



# CHILD PROTECTION POLICY AND PROCEDURES

<b>SOP Number:</b>	CPSOP05:00
<b>Status:</b>	Interim
<b>Date Issued:</b>	June 2020
<b>SOP Contact:</b>	Human Services Consultant – School Resources Services
<b>Related Documentation:</b>	Catholic Education in the Diocese of Lismore: The Mission of Jesus Christ Foundational Values <i>Child Protection (Working with Children) Act 2012 (NSW)</i> <i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i> <i>Crimes Act 1900 (NSW)</i> <i>Children’s Guardian Act 2019 (NSW)</i> Code of Conduct for Employees in Catholic Schools in the Diocese of Lismore. Discrimination, Bullying and Harassment, Standard Operating Procedures

## **POLICY**

### **INTRODUCTION**

Children and young people have a fundamental right to grow, develop and feel safe in environments that are free from violence, exploitation and harm. The Catholic Schools Office (CSO) Lismore has clear expectations that all students in Catholic systemic schools in the Diocese of Lismore will be protected from all forms of harm including sexual, physical and psychological harm as well as ill-treatment and neglect. The Catholic Schools Office and Catholic systemic schools in the Diocese have certain responsibilities and expectations to ensure the safety and protection of children in their care, including supporting measures to ensure that children and young people will be taught how to protect themselves, and to seek help if they are concerned about their safety.

Consistent with its mission and values, and in compliance with its legislative obligations, the Catholic Schools Office Lismore strives to ensure children in its care are safe and secure. Implementing a variety of practices that reduces potential risk forms part of our strategy to build child safe communities.

This policy sets out the expectations required of employees in the Catholic Schools Office and in Catholic systemic schools of the Diocese. This document is to also inform and remind employees engaged or employed in Catholic systemic schools in the Diocese of Lismore of the standards of behaviour, duties, obligations and other requirements that must be adhered to when working with children.

A range of checks and undertakings are required for people who work for or provide services to Catholic Education in the Diocese of Lismore including the mandatory considerations of professional standards, codes of conduct and accepted community standards.

### **SCOPE**

The document applies to all employees engaged to work in, or provide services to Catholic systemic schools in the Diocese of Lismore.

This document aims to:

- I. Clarify the expectations of employees who work in child related employment;
- II. Provide a safe and supportive environment for children and employees; and
- III. Build and maintain a contemporary Catholic workplace that is safe, respectful, professional and legally compliant.

This document is not exhaustive and does not identify every potential scenario of concern in the workplace.

Human Services employees will meet with Principals in their clusters to explain this Child Protection Policy and Procedures and the schools and employees' obligations and responsibilities following this document being ratified.

## **PROCEDURES**

### **1. PRINCIPLES**

Employees in Catholic systemic schools in the Diocese of Lismore and the Catholic Schools Office recognise the following principles:

- I. Jesus Christ through the Scriptures instructs us about the dignity and infinite value of every human being, especially children and young persons;
- II. The care and protection of children and young people is paramount;
- III. The value of the family unit is respected but not to the detriment of the well-being of the child;
- IV. Support is provided for the right of students, parents and employees to bring forward complaints or allegations to be heard without fear of reprisal;
- V. Persons involved in situations considered to be inappropriate or where reportable conduct is disclosed or suspected should be treated with sensitivity, dignity and respect;
- VI. All employees have an obligation to promptly inform the Principal or a member of Human Services at the Catholic Schools Office of alleged incidents of reportable conduct as well as serious matters concerning the welfare of children; and
- VII. Information regarding suspected or disclosed child abuse shall be made available only to those personnel who have a genuine need to be informed. Personnel who have access to such information have the obligation to observe appropriate confidentiality in relation to this information.

### **2. DEFINITIONS**

- 2.1 Child or children with respect to Mandatory Reporting, under the *Child and Young Persons (Care and Protection) Act 1998* means any person under the age of 16 years.
- 2.2 Young Person means a person aged 16 or 17 years. (Reportable conduct and definition of what is a child?)
- 2.3 Employee means any person who is engaged in a Catholic systemic school in the Diocese of Lismore whether or not they are employed in connection with work or activities that relate to children in paid or volunteer capacity, as well as any person engaged by the Catholic Schools Office to provide services to children and young people. Employees include, but are not limited to religious and clergy, volunteers, contractors, sub-contractors, consultants and students on tertiary practicum placements. Any reference to employees in this policy or procedures encompasses all categories outlined above.
- 2.4 Employer means the Diocese of Lismore Catholic Schools Limited.
- 2.5 PSOA means the person subject of the allegation.
- 2.6 Civil Standard of Proof – Balance of Probabilities means the matter is considered sustained if the investigator is satisfied that the case has been proved on the balance of probabilities.
- 2.7 Complaint or Allegation means, for the purposes of this document, a complaint or allegation is considered to be any issue raised regarding the conduct of an employee

of a Catholic systemic school in the Diocese of Lismore in relation to children or young people, where such conduct is considered to be of a nature which may constitute reportable conduct in accordance with the *Children's Guardian Act 2019*.

