



CHILD PROTECTION: SAFEGUARDING CHILDREN AND YOUNG PEOPLE

Responding Procedures

RESPONDING SYSTEMS AND PROCESSES

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The general procedure which the Catholic Diocese of Wagga Wagga ("the Diocese") will follow when responding to complaints.

1. KEY TERMS

1.1 Mandatory Reporters

Certain employees are required by law to report matters or concerns to the NSW Department of Family and Community Services (Keep Them Safe) if they suspect (using their professional judgment and training), on reasonable grounds, that a child or young person is at risk of significant harm.

Mandatory reporters are those people who deliver the following services to children as part of their paid or professional work:

- health care - doctors, nurses, dentists and other health workers
- welfare - psychologists, social workers and youth workers
- education – teachers
- children’s services - child care workers, family day carers and home-based carers
- residential services - refuge workers, community housing providers
- law enforcement – police.

Any person with direct responsibility for the provision of the abovementioned services must report any matters that are assessed as posing a risk of significant harm to children.

Managers, including both paid employees and volunteers, who supervise direct services to children are mandated to report.

While those employees and volunteers of the Church not listed above are not mandated by law to report to Community Services, it is a policy requirement of the Diocese that when any employee or volunteer has reasonable ground to suspect that a child or young person is at risk of significant harm, he or she will notify their supervisor and make a report.

Reports about risk of or significant harm to children may be made to the Child Protection Helpline on 133 627.

A Mandatory Reporter Guide (Decision Tree) has been developed to help both mandatory and non-mandatory reporters decide whether a concern meets the statutory threshold for reporting risk of significant harm.

Mandatory reporters are encouraged to use the Mandatory Reporter Guide to guide their decision making about whether or not to report to the Child Protection Helpline. Access to the Mandatory Reporter Guide can be found here;

http://www.keepthemsafe.nsw.gov.au/reporting_concerns/mandatory_reporter_guide

The Diocese may be required to assume responsibility for the case management of matters that do not reach the threshold of “significant risk of harm” or those matters which meet the threshold but cannot be responded to by FACS. The Diocese is resourced to assist in managing these responsibilities and should be contacted to seek advice and support as soon as possible.

1.2 Allegations of Reportable Conduct against Employees

The Ombudsman Act 1974 (NSW) requires agencies working with children to notify the Office of the New South Wales Ombudsman and to investigate any allegations of 'reportable conduct' against employees. For further information about the protocols followed by the Diocese see [section 5](#).

Reportable conduct is defined as:

- (a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence) or
- (b) any assault, ill-treatment or neglect of a child, or
- (c) any behaviour that causes psychological harm to a child, whether or not in any case, with the consent of a child.

Reportable conduct 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, or
- (b) the use of physical force that in all the circumstances, is trivial and negligible but only if the matter is to be investigated and the result recorded, or
- (c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

The NSW Ombudsman's Practice Update 2013/1: Defining reportable conduct, defines the different categories of reportable conduct in the following terms:

1.2.1 Child Sexual offences

The term 'sexual offence' encompasses all criminal offences involving a sexual element that is 'committed against, with or in the presence of a child'.

These offences include (but are not limited to) the following:

- indecent assault
- sexual assault
- aggravated sexual assault
- sexual intercourse and attempted sexual intercourse
- possession/dissemination/production of child pornography or child abuse material
- using children to produce pornography
- grooming or procuring children under the age of 16 years for unlawful sexual activity
- deemed non-consensual sexual activity on the basis of special care relationships

All cases involving a sexual offence would also involve sexual misconduct.

1.2.2 Sexual misconduct

The term 'sexual misconduct' includes conduct that does not necessarily equate to a criminal offence.

For sexual misconduct to constitute reportable conduct, the alleged conduct must have been committed against, with or in the presence of a child.

There are three categories of sexual misconduct in addition to sexual offences:

- crossing professional boundaries;

- sexually explicit comments and other overtly sexual behaviour;
- grooming behaviour.

1.2.3 Crossing professional boundaries

Sexual misconduct includes behaviour that can reasonably be construed as involving an inappropriate and overly personal or intimate:

- relationship with;
- conduct towards; or
- focus on;

-a child or young person, or a group of children or young persons.

1.2.4 Sexually explicit comments and other overtly sexual behaviour

Sexual misconduct includes a broad range of sexualised behaviour with or towards children.

