



## Catholic Schools Office Diocese of Lismore

# CHILD PROTECTION POLICY AND PROCEDURES

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**Related Documentation:** Catholic Education in the Diocese of Lismore Foundational Values for Catholic Identity and Mission

*Child Protection (Working with Children) Act 2012 (NSW)*

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

*Crimes Act 1900 (NSW)*

*Ombudsman Act 1974 (NSW)*

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 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.

### **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.

## 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** means any person under the age of 18 years. With respect to matters notifiable to Family & Community Services (FACS), a child is defined as a person under 16 years of age.
- 2.2 **Young Person** means a person aged 16 or 17 years.
- 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 Trustees of the Roman Catholic Church for the Diocese of Lismore and Catholic Schools Office Lismore.
- 2.5 **PSOA** means the person subject to 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 *Ombudsman Act 1974* (NSW).
- 2.8 **CSO** means Catholic Schools Office Diocese of Lismore.
- 2.9 **Head of Agency** means the Bishop of Lismore, who is deemed to be the Head of Agency, as per Part 3A of the *Ombudsman Act 1974* (NSW) for Catholic systemic schools in the Diocese of Lismore. The Head of Agency has delegated responsibility to the Diocesan Safe Guarding Manager (SGM).
- 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 Safe Guarding Manager (SGM).
- 2.11 **Mandatory Reporter** means under the Care and Protection Act, 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:
- I. *Children and Young Persons (Care and Protection) Act 1998* (NSW);
  - II. *Ombudsman Act 1974* (NSW);
  - III. *Crimes Act 1900* (NSW); and
  - IV. *Child Protection (Working with Children) Act 2012* (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 documentation

Code of Conduct for Employees in Catholic Schools in the Diocese of Lismore.

## 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 Care and Protection Act provides for mandatory reporting of children at risk of significant harm. Under the Care and Protection Act mandatory reporters are those who:

- I. In the course of their employment, deliver services including health care, welfare, education, children's services or residential services, to children; or
- II. Hold 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 and residential services to children.

#### 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 student; 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 in their clusters 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;
- 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 prescribed agency under the *Children and Young Persons (Care and Protection) Act 1998* 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 Family and Community Services (FACS) and, where necessary, the police. Principals will make a mandatory report via the [Child Story Mandatory Reporter Guide](#). 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;
- 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
  - 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;
- 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 Family and Community Services (FACS) 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 Family and Community Services (FACS)**

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 FACS 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 FACS 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 does 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:

- 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. THE OMBUDSMAN ACT 1974 (NSW)**

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

Part 3A of the Ombudsman Act requires the heads of certain agencies, including non-government schools, to notify the New South Wales Ombudsman (Ombudsman) 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 Ombudsman**

The Ombudsman:

- 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 Ombudsman considers it appropriate to do so, including where there is evidence of systematic failure or serious conflicts of interests.

### 5.3 Diocesan Safe Guarding Manager (SGM)

- I. The Head of Agency is the Bishop of Lismore who has delegated his responsibility for Child Protection to the Diocesan Safe Guarding Manager (SGM); and
- II. Refer to Point 5 of this document, ***Process for Managing Allegations of Reportable Conduct*** 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, FACS, NSW Ombudsman 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 5.8 of this document, ***Process for Managing Allegations of Reportable Conduct***;
  - f. Keeps the SGM informed of matters throughout the investigation process through regular meetings, phone calls and emails; 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.
- 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;
- c. Takes advice from Human Services on the next steps which could include making a report to police or FACs 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 other employee engaging in reportable conduct or any allegation of 'reportable conduct' that has been made to them to their Principal, including information about themselves;
- II. If an employee is not sure whether the conduct is reportable conduct but consider 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.
- 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 of reportable conduct against a person, or an allegation of misconduct that may involve reportable conduct as defined by the Ombudsman Act 1974 (NSW). A reportable allegation must be reported to the Ombudsman and may result in an employee's name being forwarded to the NSW Office of Children's Guardian following a sustained finding on completion of investigation;
- II. An Exempt Allegation is a matter that is not reportable under the *Ombudsman Act 1974* (NSW);

- III. In accordance with the Ombudsman Act 1974 (NSW) reportable conduct is defined as:
- a. Any sexual offence or sexual misconduct committed against, with, or in the presence of a child (including child pornography offences);
  - b. Any assault, ill-treatment or neglect of a child;
  - c. Any behaviour that causes psychological harm to a child; or
  - d. Whether or not, in any case, with the consent of the child.
- IV. 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 Ombudsman under 25C (4) of the Ombudsman Act 1974 (NSW).