- 2.8 CSO means Catholic Schools Office Diocese of Lismore.
- 2.9 Head of Relevant Entity means the Chief Executive Officer of the entity as per section 17 of the *Children's Guardian Act 2019* for Catholic systemic schools in the Diocese of Lismore.
- 2.10 Human Services Staff means Human Services Staff at the Catholic Schools Office who investigate complaints and allegations in relation to children or young people in Catholic systemic schools in the Diocese of Lismore and report to the Diocesan Safeguarding Manager (SGM).
- 2.11 Mandatory Reporter means under the *Children and Young Persons (Care and Protection) Act 1998*, a Mandatory Reporter is a person who due to the nature of their employment must report any concern regarding the safety, welfare or well-being of a child.

### **3. LEGISLATION FRAMEWORK**

- 3.1 Employees are required to be familiar and comply with child protection legislation as varied from time to time, including but not limited to:
  - a. Children and Young Persons (Care and Protection) Act 1998 (NSW);
  - b. Children's Guardian Act 2019 (NSW);
  - c. Crimes Act 1900 (NSW);
  - d. Child Protection (Working with Children) Act 2012 (NSW); and
  - e. Government Information (Public Access) Act 2009 (NSW).
- 3.2 Failure to comply with the child protection responsibilities and obligations required by legislation or this document will result in disciplinary action being taken, up to and including immediate termination of employment, termination of contractor agreement, notification to external agencies and/or criminal charges.
- 3.3 An employee who becomes aware of a possible breach of this document or legislation by another employee must report this to their Principal or Human Services at the Catholic Schools Office. Failure to do so may result in disciplinary action.

#### **Supporting Mandatory Considerations of:**

- a. Professional Standards;
- b. Code of Conduct for Employees in Catholic Schools in the Diocese of Lismore; and
- c. Accepted Community Standards.

### **KEY LEGISLATION**

#### **4. CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT 1998 (NSW)**

##### **4.1 The objects of this Act are to provide:**

- I. That children and young persons receive such care and protection as is necessary for their safety, welfare and well-being, having regard to the capacity of their parents or other persons responsible for them; and
- II. That all institutions, services and facilities responsible for the care and protection of children and young persons provide an environment for them that is free of violence and exploitation and provide services that foster their health, development needs, spirituality, self-respect and dignity.

**4.2 The Act** provides for mandatory reporting of children at risk of significant harm. Under the Act Mandatory Reporters are those who:

- I. In the course of their professional work or other paid employment, delivers services including health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children; and
- II. A person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of services including health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children;
- III. A person in religious ministry, or a person providing religion-based activities to children; and
- IV. a registered psychologist providing a professional service as a psychologist.

**4.3 Responsibilities under the Act**

- I. Mandatory Reporters are required to report if they have any concern regarding the safety, welfare or well-being of a child; and
- II. In order to meet this requirement, the CSO, systemic schools and employees will undertake the following:

**4.4 Catholic Schools Office (CSO) Human Services**

- I. Human Services employees will meet with Principals to explain this Child Protection Policy and Procedures and the schools and employees' obligations and responsibilities following this document being ratified;
- II. The Catholic Schools Office will ensure that all employees are aware of their obligations to report a child at risk or inappropriate conduct involving a child;
- III. The Catholic Schools Office will ensure all employees are aware of the required standards of behaviour, the complaints policy and the procedures and provide support to employees to remind them of expectations in maintaining professional standards related to relationships with students;
- IV. This is managed through online training, face to face training and support to high risk employees through targeted induction; and
- V. The process includes:
  - a. Providing access to Self-Administered Legal Training (SALT) modules on Child Protection and Discrimination Bullying and Harassment for new applicants. New employees must complete the SALT training before being considered for

employment. Records of completion of SALT modules are kept at the CSO in the online registration process MyProfile;

- b. Providing access to Self-Administered Legal Training (SALT) modules on Child Protection and Discrimination Bullying and Harassment for existing employees and priests which must be completed annually. An email with an alert is sent prior to the 12-month expiry to remind employees that they are due to complete their online training. Records of employees who have completed SALT training are kept at the CSO;
- c. Providing Principals with a monthly progress report for staff in their school with details of completion or non-completion of online SALT training;
- d. Providing face to face Child Protection training covering reporting obligations, child protection investigation process and mandatory reporting to employees in Catholic systemic schools as requested by Principals and as a minimum not less than once every three years;
- e. Providing targeted face to face child protection training to high risk groups of employees such as graduates and trainees at the commencement of their employment;
- f. Publishing the Child Protection Policy and Procedures on the CSO website;
- g. Creating an electronic authentication process whereby employees will need to verify and agree that they have read and understood the Child Protection Policy and Procedures when they log in to their computer or device; and
- h. The Catholic Schools Office is a designated agency under the Act and may seek or provide information from other 'prescribed agencies' in accordance with Chapter 16A of the Act.

