

REPORTING OBLIGATIONS IN NEW SOUTH WALES

Children and Young Persons (Care and Protection) Act 1998, ss. 23, 24, and 27

Crimes Act 1900, s. 316

Taking Calls Concerning Abuse Matters

1. Names of the elders calling and from what congregation?
 2. Names of the alleged victim/s?
 - Age now?
 - Age at time of alleged offence?
 - Spiritual status – (baptised/unbaptised/unbaptised pub/nonJW)?
 3. Name of the alleged perpetrator?
 - Age now?
 - Age at time of alleged offence?
 - Spiritual status – (baptised/unbaptised/unbaptised pub/nonJW)?
 - Date of offence – (recent or if historical approx. year/s)?
 - Does alleged perpetrator presently have access to children?
 - Relationship to the alleged victim?
 4. In what State or Territory did the alleged abuse occur?
 5. Who reported the matter to the elders?
 6. Has this matter been, or will be, reported to the police or other authorities?
 7. If the victim is still a child (under 16), is he/she still in danger? If so, the Service Department will provide necessary direction to ensure the child's protection.
 8. Irrespective of whether the victim is still under 16, the reporting obligations under s 316 of the *Crimes Act* must be carefully considered after getting the facts involved in the matter. ***In virtually every instance***, ask the elders to take no further action until the office calls them back with the needed direction.
-
9. Obtain legal advice from solicitor concerning this matter.
 10. Irrespective of the legal advice, advise the elders to pass on the following information to the victim, if he/she is an adult, or the child's parent/s if the victim is still a minor:

“Even though you have reported this matter to the elders, you have the absolute right to report this matter to the authorities if you want to and the elders will support you in whatever decision you make.”
 11. Transfer the elders to the Service Department.
 12. If matter has been or will be reported to the authorities, the elders need to ensure that their actions do not interfere with any police investigation.

REPORTING OBLIGATIONS IN NEW SOUTH WALES

Children and Young Persons (Care and Protection) Act 1998, ss. 23, 24, and 27
Crimes Act 1900, s. 316

General position:

- Child is defined in NSW as under 16.¹
- The age of consent in NSW is 16.²

Reporting obligation under general legislation

The legislation imposes a reporting duty on a broad range of persons. The duty is worded in a somewhat complex fashion but applies to current concerns for the safety, welfare or well-being of a child because of a suspicion of the child having been, or being at risk of being, sexually abused. The duty applies to a broad range of professionals in professions including education, health, welfare and law enforcement who deliver services to children, and those in management positions in these organisations. Since 2010, there has been no penalty for those who have an obligation to report if they fail to do so.³

Elders ***do not*** come within the class of persons have a duty to report and thus ***do not*** have a duty to report under the present mandatory reporting legislation.

Reporting obligation under s 316 of the Crimes Act 1900

316 Concealing serious indictable offence

(1) If a person *has committed a serious indictable offence* and another person who *knows or believes* that the *offence has been committed* and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender or fails without reasonable excuse to bring that information *to the attention of a member of the Police Force or other appropriate authority*, that other person is liable to imprisonment for 2 years

(4) A prosecution for an offence against subsection (1) is not to be commenced against a person without the approval of the Attorney General if the knowledge or belief that an offence has been committed was formed or the information referred to in the subsection was obtained by the person in the course of practising or following a profession, calling or vocation prescribed by the regulations for the purposes of this subsection.⁴

Analysing calls about abuse under s 316

The section is invoked when “another person ***knows or believes*** that the offence has been committed and that ***he or she has information*** which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender” unless the person has a “reasonable excuse” for not doing so.

- It is prudent to treat s 316 as creating a mandatory reporting regime where the allegation involves a victim who is presently under 16 and the perpetrator was in a position of power towards the victim (usually 2 or more years older than the victim). – ***Matter should be reported***
- Where the victim is now over 16, but the perpetrator still has access to children, irrespective of victim’s wishes - ***Matter should be reported***
- Where an allegation is “stale” (i.e. it relates to long-past conduct, the complainant is now an adult, the perpetrator does not have access to children, there are no related investigations or proceedings in which the allegation may provide important corroboration, etc.), it is far more likely that the victim’s request for confidentiality will be considered a reasonable excuse for not reporting the matter. - ***After weighing all the circumstances, then likely the victim’s request that the matter not to be reported should be respected, but this would depend on the circumstances***

Making a report under s 316

Report should be made to the police or other appropriate authority.⁵ Crime Stoppers 1800333000 or the Child Protection Helpline operated by Family and Community Services 132111.

¹ *Children (Care and Protection) Act 1988, s.3.*

² *Crimes Act 1900, s.66C.*

³ *Children (Care and Protection) Act 1988, ss.23, 24, and 27.*

⁴ *Crimes Regulation 2015, cl. 4:* Lists “a member of the clergy of any church or religious denomination.”

⁵ *Crimes Act 1900, s.316(1).*