While it is not possible to provide a complete and definitive list of unacceptable sexual conduct involving children, the following types of behaviour give strong guidance:

- sexualised behaviour with or towards a child (including sexual exhibitionism);
- inappropriate conversations of a sexual nature;
- comments that express a desire to act in a sexual manner;
- unwarranted and inappropriate touching involving a child;
- personal correspondence and communications (including emails, social media and web forums) with a child or young person in relation to the adult's romantic, intimate or sexual feelings for a child or young person;
 - exposure of children and young people to sexual behaviour of others including display of pornography; and
 - watching children undress in circumstances where supervision is not required and it is clearly inappropriate.

1.2.5 Grooming behaviour

Grooming or procuring a child under the age of 16 years for unlawful sexual activity is a sexual offence. However, Schedule 1(2) of the Child Protection (Working with Children) Act 2012 also recognises grooming as a form of sexual misconduct.

Behaviour should only be seen as 'grooming' where there is evidence of a pattern of conduct that is consistent with grooming the alleged victim for sexual activity, and that there is no other reasonable explanation for it.

The types of behaviours that may lead to such a conclusion include (but are not limited to) the following:

Persuading a child or group of children that they have a 'special' relationship, for example by:

- spending inappropriate special time with a child;
- inappropriately giving gifts;
- inappropriately showing special favours to them but not other children;
- inappropriately allowing the child to overstep rules; and
- asking the child to keep this relationship to themselves.
- Testing boundaries, for example by:
 - undressing in front of a child;
 - encouraging inappropriate physical contact (even where it is not overtly sexual);
 - talking about sex; and
 - 'accidental' intimate touching

- Inappropriately extending a relationship outside of work (except where it may be appropriate – for example where there was a pre-existing friendship with the child’s family or as part of normal social interactions in the community).
- Inappropriate personal communication (including emails, telephone calls, text messaging, social media and web forums) that explores sexual feelings or intimate personal feelings with a child.
- An adult requesting that a child keep any aspect of their relationship secret or using tactics to keep any aspect of the relationship secret, would generally increase the likelihood that grooming is occurring.

1.2.6 Physical assault

An assault of a child includes any act by which a person intentionally inflicts unjustified use of physical force against a child. An assault can also occur if a person causes a child to reasonably fear that unjustified force will be used against them. Even if a person who inflicts, or causes the fear of, physical harm does not intend to inflict the harm or cause the fear, they may still have committed an assault if they acted recklessly (i.e. the person ought to have known that their actions would cause physical harm or the fear of such harm).

Assaults can include hitting, pushing, shoving, throwing objects, or making threats to physically harm a child.

While every allegation of physical assault should be investigated, only findings that a serious physical assault occurred are reportable to the Office of the Children’s Guardian for consideration in Working with Children Check assessments.

A physical assault is serious where:

- it results in the child being injured, beyond a type of injury like a minor scratch, bruise or graze; or
- it had the potential to result in a serious injury; or
- the injury suffered may be minor, but the assault is associated with aggravating circumstances (in this regard, aggravating circumstances might include associated inhumane or demeaning behaviour by the employee, for example kicking a child, pulling a child by grabbing the child around the neck).

In considering whether a serious physical assault has occurred, reporting bodies whose work involves regular restraint of children should consider the context of events, including the child’s age and vulnerability.

Generally, behaviour that does not meet the standard of a serious physical assault does not become a serious physical assault by means of it being repeated.

1.2.7 Ill-treatment

Ill-treatment captures those circumstances where a person treats a child or young person in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner.

The focus is on the alleged conduct rather than the actual effect of the conduct on the child or young person.

Ill-treatment can include disciplining or correcting a child in an unreasonable and seriously inappropriate or improper manner; making excessive and/or degrading demands of a child; hostile use of force towards a child; and/or a pattern of hostile or unreasonable and seriously inappropriate, degrading comments or behaviour towards a child.

1.2.8 Neglect

Neglect includes either an action or inaction by a person who has care responsibilities towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.

1.2.8.1 Supervisory neglect:

- An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or
- An intentional or reckless failure to adequately supervise a child, or a significantly careless act or failure to act, that:
 - involves a gross breach of professional standards, and
 - has the potential to result in the death of, or significant harm to, a child.