#### **4.5 Catholic Systemic Schools**

- I. The Principal or senior staff delegate will report mandatory reporting matters to the Department of Communities and Justice (DCJ) and, where necessary, NSW Police. Principals will make a mandatory report via the [Child Story Mandatory Reporter Guide](#). Urgent matters can be reported via the helpline or to the police. Confirmation of the Mandatory Reporting Guide (MRG) and eReport (if applicable), along with any other documentation, is to be uploaded to the electronic student's record, under the Welfare Tab, entry type, 'MRG' reporting;
- II. The Principal is required to ensure that all employees in their school are aware of their mandatory reporting obligations; and
- III. The process includes:
  - a. Ensuring employees are informed of the Child Protection Policy and Procedures at the commencement of each school year at the school's staff development day;
  - b. Inducting new employees of their obligations and responsibilities and the Child Protection policy and procedures at the commencement of their employment;
  - c. Inducting volunteers of expectations of behaviour with and around students at the school and informing them of their legislative obligations;

- d. Monitoring the monthly SALT compliance progress reports to ensure all staff are compliant and take appropriate action if not up to date including speaking with the employee and informing them they could face disciplinary action if they do not complete the mandatory training;
- e. Providing general employees with time allocation and access to computers to complete online SALT training;
- f. Providing time allocation to Human Services staff at the CSO to conduct refresher child protection training with employees as a minimum once every three years;
- g. Ensuring high risk employees such as trainees and graduate teachers attend system training on commencement of employment at the beginning of the school year, records to be kept of those attending at the school;
- h. Principals in Catholic Systemic Schools must publish the Child Protection policy and procedures identifying child protection processes including mandatory reporting within the school and to the parent community. This can be communicated through the Parent/Staff Handbook, via the school newsletter and/or the link to the school's public website; and a copy at the school's front reception desk;
- i. Keep up to date records to show compliance with above.

#### **4.6 Employees in Catholic Systemic Schools**

- I. Employees have significant obligations as mandatory reporters, for the safety, welfare and well-being of children and young people; and
- II. The process includes:
  - a. An employee must complete online SALT child protection, discrimination, bullying and harassment training annually;
  - b. Verify and agree that they have read and understood the Child Protection Policy and Procedures via an electronic authentication process when they log in to their computer or device;
  - c. Report any concerns regarding the safety, welfare or well-being of a child or young person to their Principal. If there is an immediate danger to the child or young person and the Principal or next most senior member of staff is not contactable they should speak to Human Services at the CSO;
  - d. Employees are not required to, and must not, undertake any investigation of the matter;
  - e. Employees must not inform the parents or caregivers that a report to Department of Communities and Justice (DCJ) has been made;
  - f. Employees are required to deal with the matter confidentially and only disclose it to the persons referred above or as required to comply with mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this policy but could expose the employee to potential civil proceedings for defamation; and

- g. If the allegation involves the principal, the employee is required to report to Human Services at the Catholic Schools Office.

#### **4.7 Definitions under the Act**

##### **I. Threshold for reporting to Department of Communities and Justice (DCJ)**

A mandatory reporter must, where they have reasonable grounds to suspect that a child (under 16 years of age) is at risk of significant harm, report to DCJ 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.

In addition, while not mandatory, the Principal or Human Services employee considers that a report should also be made to DCJ where there are reasonable grounds to suspect a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety, welfare and well-being of the young person.

##### **II. Reasonable Grounds**

Reasonable grounds refer to the need to have an objective basis for suspecting that a child or young person may be at risk of significant harm based on:

- a. First hand observations of the child, young person or family;
- b. What the child, young person, parent or another has disclosed; and
- c. What can reasonably be inferred based on professional training and/or experience.

Reasonable grounds do not mean that employees are required to confirm their suspicions or have clear proof before making a report.

##### **III. Significant Harm**

A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or well-being of the child or young person are present to a significant extent.

What is meant by 'significant' in the phrase 'to a significant extent' is that which is sufficiently serious to warrant a response by a statutory authority irrespective of a family's consent.

What is significant 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 well-being.

A child or young person is 'at risk of significant harm' if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances as per the Act, but not limited to:

- 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;

- c. 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 person to receive an education in accordance with that Act;
- d. The child or young person has been, or is at risk of being, physically or sexually abused or ill-treated;
- e. 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;
- f. 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; and
- g. A child or young person is at risk of psychological harm due to bullying.

## **5. CHILDREN'S GUARDIAN ACT 2019 (NSW) -**

### **5.1 Responsibilities under the Act**

Part 4 of the Act requires the Heads of Relevant Entities, including non-government schools, to notify the Office of the Children's Guardian of all allegations of reportable conduct by an employee and the outcome of the investigation of these allegations.

In order to meet these requirements, the following will occur:

### **5.2 The Office of the Children's Guardian (The Guardian)**

The Guardian:

- I. Must keep under scrutiny the systems for preventing reportable conduct by employees of non-government schools and the handling of, or response to, reportable allegations (including allegations which are exempt from notification) or convictions;
- II. Must receive and assess notifications from non-government schools concerning reportable conduct or reportable convictions;
- III. Is required to oversee or monitor the conduct of investigations by non-government schools into allegations of reportable or reportable convictions;
- IV. Must determine whether an investigation that has been monitored has been conducted properly, and whether appropriate action has been taken as a result of the investigation;
- V. May directly investigate an allegation of reportable conduct or reportable conviction against an employee of a non-government school, or the handling of or response to such a matter (e.g. arising out of complaints by the person who is the subject of an allegation); and
- VI. May undertake 'own motion' investigations of non-government schools where The Guardian considers it appropriate to do so, including where there is evidence of systematic failure or serious conflicts of interests.