## 5.9 Definitions of Reportable Conduct

### I. *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:

- a. Indecent assault;
- b. Sexual assault;
- c. Aggravated sexual assault;
- d. Sexual intercourse and attempted sexual intercourse;
- e. Possession/dissemination/production of child pornography or child abuse material;
- f. Using children to produce pornography;
- g. Grooming or procuring children under the age of 16 years for unlawful sexual activity; and
- h. Deemed non-consensual sexual activity on the basis of special care relationships.

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

## II. *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:

- a. Crossing professional boundaries;
- b. Sexually explicit comments and other overtly sexual behaviour; and
- c. Grooming behaviour.

## III. *Crossing professional boundaries*

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

- a. Relationship with;
- b. Conduct towards; or
- c. Focus on;

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

## IV. *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:

- a. Sexualized behaviour with or towards a child (including sexual exhibitionism);
- b. Inappropriate conversations of a sexual nature;
- c. Comments that express a desire to act in a sexual manner;
- d. Unwarranted and inappropriate touching involving a child;
- e. 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;

- f. Exposure of children and young people to sexual behaviour of others including display of pornography; and
- g. Watching children undress in circumstances where supervision is not required and it is clearly inappropriate.

V. *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 recognizes 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 the behaviour.

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

- a. Persuading child/ren that there is a 'special relationship';
- b. Inappropriate gift giving;
- c. Special favours/breaking rules;
- d. Inappropriate amounts of time being spent with child/ren;
- e. Secret relationship, tactics to keep relationship secret;
- f. Testing boundaries (touching, physical contact, undressing in front of a child, talking about sex);
- g. Extending relationship outside of work; or
- h. Personal communication about personal or intimate feelings.

VI. *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. if 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:

- a. It results in the child being injured, beyond a type of injury like a minor scratch, bruise or graze;
- b. It had the potential to result in a serious injury; or
- c. 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, or 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 reported.

#### VII. *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 or hostile or unreasonable and seriously inappropriate, degrading comments or behaviour towards a child.

#### VIII. *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.

#### IX. *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:

- 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. Psychological harm can include the exacerbation or aggravation of an existing psychological condition, such as anxiety or depression.

5.10 **Class or Kind Determination pursuant to S25CA of the *Ombudsman Act 1974***

- I. Part 3A of the *Ombudsman Act 1974* ('the Act') sets out the Ombudsman's functions relating to child protection.
- II. Section 25CA of the Act permits the Ombudsman to determine the allegations of certain classes or kinds of conduct by employees of agencies are exempted from being reported to the Ombudsman.
- III. Pursuant to s25CA of the Act, the Ombudsman has determined that the Catholic Schools Office (CSO), in the Diocese of Lismore, is an agency that has achieved a standard of investigative practice whereby only the reportable allegations specified below, against employees of that agency, need to be notified to the Ombudsman under s25C(1);
- IV. 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.
- V. This Determination does **not exempt** an agency from reporting allegations that involve:
  - a. Any allegation of any sexual offence or sexual misconduct;
  - b. Any allegation of conduct causing psychological harm;
  - c. Allegations of neglect or ill-treatment;
  - d. Any conviction for an offence involving reportable conduct; and

- e. Those matters initially exempted under s25A or s25CA, but where investigation uncovers information that renders the matter reportable, and the information indicates that the person may pose a risk to children.
- VI. Matters not requiring a report to the NSW Ombudsman 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 NSW *Crimes Act 1900* took effect on 31 August 2018. The changes introduce new offences of concealing a child abuse offence (section 316A) 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 (section 43B). Any offence under the new sections 43B or 316A of the Crimes Act is now defined as reportable conduct under the Ombudsman Act.

### 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
- II. The current reporting requirements of employers and employees with existing child protection obligations remain unchanged;
- 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 FACS or the Ombudsman). In addition, the Crimes Act already contained obligations to report a serious indictable offence to Police.

### 6.3 **Failure to reduce or remove risk of child abuse (s42B)**

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. A working with Children Check is a requirement for people who work or volunteer in child-related work. It involves a national criminal history check and a review of findings of workplace misconduct;
- 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, 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
- IV. In order to meet these requirements, the CSO, Systemic Schools and employees will undertake the following:

### **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 volunteer WWC (other than those classed as exempt) provide the school with the volunteer 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 through the Office of the Children's Guardian Employers portal;
  - d. Only applicants who have a verified WWC status as cleared can progress through the online 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;
  - 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
- 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;
- 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; and
- 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.
- 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;
- 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. If an interim bar remains in place for six

months or longer, it may be appealed against through the Administrative Decisions Tribunal.