1.2.8.2 Carer neglect:

Grossly inadequate care that involves depriving a child of the basic necessities of life: such as the provision of food and drink, clothing, critical medical care or treatment, or shelter.

1.2.8.3 Failure to protect from abuse:

An obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.

1.2.8.4 Reckless acts (or failure to act):

A reckless act, or failure to act, that:

- involves a gross breach of professional standards, and
- has the potential to result in the death of, or significant harm to, a child.

1.2.9 Behaviour that causes psychological harm to a child

Behaviour that causes psychological harm is conduct that is obviously or very clearly unreasonable and results in significant emotional harm or trauma to a child.

There needs to be a proven causal link between the inappropriate behaviour and the harm, and the harm must be more than transient.

For reportable conduct involving psychological harm, the following elements must be present:

- an obviously or very clearly unreasonable or serious act or series of acts that the employee knew or ought to have known was unacceptable, and
- evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self-harm, and
- an alleged causal link between the employee's conduct and the psychological harm to the child. Psychological harm can include the exacerbation or aggravation of an existing psychological condition, such as anxiety or depression.

1.3 Children and young people

Children and young people are people under the age of 18 years.

For the purposes of this policy the following definitions apply:

- Child means a person under the age of 16 years
- Young person means a person who is aged 16 years but who is under 18 years

1.4 Child-related work

Child-related work is defined as face-to-face contact with children in a child-related sector or work in a child-related role.

Child-related sectors include:

- Child development and family welfare services
- Child protection
- Clubs or other bodies providing services for children
- Disability services
- Early education and child care
- Education
- Religious services
- Residential services
- Transport services for children
- Youth workers
- School cleaners

Work for a religious organisation where children form part of the congregation or organisation is child-related work, if the work is carried out:

- a) as a minister, priest or other like religious leader or spiritual officer of the organisation, or
- b) in any other role in the organisation involving activities primarily related to children, including youth groups, youth camps, teaching children and child care.

Many forms of ministry that involve children may be described as child-related work.

2. MANDATORY REQUIREMENTS OF DIOCESAN AGENCIES

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

This Act requires mandatory reporting to FACS of a child or young person under 18 years of age who is suspected to be at risk of significant harm.

The Diocese requires all employees and volunteers engaged in ministry to inform their relevant leader of any serious well-being concerns that they may have about a child or young person, particularly where they suspect the child or young person may be currently at risk of significant harm.

2.2 Child Protection (Working with Children) Act 2012

This is the relevant Act in NSW that governs the checking of persons who are deemed to be in child-related work.

The Act requires persons (paid or unpaid) who will be working with children to undergo certain checking procedures prior to commencing work, to ensure their suitability to work with children. This includes religious, clergy and volunteers (unless an exemption provision applies).

All employees and volunteers whose ministry involves services to children are required to apply for a Working with Children Check clearance. In other words, employees and volunteers engaged in ministry that is child-related work (see 1.4) need to apply for a Working with Children Check. This may be done online at www.kidsguardian.nsw.gov.au or through phone support services which are available by contacting (02) 9286 7219. It is the responsibility of employees and volunteers to apply for and renew their own Working with Children Check. The Diocese is responsible for verifying that an employee or volunteer is cleared to work with children.

A Working with Children Check involves a national police check and review of findings of misconduct involving children, and the result is either a clearance to work with children for five years, or a bar against working with children. A Check is a prerequisite for anyone in child-related work.

If the outcome of the Working with Children Check is a clearance, the Check can be used for any voluntary child-related work in NSW.

If the outcome is a bar it is an offence to engage in any child-related work, paid or unpaid. In most cases, application may be made for this outcome to be reviewed by the Administrative Decisions Tribunal. More information on the review process is available at [http://www.kidsguardian.nsw.gov.au/working-with-children/working-with-children-check`](http://www.kidsguardian.nsw.gov.au/working-with-children/working-with-children-check)

2.3 Ombudsman's Act 1974 (NSW) This law provides the NSW Ombudsman's Office authority to oversee how certain agencies that provide services to children (such as all schools) respond to allegations about a staff member's inappropriate conduct with a child.

It is aimed at ensuring that places where children frequent are safer, by having appropriate procedures for reporting, assessing and responding to allegations of inappropriate conduct by those working at the agency.