### **5.3 Diocesan Safeguarding Manager (SGM)**

- I. The Head of Relevant Entity is the Bishop of Lismore who has delegated his responsibility for Child Protection to the Diocesan Safeguarding Manager (SGM);
- II. Refer to Section 8 of this document, ***Process for Managing Allegations*** for the role of the SGM for reportable conduct matters.

#### **5.4 Catholic Schools Office (CSO) Human Services**

- I. In the Diocese of Lismore child protection allegations/complaints in Catholic systemic schools must be referred to the Principal who will inform Human Services at the Catholic Schools Office. Human Services work closely with the SGM and keeps the SGM informed of all matters in relation to child protection; and
- II. The process includes:
  - a. Human Services receives allegations or complaint of reportable conduct from the school Principal;
  - b. Informs the SGM of the reportable conduct allegation via registering into the confidential online Child Protection database and follow up email;
  - c. Identifies whether the alleged conduct requires a report to external authorities, which could include NSW Police, DCJ, Office of Children's Guardian or other agencies;
  - d. Undertakes a risk assessment in conjunction with the Principal, takes appropriate action and informs the SGM
  - e. Responds to, makes inquiries and/or investigates the reportable conduct matter as per paragraph 8.5 of this document, ***Investigation Process***;
  - f. Keeps the SGM informed of matters throughout the investigation process; and
  - g. Maintains appropriate records of investigation and findings, ensuring storage of such records is kept securely and separately from personnel files.

#### **5.5 Catholic Systemic Schools**

- I. The Principal in a Catholic systemic school in the Diocese of Lismore must report any allegation or complaint regarding a child to Human Services at the CSO; and
- II. The process includes:
  - a. Informing Human Services if the Principal becomes aware that an employee has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction) involving reportable conduct.

This includes information relating to themselves;

- b. Informing Human Services of any allegation or complaint of a child related matter whether it occurred during the course of the employees work or outside of the workplace;

- c. Takes advice from Human Services on the next steps which could include making a report to police or DCJ and assisting with a risk assessment of the situation; and
- d. Maintaining strict confidentiality around all matters.

## **5.6 Employees in Catholic Systemic Schools**

- I. An employee in a Catholic systemic school in the Diocese of Lismore must report any concerns they have about any employee engaging in reportable conduct or any allegation of 'reportable conduct', including information about themselves whether this conduct is during or outside of work hours;
- II. If an employee is not sure whether the allegation is reportable conduct but considers that it is inappropriate behaviour they must still report it;
- III. An employee must also report to the Principal if they become aware that an employee has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction) involving reportable conduct.

This includes information relating to themselves;

- IV. If the allegation involves the Principal the employee is required to report the allegation to Human Services at the Catholic Schools Office; and
- V. In addition to reportable conduct matters employees also have a duty of care to all students in the school.

## **5.7 Duty of Care**

- I. An employee has a legal obligation to take reasonable care for their own safety and the safety of children and others with whom they come into contact as part of their engagement with the employer;
- II. These obligations will arise from the specific role and responsibilities of the employee and include (but are not limited to) the following:
  - a. Providing adequate supervision;
  - b. Following procedures relating to child safety, welfare and well-being (for example, reporting procedures);
  - c. Demonstrating personal behaviours that promote the safety, welfare and well-being of children
  - d. Providing medical assistance (if competent to do so); or seeking assistance from a medically trained person to aid a child who is injured or becomes sick;
  - e. Protecting a child from known hazards that pose a risk of harm and which can be reasonably predicted; and
  - f. Taking appropriate action to reduce or remove risks impacting on a child's safety, welfare or well-being.

- III. Duty of care to children applies during all activities and functions conducted or arranged by the employer where children are in the care of employees;
- IV. Employees must assess and manage the risk associated with any activity before undertaking the activity; and
- V. Actual harm to a child, or potential to cause significant harm to a child, caused by:
  - a. A single serious failure to exercise appropriate duty of care; or
  - b. Repeated less serious failures to exercise appropriate duty of care may constitute misconduct, neglect or negligence and/or a breach of this document.

## 5.8 Reportable Conduct

- I. A reportable allegation means an allegation that the employee has engaged in conduct that may be reportable conduct, whether or not the conduction is alleged to have occurred in the course of the employee's employment. A reportable allegation must be reported to The Office of the Children's Guardian.
- II. A finding of reportable conduct may trigger a risk assessment of the employees' WWC;
- III. An Exempt Allegation is a matter that is not reportable under the *Children's Guardian Act 2019* (NSW);
- IV. In accordance with *The Children's Guardian Act 2019* (NSW) reportable conduct is defined as:
  - a. A sexual offence;
  - b. Sexual misconduct;
  - c. Ill-treatment or neglect of a child;
  - d. An assault of a child;
  - e. An offence under 43B or 316A of *The Crimes Act 1900*; or
  - f. Any behaviour that causes significant emotional or psychological harm to a child; and
- V. 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 child, and to any relevant codes of conduct or professional standards (See ***Code of Conduct for Employees in Catholic Schools in the Diocese of Lismore***).
  - b. The use of physical force that is trivial and negligible; or
  - c. Conduct of a class or kind exempted from being reportable conduct by The Office of the Children's Guardian under section 30 of *The Children's Guardian Act 2019* (NSW).

