

WS 4.3

Managing Allegations of Reportable Conduct against an Employee

Controlled Document

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This policy and procedures should be read in conjunction with CS 16 Child Safeguarding Policy.

1. Purpose

To ensure that allegations that CatholicCare personnel have mistreated or abused a child are acknowledged, investigated and acted upon in a manner that:

- maintains the safety of the child
- respects & protects the rights of the child and other parties involved
- is confidential, just and fair
- meets legal requirements and is reported to the correct authorities

2. Key Accountability

- Director
- Principal Officer
- Executive Manager, Quality and Risk
- Executive Manager, People & Culture

3. Application

This policy applies to all CatholicCare personnel (including anyone engaged by CatholicCare to provide services to children) including:

- Employees
- Foster/Kinship carers
- Volunteers
- Students (e.g. work experience, professional placements)
- Members of councils, committees, and sub-committees

Where specified it also applies to adult household members living in the home of a foster/kinship carer.

If disciplinary action or an employment proceeding has commenced in relation to a child protection allegation (regardless of whether the matter is reportable or exempt from reporting to external bodies), this policy continues to apply to a person even after they have ceased their association or employment with CatholicCare.

4. Relevant Legislation

- Children and Young Persons (Care and Protection) Act 1998
- Children and Young Persons (Care and Protection) Regulation 2012
- Child Protection (Working with Children) Act 2012
- Child Protection (Working with Children) Regulation 2013
- Children's Guardian Act 2019
- Disability Inclusion Act 2014 (NSW)

- National Disability Insurance Scheme Act 2013
- NDIS (Quality & Safeguards Commission and Other Measures) Act 2018
- United Nations Convention on the Rights of the Child (Ratified in Australia 1990)
- Crimes Act 1900 (No 40)

5. Accreditation Standards and Related Documents

- Council of Australian Governments – National Principles for Child Safe Organisations Standard 5 – People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice
- Office of the Children's Guardian – NSW Child Safe Standards for Permanent Care
 - Standard 3 - Child Protection and Child Safety
- Australian Children's Education & Care Quality Authority
 - Quality Area 2 – Children's Health & Safety
 - 2.2.3 Child Protection
- Department of Social Services - Families and Children Activity Administrative Approval Requirements
 - Standard 13 - Client Safety
- NDIS Quality and Safeguards Commission – NDIS Practice Standards
 - Core Module Section 1 – Rights & Responsibilities
 - Violence, Abuse, Neglect, Exploitation & Discrimination

6. Definitions

Child

A person under the age of 18 years - Children's Guardian Act 2019

Employee

Under Section 16, Children's Guardian Act (2019) an 'employee' captures a range of individuals who work with children including:

- an individual employed by CatholicCare
- an individual engaged by CatholicCare, whether directly or indirectly, to provide services to children
 - a volunteer, whether or not they have a Working with Children Clearance (WWCC) to do so (includes parent volunteers)
 - a contractor, if the contractor requires a WWCC for the purpose of this engagement

Head of Entity

For the purposes of fulfilling CatholicCare's responsibilities under the *Children's Guardian Act 2019*, the Director of CatholicCare, Diocese of Wollongong represents the Bishop of Wollongong as head of relevant entity.

Principal Officer

For the purposes of fulfilling CatholicCare's responsibilities under the *Children & Young Persons (Care and Protection) Act 1998* and the *Children & Young Persons (Care & Protection) Regulation 2012* the Executive Manager, Children & Youth Services, Michelle Ferrara, is the designated Principal Officer and also has overall responsibility for supervising CatholicCare's arrangements for providing Out of Home Care.

Reasonable Grounds

Another person, when faced with similar information, would draw the same conclusion. Proof is not necessary.

Reportable Conduct

- Defined by Section 20 of the Children's Guardian Act (2019) as sexual misconduct, ill-treatment of a child, neglect of a child, assault against a child.
- An offence under 43B or 316A of the Crimes Act 1900, behaviour that causes significant emotional or psychological harm to a child.