2.4 Crimes Act 1900 (NSW) If a staff member suspects that a person is acting in a manner that may be criminal in nature towards, involving or in the presence of a child, they should make a report to the NSW Police.

A senior member of staff can assist other staff members to make that report if it involves the workplace. Staff are encouraged to assist the NSW Police Force in its inquiries.

3. RELEVANT PROCEDURES

3.1 Procedures for Notifying Concerns that a Child is at Risk of Significant Harm

3.1.1 Managing Disclosures

Disclosures related to a child or young person potentially being at risk of significant harm require assessment to determine whether the matter requires case management or reporting to Community Services. This assessment should not be made in isolation and should be the subject of advice from the Child Protection Delegate and the employee's supervisor.

Disclosures may take the following forms:

- i. A child or young person tells an employee or volunteer who is engaged in ministry that they are at risk of significant harm;
- ii. Someone else tells an employee or volunteer who is engaged in ministry that a child or young person is at risk of significant harm;
- iii. A child or young person tells an employee or volunteer that they know someone who is at risk of significant harm; and
- iv. An employee or volunteer engaged in ministry may make their own observations that leads her/him to suspect a child or young person is at risk of significant harm (some indicators of risk of harm are: marked changes in behaviour; withdrawal; depression; attention to personal appearance; pregnancy; anorexia or over-eating; self-destructive behaviour such as drug dependency, suicide attempts or self-mutilation).

3.1.2 Managing notifications of children and young people who are at risk of significant harm

- i. A person engaged in ministry who has reason to believe that a child or young person is at risk of significant harm is required to report the concern to their supervisor, this may be their Parish Priest or Ministry Coordinator. If the allegation relates to the Parish Priest or Ministry Coordinator then the report should be made to the Diocesan Child Protection Delegate.
- ii. Those involved in this report are expected to maintain the confidentiality of such matters. It is therefore expected that such matters are not discussed unless for the purpose of legal compliance or seeking professional advice;
- iii. The details of the disclosure or incident should be forwarded to Community Services

3.2 Procedures for managing allegations of reportable conduct by employees and persons engaged in parish ministry

Allegations of reportable conduct involving staff members and persons engaged in parish ministry must be investigated and may need to be notified to the Office of the Children's Guardian during or after the investigation.

While the primary concern of the Diocese at all times is the safety and care of children and young people, the principles of procedural fairness and natural justice should be adhered to at all times so that the privacy and dignity of all involved may be considered and maintained.

Detailed procedures for managing allegations of reportable conduct against employees are outlined in section 5.

3.3 Supporting a Child or Young Person Who Has Disclosed Risk of Harm

Children and young people generally disclose with great hesitation and often with feelings of fear and guilt. It is therefore important to remain calm and supportive in these situations. Active listening without probing is required.

The following three steps are expected:

Reassure – the child or young person that:

- the child or young person did the right thing by telling you;
- the child or young person is not in trouble;
- you will tell someone who can help the child or young person; and
- the child or young person has a right to feel safe and protected.

Record

- immediately anything that you are told or that you observe;
- include the date, time, parties involved; and
- sign the record

Report – the incident immediately or as soon as practicably possible to your supervisor

If the allegation relates to the Parish Priest or Ministry Coordinator then the report should be made to the Diocesan Child Protection Delegate.

4 GUIDELINES FOR PROFESSIONAL CONDUCT in the PROTECTION OF CHILDREN AND YOUNG PEOPLE (separate document)

5 PROTOCOLS FOR RESPONDING TO COMPLAINTS AGAINST THOSE ENGAGED IN MINISTRY ON BEHALF OF THE DIOCESE OF WAGGA WAGGA

5.1 Purpose and extent of these protocols

These protocols set out the general procedure which the Catholic Diocese of Wagga Wagga (“the Diocese”) will follow when responding to complaints made against those engaged in parish and/or diocesan ministry in relation to their professional conduct.

For the purpose of these protocols an employee is any person who is engaged to provide a service to the Diocese including:

- Paid staff;
- Clergy;
- Volunteers;
- Contractors and subcontractors;
- Out of home carers;
- Work experience participants and students on placement; and
- Special Religious Education (SRE) teachers.

Professional conduct is conduct which takes place during the course of employment. Employees have a responsibility to meet high standards of professional and ethical behaviour required by the Diocese.