## 5.9 Definitions of Reportable Conduct

### I. Sexual Offence

Sexual offence means an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child.

Examples of sexual offences

- sexual touching of a child
- a child grooming offence
- production, dissemination or possession of child abuse material

## II. Sexual Misconduct

*Sexual misconduct* means conduct with, towards or in the presence of a child that—

- a. is sexual in nature, but
- b. is not a sexual offence.

Examples of sexual misconduct

- descriptions of sexual acts without a legitimate reason to provide the descriptions
- sexual comments, conversations or communications
- comments to a child that express a desire to act in a sexual manner towards the child or another child
- crossing of professional standards will not amount to sexual misconduct in and of itself, unless there is a sexual element.

## III. Assault

*Assault* means:

- (a) the intentional or reckless application of physical force without lawful justification or excuse, or
- (b) any act which intentionally or recklessly causes another to apprehend immediate and unlawful violence.

Examples of assault

- hitting, striking, kicking, punching or dragging a child
- threatening to physically harm a child

## IV. Ill-treatment

Ill-treatment, of a child, means conduct towards a child that is unreasonable and seriously inappropriate, improper, inhumane or cruel.

Examples of ill-treatment

- making excessive or degrading demands of a child
- a pattern of hostile or degrading comments or behaviour towards a child
- using inappropriate forms of behaviour management towards a child

## V. Neglect

Neglect, of a child, means a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child, that causes or is likely to cause harm to a child, by

- (a) a person with parental responsibility for the child, or
- (b) an authorised carer of the child, or
- (c) an employee, if the child is in the employee's care.

Examples of neglect

- failing to protect a child from abuse

- exposing a child to a harmful environment, for example, an environment where there is illicit drug use or illicit drug manufacturing

#### VI. Emotional or Psychological Harm

Behaviour that causes significant Emotional or Psychological Harm is conduct that is intentional or reckless (without reasonable excuse), obviously or very unreasonable and results in significant emotional harm or trauma to a child.

Examples of indicators of significant emotional or psychological harm

- displaying behaviour patterns that are out of character
- regressive behaviour
- anxiety or self-harm

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

- a. An obviously or very clearly unreasonable or serious act or series of acts that the employee knew or ought to have known was unacceptable;
- b. 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
- c. An alleged causal link between the employee's conduct and the psychological harm to the child.

#### VII An offence under s43B (Failure to Protect) or s316A (Failure to Report) of the *Crimes Act 1900*. See Section 6 of this document.

### 5.10 Class or Kind Determination pursuant to s30 of the Children's Guardian Act 2019

- I. Section 30 of the Act permits the Children's Guardian to exempt a class or kind of conduct of employees from being reportable conduct;
- II. No allegation of a physical assault, or a threat of a physical assault, need be reported to the Ombudsman as a reportable allegation, unless it is alleged that:
  - a. There was contact with any body part or area of a child that was clearly hostile and forceful, or reckless, and which had the potential to, or resulted in significant physical harm or injury to the child; or
  - b. A child believed on reasonable grounds that the threat would result in significant physical harm or injury to them; and
- III. Matters not requiring a report to the Children's Guardian must still be recorded and investigated and an appropriate finding made which is provided to the SGM for final determination.

## 6. **CRIMES ACT 1900 (NSW)**

**6.1 Amendments to the *Crimes Act 1900 (NSW)*** took effect on 31 August 2018. The changes introduce new offences of concealing a child abuse offence (s316A) and failing to remove or reduce the risk of a child abuse offence occurring if a person has the power or responsibility to do so (s43B). Any offence under the new sections 43B

or 316A of the Crimes Act are now defined as reportable conduct under the *Children's Guardian Act 2019*.

## **6.2 Failure to report child abuse (s316A)**

- I. All adults in NSW, not just those in child-related work, are required to report a child abuse offence (sexual or physical abuse or extreme neglect) to police if they:
  - a. Know (or reasonably ought to know) that an offence has been committed; and
  - b. Have information that might be of material assistance in apprehending, prosecuting or convicting the offender; and
- II. The current reporting requirements of employers and employees with existing child protection obligations remain unchanged; and
- III. A person has a reasonable excuse for not reporting concerns under s316A if they have already reported a concern under mandatory reporting requirements (e.g. to the Department of Communities and Justice (DCJ) or the Office of the Children's Guardian (OCG)). In addition, the Crimes Act already contains obligations to report a serious indictable offence to police.

## **6.3 Failure to reduce or remove risk of child abuse (s43B)**

An adult working in an organisation that undertakes child-related work will commit an offence if they negligently fail to reduce or remove the risk of a child abuse offence occurring now or in the future.