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 4.5, 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 the NSW motor registry 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 OF REPORTABLE CONDUCT**

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 prior to Human Services proceeding with a Reportable Conduct investigation;
- III. Consider whether the alleged behaviour requires a mandatory report to FACS;
- IV. Where conduct meets threshold of reportable conduct, notify the SGM who will inform the Ombudsman within 30 days of receiving the allegation via a Part A;
- V. Notify child's parents (unless specifically requested not to by police or FACS to ensure no compromise to their investigations);
- VI. Carry out a 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 PSOA;
  - 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 PSOA has contact with at work;
  - c. The nature of the position occupied by the PSOA;
  - d. The level of supervision of the PSOA; and
  - e. The disciplinary history or safety of the PSOA and possible risks to the investigation
  
- V. Human Services at the Catholic Schools Office will discuss with the SGM the appropriate action to take to minimise risks. This may include the PSOA 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 PSOA.
  
- 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.
  
- VII. Risk management will be monitored throughout the investigation. At the completion of the investigation, a finding will be made in relation to the allegation and a decision made by Human Services on whether to proceed with disciplinary action.

#### **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. Inform the person subject of the allegation (PSOA) of the substance of any allegations made against them and provide them with a reasonable opportunity to respond to the allegations (unless specifically requested not to by police or FACs to ensure no compromise to their investigations);
- c. Make reasonable enquiries or investigations before making a decision;
- d. Avoid conflicts of interest;
- e. Conduct the investigation without unjustifiable delay;
- f. Handle the matter as confidentially as possible; and
- g. Provide appropriate support for all parties including the child/children, witnesses and PSOA

### 8.5 Investigation Process

The investigation process 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 Ombudsman's Office;
  - 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 written statements, review of documents and records; and
- d. All records of interviews and statements should be signed and dated.

### III. Contact PSOA:

- a. Contact the PSOA and inform them of the allegation, whether or not the allegation is notifiable to the Ombudsman (and if necessary FACS). Follow up with a letter with the allegations of the reportable matter i.e. psychological harm, ill treatment, neglect, physical assault, sexual offence or sexual misconduct;
- b. Advise the PSOA 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;
- c. Arrange a time to meet with the PSOA to provide them with an opportunity to respond. Alternatively the PSOA may respond in writing;
- d. Inform the PSOA they may choose to have a support person present at the meeting 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; and
- e. Provide the employee with the opportunity to avail themselves of counselling services via the Catholic Schools Office EAP.

### IV. Interview with the PSOA

At the meeting with the PSOA, Human Services:

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

### I. Preliminary Finding

At the conclusion of the investigation the investigator will recommend a finding, on the balance of probabilities, in relation to each allegation and forward this recommendation to the SGM. The available findings are:

- a. Sustained (i.e. a finding that the conduct occurred);
- b. 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);
- c. Where the evidence is of such poor probative value or lacking in weight, such as to warrant a finding that, on the balance or probabilities, the conduct did not occur);
- d. False (i.e. where inquiries into the matter show the matter did not occur). Some of these matters could 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
- e. 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.

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

The PSOA will be provided with a letter outlining the preliminary findings of the investigation and invited to provide any further information which will be considered.

### II. Final Finding

Human Services in consultation with the SGM will consider any further information provided by PSOA and make a final finding. Where an allegation of reportable conduct exists the SGM will sign off on the Part B Notification and provide the Part B, with a copy of the investigation file, to the Ombudsman. The Ombudsman will review the file and advise the SGM whether or not it is satisfied with the process prior to closing the matter. Following a sustained finding, the SGM will also provide the Part B and investigation file to the Office of the Children's Guardian.

### III. Reporting and disciplinary action

The PSOA will receive written advice as to the final finding of the investigation.

The finding will inform a final risk assessment and any action Human Services considers necessary to mitigate risk. This may include increased

support, professional development, increased supervision/monitoring or disciplinary action, removal from duties or termination of employment.

IV. Advice to Notifier and/or Child's Parent/Guardian

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

V. 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 SGM and separate from personnel files.

VI. Access to files

A PSOA 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>
3	May 2019	Assistant Director – School Resources Services	Reviewed, amended, reformatted