report.

A person will not be guilty of the offence if he or she has a **reasonable excuse** for not reporting the information to the police\*. Some examples of what constitutes a reasonable excuse include:

- If the offence has already been reported under mandatory reporting obligations, such as to the Child Protection Helpline or to the Office of the Children's Guardian under the Reportable Conduct Scheme, or the person believes on reasonable grounds that another person reported it
- If the person believes on reasonable grounds that the information is already known to police
- If the victim is now an adult and doesn't want the offence reported
- If the person fears for their safety or another person's safety if they report
- If the information was obtained by the person when they were under the age of 18 years

*\*The issue of whether the offence will apply when a person received their information from a religious confession is covered by uniform evidence law that applies in multiple Australian jurisdictions.*

*EVIDENCE ACT 1995 - SECT 127. (1) A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious confession was made, or the contents of a religious confession made, to the person when a member of the clergy.*

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<sup>1</sup> NSW Government Fact Sheet: New legislation to strengthen child sexual abuse laws



### **Failure to Protect Offence**

An adult working in an organisation doing child-related work will commit an offence if they **know** another adult working there poses a serious risk of abusing a child (under 18 years), and they have the **power to reduce or remove the risk**, and they negligently **fail to do so**.

The offence covers failures to protect against sexual or serious physical abuse and will be punishable to up to two years' imprisonment.

### **Broader Grooming Offences**

The offence of grooming a child refers to any adult who offers a child a material or financial benefit with the intention of making it easier to access the child for unlawful sexual activity.

This includes giving a child gifts or money, which can be used to gain a child's trust. The maximum penalty for the offence is 12 years' imprisonment if the child is under 14 years of age and 10 years' imprisonment if the child is 14 or 15 years old.

It also includes any adult or provides gifts or money to an adult with the intention of making it easier to access a child in their care for unlawful sexual activity. The offence is punishable by up to six years' imprisonment where the child is under 14 years of age and five years' imprisonment where the child is 14 or 15-year-old.

### **More Information:**

For further information, you can visit the NSW Department of Communities & Justice website at [dcj.nsw.gov.au](http://dcj.nsw.gov.au)

If you have specific questions about this legislation you can email the Safeguarding and Ministerial Integrity Office on [safeguardingenquiries@sydneycatholic.org](mailto:safeguardingenquiries@sydneycatholic.org) or phone 02 9390 5810

### **Further Resources**

Visit the Archdiocese Safeguarding website to access the Archdiocese Policy and Protocols including:

- Fact Sheet: What is a Reportable Crime
- Guidance Document: What Constitutes a Reportable Crime

- Protocol: Reporting Crimes to the NSW Police
- Table of Reportable Crimes