# **7. CHILD PROTECTION (WORKING WITH CHILDREN) ACT 2012 (NSW)**

## **7.1 About the Working with Children (WWC) Act**

- I. Working with Children Check is a requirement for people who work or volunteer in child-related work.
- II. The Office of the Children's Guardian (OCG) is responsible for employment screening for child related work. The result of a Check is either a clearance to work with children for five years, an interim bar or a bar against working with children. Cleared applicants are subject to ongoing monitoring by the OCG, and any relevant new records which appear against a cleared applicant's name may lead to the Check being revoked;
- III. The object of the WWC Act is to protect children:
  - a. By not permitting certain persons to engage in child-related work; and
  - b. By requiring persons engaged in child-related work to have working with children check clearances; and

## **7.2 Responsibilities under the Act**

In order to meet these requirements, the following will occur:

## **7.3 Catholic Schools Office (CSO) Human Services**

- I. The Catholic Schools Office assists Catholic systemic schools to ensure that only employees who have a valid WWC are engaged in schools by verifying online and recording the status of each child-related employee's WWC;
- II. The process includes:
  - a. Applicants register online for paid employment with the CSO and during this process supply their date of birth and a paid WWC number;
  - b. Volunteers (and private tutors) engaged in schools who are required to have a WWC (other than those classed as exempt) provide the school with the number and their date of birth. Schools advise the CSO through an online notification form;
  - c. Online verification for paid employees, volunteers or tutors is completed by the CSO through the Office of the Children's Guardian Employers portal;
  - d. Only applicants who have an application in progress or a verified WWC status as cleared can volunteer, private tutor or progress through the online employment registration and application process;
  - e. Verification status confirmation notice for volunteers or tutors from the OCG is emailed to Principals;
  - f. Current paid employees' WWC details are kept with the individual's electronic payroll data. A report is drawn from payroll each fortnight and individuals whose WWC is due to expire within the next two months receives an email reminder from the CSO (in addition to the three-month reminder from the OCG) providing the individual with a link to the OCG renewal process plus a link to the CSO online notification to update their renewal details and a reminder for employees to contact NESAs to update their details;
  - g. Reminder to Principals through regular notices that they can access up to date reports on the WWC status of an employee, including expiry status, via ConnX reports;
  - h. Inform Principals of employees who have been issued with an interim bar or bar from the OCG; and
  - i. Reject the registration for employment status for an employee who has been issued with an interim bar or bar and flag the payroll system of same; and
- III. The Catholic Schools Office will keep records for each employee including full name, date of birth, WWC, verification date, verification outcome, expiry date, whether the WWC is paid or volunteer for a period of at least seven years after the last date of the employees' engagement.

#### **7.4 Catholic Systemic Schools**

- I. Principals are required to ensure that all employees engaged in the school, whether paid or volunteers are cleared to work with children; and
- II. The process includes:
  - a. Accessing the CSO online registration for employment data of an applicant which will inform principals whether a WWC is valid and verified as cleared;

- b. Accessing up to date reports on the status, including expiry status, of paid employees WWCs via Connx reports;
- c. Regularly reminding employees of their obligations to ensure that their WWC is current and that they have provided their updated personal details and renewal details to the Catholic Schools Office and NESAs.
- d. Requesting WWC details from the volunteers or tutors to provide to the CSO who will complete the online verification. File the verification notice provided by the CSO at the school for a period of at least seven years following the last day of the volunteers' or tutors' engagement;
- e. Creating and monitoring data bases of volunteers' and tutors' WWC expiry dates;
- f. Conduct regular risk assessments for the attendance on school sites of visitors, contractors and those individuals who are classed as 'exempt' individuals not requiring a WWC under the criteria as determined by the Office of the Children's Guardian; and
- g. Informing parents and guardians of the processes the school undertakes to ensure that all people engaged to work with students in the school have a WWC. This can be communicated through the Parent/Staff Handbook, via the school newsletter and/or the link to the school's public website.

## **7.5 Employees in Catholic Systemic Schools**

- I. It is the responsibility of the child-related worker to ensure that when they are eligible to apply for a Check or when their Check is up for renewal that they do so; and
- II. The process includes:
  - a. Employees must hold and maintain a valid Check by applying for or renewing their WWC online through the OCG portal;
  - b. Renew and update their details to Human Services at the CSO via the online notification link;
  - c. Not engage in child-related work at any time that they are subjected to an interim bar or a bar;
  - d. Report to the Principal if they are no longer eligible for a WWC, the status of their WWC changes or are notified by the OCG that they are subjected to a risk assessment;
  - e. Inform their principal of any change in WWC status which may include but is not limited to an interim bar or bar; and
  - f. Inform NESAs of any changes to their WWC status.

## **7.6 Definitions under the Act**

- I. Bars
  - Final bar is a bar applied based on a decision made by the OCG, following a risk assessment. This person is barred against working with children.
  - Interim bar is issued to high risk individuals to prevent them from continuing to work with children while a risk assessment is conducted. An interim bar may be

applied for up to 12 months. It may be appealed against through the NSW Civil and Administrative Tribunal (NCAT).