Risk to the Safety of Children

A 'real and appreciable risk to the safety of children'

Risk of Significant Harm (RoSH) – see CS 16 Child Safeguarding Policy

7. Policy

Allegations of a child protection nature involving employees **MUST** be reported to the Director, CatholicCare and dealt with appropriately. This includes notifying the Office of the Children's Guardian of allegations of "reportable conduct".

From 1 March 2020, the Reportable Conduct Scheme is operated by the Office of the Children's Guardian (OCG) under the Children's Guardian Act 2019. The scheme monitors how organisations investigate and report on reportable allegations and convictions made against their employees, volunteers or contractors who provide services to children.

CatholicCare, e Diocese of Wollongong, has put in place procedures to fulfil the legal obligation to respond to these allegations and convictions. These are not easy matters to deal with as they are highly sensitive and raise complex issues and emotions. However, the welfare of children and young people and our legal responsibilities are not negotiable.

CatholicCare has continually refined its processes to protect the rights and interests of all parties. All efforts are made to maintain the integrity of the people involved and to ensure care and support. The procedures to handle these allegations are to ensure confidentiality, justice and fairness for all involved.

The safety, welfare, and wellbeing of children, including protection from child abuse, is the paramount consideration in decision making under the *Children's Guardian Act 2019* (the Act). Under the law, the *head of a relevant entity* (i.e. the Director of CatholicCare) is required to have systems in place to ensure **all employees make reports of reportable allegations of which they become aware**, and that report must be made as soon as practicable.

A failure to make a report may constitute misconduct, to which CatholicCare would respond in accordance with work place disciplinary processes (see WS 4.2 Managing Conduct and Performance Policy).

In some circumstances, a failure to make a report could also constitute:

- a reportable allegation (of neglect) against the employee who fails to report, and/or
- a criminal offence (under [s43B of the Crimes Act](#)).

Key Principles in the Handling of Allegations and CatholicCare Investigations

- **Respect and support** for the dignity of all persons

- **Confidentiality**
 - To preserve the dignity and wellbeing of the child/ren, the employee and other persons
 - To ensure the investigation is not compromised
 - Also ensure security of relevant documents
- **Natural justice**
 - The employee has the right to be informed of the allegation/s and to put their case
 - The employee has the right to respond to adverse comment
 - Reasonable enquiries or investigations made before deciding on the matter
 - Investigation conducted without undue delay
- **Unbiased and fair**
 - Investigation conducted by independent persons
 - Careful decision making that is fair, just and based on evidence
- **Appropriate action** consequently
 - To minimise risk for the future
 - To ensure protection from intimidation or retribution for bringing forth a concern in good faith
 - To ensure ongoing support, where appropriate, for the child/ren, the employee and other persons
- **Closure** of the matter investigated

The process for dealing with allegations is transparent. There are checks in place to ensure this:

- The process is accountable to the Director of CatholicCare and is subject to scrutiny by the OCG.
- Protocols govern the employee's access to the confidential file of the proceeding.
- Employees as well as others have the right to complain to the Director of CatholicCare and/or to the OCG if they are concerned about the conduct of an investigation conducted under Part 4 of the *Children's Guardian Act 2019* (the Act).

It is important to "hold on to normality" and keep these issues in perspective. We must recognise and honour the outstanding dedication of staff to the children and young people in our agency. It is a matter of fact that most people working in our agency are never likely to be the subject of an allegation requiring an investigation. Furthermore, the more serious allegations will be investigated by external agencies, such as Police and/or Department of Communities and Justice (DCJ). If these external agencies become involved, the CatholicCare investigation may need to be suspended until clearance is given by the external agency.

All people working in CatholicCare called to act in the interest of children and young people, so that working together we may maintain the highest of professional standards and the integrity of the welfare profession and to maintain an authentic Catholic agency.