5.2 Investigation and reporting

Child protection legislation requires the Diocese to report to the NSW Ombudsman and to investigate allegations or convictions of “reportable conduct” or allegations of “misconduct which may involve reportable conduct” which are made against its employees.

“Reportable conduct” means:

- any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), or
- any assault, ill-treatment or neglect of a child, or
- any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.

5.3 Stages in the conduct of an investigation of a complaint

a. Identification of an allegation of “reportable conduct”

A complaint may need to be clarified so that:

- it is clear whether an allegation of “reportable conduct” is actually being made and if so, what category of reportable conduct is relevant;
- investigators are clear about what they are investigating; and
- persons who are the subject of allegations are clear about what they need to respond to.

Details to be clarified might include:

- the identity of the person making the allegation and (if different) the identity of the alleged victim;
- the identity of the employee against whom the allegation is made;
- when and where the alleged incident or incidents occurred; and
- a description of the action and/or omissions which form the basis of the allegation against the employee

b. Investigative Stage

During this time, an impartial investigator is appointed and proper inquiries are made of the child(ren) involved, the person who is the subject of the allegation, and other witnesses, by way of interview and/or the collection of other relevant information.

c. Determination of a finding

At the conclusion of the investigation the investigator will present all of the evidence to the Diocese.

The Diocese will then make a finding, on the balance of probabilities, in relation to each allegation.

The available findings are:

- sustained (i.e. a finding that the conduct occurred); or
- not sustained – insufficient evidence (i.e. there is some evidence of weight however there is insufficient evidence available to reasonably establish that the alleged conduct did occur); or

- not sustained – lack of evidence of weight (i.e. where the evidence is of such poor probative value or lacking in weight, such as to warrant a finding that, on the balance of probabilities, the conduct did not occur); or
- false (i.e. where inquiries into the matter show reportable conduct or an act of violence did not occur). Some of these matters may be vexatious, for example where inquiries into the matter show the allegation was made without substance and to cause distress to the person against whom the allegation was made; or
- not reportable conduct (i.e. where inquiries into the matter show the conduct was not reportable). For example, use of force that was trivial or negligible in the circumstances, conduct that was reasonable in the circumstances or accidental.

This may include ‘misconceived’ matters, where inquiries into the matter show that, even though the allegation was made in good faith, it was based on a misunderstanding of what actually occurred and the incident was not reportable conduct.

e. Reporting and disciplinary action

The finding will inform a final risk assessment and any action the Diocese considers necessary to mitigate risk. This may include disciplinary action.

The Diocese will also need to consider whether it has a legal obligation to notify the employee’s details to the Office of the Children’s Guardian where there has been a finding of sexual misconduct or serious physical assault.

A final report will also be submitted to the Office of the NSW Ombudsman. The NSW Ombudsman will then assess whether the process was procedurally fair and the findings and outcome were appropriate.

5.4 The requirements of procedural fairness

Procedural fairness means that an employee has:

A right to an impartial decision:

a. The investigators and other decision-makers should conduct all aspects of the process in an impartial and objective manner without prejudging the matters under consideration.

b. The employee should be given an unbiased hearing of his/her responses both to the matters alleged and to any proposed adverse finding or recommended disciplinary action.

A right to be heard:

a. Prior to being interviewed, employees should be advised of the allegation in as much detail as possible to enable them to respond, and should be provided a copy of this document, together with the DWW - Guidelines for Professional Conduct and the Complaints Policy for the relevant sector.

b. Employees should be provided with reasonable notice regarding arrangements for any interview regarding the allegations, although an employee may waive the notice period and request the interview proceed at a mutually acceptable earlier time.

c. Employees should be advised of the names of the people who have been appointed by the employer to conduct the investigation – any actual or perceived conflicts of interest should be addressed by an open and transparent process. If such concerns are not resolved, it may be advisable to appoint an alternative investigator.

d. During the investigation phase of the process, employees should be provided with sufficient information to enable a response to each allegation.

e. Employees should be provided with reasonable opportunities to respond to the allegations whether at interview and/or in writing.

f. Employees should be advised of and given an opportunity to comment upon any proposed adverse finding, any proposed report to the Office of the Children's Guardian and disciplinary action. The employee's comments should be considered prior to the final determination of the findings and disciplinary action.

g. At any stage in the process, employees may access the investigation file, and shall be informed of this right.