- Not everyone who is subject to a risk assessment will receive an interim bar, only those representing a serious and immediate risk to children. Interim bars are issued only for risks considered likely to result in a final bar.

## II. Child-related work

Child-related work includes, but not limited to work in the following sectors:

- a. Early education and child care including education and care services, child care centres and other child care;
- b. Education schools and other educational institutions and private coaching or tuition of children;
- c. Religious services;
- d. Residential services including boarding schools, homestays more than three weeks, residential services and overnight camps; or
- e. Transport services for children including school bus services, taxi services for children with disability and supervision of school road crossings.

## III. Child-related worker

A person who has physical contact or face to face contact with children in work outlined above in 7.6.II, including schools. This may include volunteer work.

A child-related worker may commence work once they have completed the WWC application process. An application is completed when the online application form is complete and the worker's identity has been proven at Service NSW and the fee has been paid (if in paid work) and the WWC has been verified by the Catholic Schools Office.

## IV. Disqualified person

A disqualified person is a person who has been convicted, or against whom proceedings have been commenced for a disqualifying offence outlined in Schedule 2 of WWC Act.

A disqualified person is a person who has a bar preventing them from working with children in child-related work.

It is an offence for an employer to knowingly engage a child-related worker when they do not hold a Check or who has a bar or an interim bar.

It is an offence for an employee to engage in child-related work when they do not hold a Check or have a bar or an interim bar.

## V. Working with Children Check Clearance

A Working with Children Check (WWC) means authorisation under the WWC Act to engage in child-related work. An employee will be issued with a number which is to be provided to the Catholic Schools Office to verify the status of an employee's WWC.

## **8. PROCESS FOR MANAGING ALLEGATIONS**

**8.1 Legislation** establishes an allegation-based framework where the veracity of any complaint is tested through an internal inquiry/investigation process. The process for managing complaints remains consistent for all complaints or allegations, whether they require a report to an external authority or not.

### **8.2 First Steps**

Once an allegation against an employee in a Catholic systemic school in the Diocese of Lismore is received, Human Services will:

- I. Determine on face value whether it is an allegation of reportable conduct;
- II. Consider whether the alleged behaviour constitutes criminal behaviour and whether the matter needs to be reported to the police. Clearance must be sought from the police and/or relevant agencies prior to Human Services proceeding with an investigation;
- III. Consider whether the alleged behaviour requires a mandatory report to DCJ;
- IV. Where conduct meets threshold of reportable conduct, notify the Head of Relevant Entity (HRE) who will inform the Office of the Children's Guardian within seven (7) working days by the submission of a 7-Day Notification Form;
- V. Notify child's parents (unless specifically requested not to by police or DCJ to ensure no compromise to their investigations); and
- VI. Carry out an initial risk assessment in consultation with the Principal and take action to reduce risk/remove risk, where appropriate.

### **8.3 Risk Management and Assessment**

- I. Risk management means identifying the potential for an incident or accident to occur and taking steps to reduce the likelihood or severity of its occurrence;
- II. Human Services is responsible for risk management through the investigation and will assess risk at the beginning of the investigation, during and at the end of the investigation;
- III. One of the first steps following an allegation against an employee is to conduct a risk assessment. The purpose of the risk assessment is to identify and minimise the risks to:
  - a. The child(ren) who are the subject of the allegation;
  - b. Other children with whom the employee may have contact;
  - c. The employee subject of the allegation;
  - d. The school; and
  - e. The proper investigation of the allegation.
- IV. The factors which will be considered during the risk assessment include:
  - a. The nature and seriousness of the allegations;
  - b. The vulnerability of the child(ren) the employee subject of the allegation has contact with at work;
  - c. The nature of the position occupied by the employee subject of the allegation;

- d. The level of supervision of the employee subject of the allegation; and
  - e. The disciplinary history or safety of the employee subject of the allegation and possible risks to the investigation.
- V. Human Services at the Catholic Schools Office will discuss with the Safeguarding Manager the appropriate action to take to minimise risks. This may include the employee subject of the allegation being temporarily relieved of some duties, being required not to have contact with certain students, or being suspended from duty. When taking action to address any risks identified, Human Services will take into consideration both the needs of the child(ren) and the employee subject of the allegation;
  - VI. A decision to take action on the basis of a risk assessment is not indicative of the findings of the matter or that the alleged conduct by the employee did occur; and
  - VII. Risk management will be monitored throughout the investigation. At the completion of the investigation a final risk assessment will be conducted if required.

#### **8.4 Investigation Principles**

- I. In consultation with the SGM, Human Services at the Catholic Schools Office will:
  - a. Plan and conduct the process giving consideration to procedural fairness principles;
  - b. Make reasonable enquiries or investigations before making a decision;
  - c. Avoid conflicts of interest and bias;
  - d. Conduct the investigation without unjustifiable delay;
  - e. Handle the matter as confidentially as possible; and
  - f. Provide appropriate support for all parties including the child/children, witnesses and the employee, subject of the allegation; and
- I.I Reportable Conduct Investigations
  - a. In addition to the above, mandatory considerations of Codes of Conduct Professional Standards and Accepted Community Expectations will be considered.

#### **8.5 Investigation Process**

The investigation process as follows will be conducted by Human Services at the CSO or an external investigator will be appointed.

- I. Contact the parent/guardian of the child:
  - a. Advise parent of receipt of the allegation and seek approval to speak with the child (in the presence of parent/guardian or other relevant adult);
  - b. Explain the investigation process to be followed;
  - c. Inform parent/guardian that the allegation has been reported to the Office of the Children's Guardian;
  - d. Ensure the child is supported including the availability of counselling if required;
  - e. Explain the need for confidentiality; and
  - f. Advise they will be informed when the matter is finalised;
- II. Interviewing witnesses and gathering information:

- a. Interviews with the child (in the presence of the parent/guardian or other relevant adult);
- b. Interviews with any witnesses the child or the person who has reported the matter puts forward;
- c. Information is gathered from recorded and typed statements/interviews, documents and records; and
- d. All records of interviews and statements should be signed and dated;

III. Contact employee subject of the allegation:

- a. Contact the employee and inform them of the allegation, following up with a letter outlining the allegations,
- b. Provide them with a reasonable opportunity to respond to the allegations;
- c. Advise the employee of the details of the person who will be conducting the enquiry into the allegation. In general, this will be a Human Services employee from the Catholic Schools Office however it could also be an external investigator.
- d. Inform the employee that they are able to bring a support person to the interview who can be a IEU organiser or work colleague. It is not advisable to have a member of the Leadership team at the school attend as support person;
- e. Arrange a time to meet with the employee to provide them with an opportunity to respond. Alternatively, the employee may respond in writing;
- f. Provide the employee with the opportunity to avail themselves of counselling services via the Catholic Schools Office EAP; and

Reportable Conduct Investigations

- g. Notify the employee that a Reportable Conduct concern has been raised and follow up with a notification letter.
- h. Inform the employee subject of the allegation that the allegation is reportable to the Office of the Children's Guardian (and if necessary police and/or DCJ). Follow up with a further letter providing details of the allegations of the reportable matter e.g. psychological harm, ill treatment, neglect, physical assault, sexual offence, sexual misconduct, or any offence under sections 43B or 316A or the *Crimes Act 1900*; and
- i. adhere to points b) to f) above;

IV. Interview with the employee subject of the allegation

At the meeting with the employee, Human Services or the External Investigator will:

- a. Clarify any issue/s regarding the procedure to be followed;
- b. Inform the employee of the allegation that has been made providing as much detail as possible;
- c. Offer the employee the opportunity for a break in the meeting to allow him/her time to consider the complaint;

- d. Invite the employee to respond and records the response – the employee may elect to respond in writing;
- e. Ask for the name(s) of any witness/es to the alleged incident; and
- f. Assure that the issue will be dealt with promptly and confidentially and seeks confidentiality from all present at the meeting.

## **8.6 Proposed Outcome and Final Finding**

### **I. Non-Reportable Allegations:**

The SGM will consider and confirm the recommended finding after viewing all documentation related to the investigation.

The employee, subject of the allegation will be provided with a letter outlining the finding of the investigation and invited to provide any further information which will be considered.

Available findings include sustained, not sustained or false.

### **II. Reportable Conduct Allegations:**

Proposed Outcome:

At the conclusion of the investigation the investigator will recommend an outcome, on the balance of probabilities, in relation to each allegation and forward this recommendation to the Head of Relevant Entity (HRE). The outcomes include:

- a. Reportable Conduct; or
- b. Not Reportable Conduct.

The HRE will consider and confirm the recommended proposed outcome after viewing all documentation related to the investigation.

The employee, subject of the allegation will be provided with a letter outlining the proposed outcome of the investigation and invited to provide any further submission which will be given genuine consideration before proceeding to make a final decision.

Final Finding:

The HRE will consider any further information provided by the employee subject of the reportable allegation and make a final finding. Final findings are provided in the Entity Report to the HRE. A sustained finding of sexual offence, sexual misconduct or serious sexual assault will trigger a risk assessment of the employees WWCC.

## **8.7 Reporting**

The employee subject of the allegation will receive written advice as to the final finding of the investigation.

- a. Advice to Complainant and/or Child's Parent/Guardian

Human Services advises the Complainant and/or the child's parent/carer that the matter has been finalised.

b. Documentation

Comprehensive documentation needs to be maintained throughout the process.

If a person interviewed does not wish to sign a document, it should be recorded that they were provided with a copy of the document and invited to make amendments.

At the conclusion of the investigation all documentation is filed confidentially by the HRE and separate from personnel files.

**9. Access to files**

An employee may request access to records held by the Catholic Schools Office in accordance with the relevant Enterprise Agreement, the *Government Information (Public Access) Act 2009* (NSW), or other relevant legislation.

**VERSION HISTORY**

<b>Version</b>	<b>Approval Date</b>	<b>Authorised By</b>	<b>Notes</b>
1	June 2004	Assistant Director – School Resources Services	Originally released
2	June 2011	Assistant Director – School Resources Services	Reviewed
3	May 2019	Assistant Director – School Resources Services	Reviewed, amended, reformatted
4	June 2020	Human Services Consultant	Reviewed, amended,