



## FACT SHEET: Mandatory Reporting

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

Information for Clergy, Agency and Parish workers in a child related role within the Archdiocese of Sydney

### What is mandatory reporting?

Mandatory reporting is the legislative requirement for selected classes of people to report suspected child abuse and neglect to government authorities. In NSW, mandatory reporting is regulated by the Care Act. Legislative grounds for intervention in NSW cover young people up to 18 years of age, but it is not mandatory to report suspicions of risk of harm in relation to young people aged 16 and 17 years. **It is mandatory to report suspicions of risk of harm in relation to children under the age of 16 years.**

**From 1 March 2020**, amendments to the Care Act will commence and expand the mandatory reporter group to include Clergy, agency and parish workers (paid and unpaid) in child related roles. These amendments are in line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

### Who are mandatory reporters in NSW?

In NSW mandatory reporting obligations apply to persons who deliver the following services wholly or partly to children as part of their professional work or other paid employment and those in management positions in organisations that deliver those services<sup>1</sup>:

- Health Care
- Welfare (psychologists, social workers)
- Education (teachers, counsellors)
- Disability Services
- Children's Services
- Residential Services
- Law Enforcement
- **Persons in religious ministry or persons providing religion based activities to children**

- Registered psychologists

### When is a mandatory reporter required to make a report?

A mandatory reporter must make a report when they have **reasonable grounds** to suspect that a child or young person is at **risk of significant harm** and those grounds arise in the course of, or from their work or role. A mandatory reporter has a duty to report, 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<sup>2</sup>.

### Risk of Significant Harm Definitions

- Circumstances that are causing concern for the safety, welfare or wellbeing of the child or young person to a significant extent which means the concern is sufficiently serious to warrant a response by a statutory authority (such as NSW Police Force or Community Services) irrespective of a family's consent.
- 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 wellbeing.
- The significance can result from a single act or omission or an accumulation of these.

### Categories of Risk of Significant Harm<sup>3</sup>:

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,

<sup>1</sup> Children and Young Persons (Care and Protection) Act 1998 section 27(1) and (b)

<sup>2</sup> Children and Young Persons (Care and Protection) Act 1998 section 27(2)

<sup>3</sup> Children and Young Persons (Care and Protection) Act 1998 section 23(1)

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,

b1) 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,

c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,

d) 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,

e) 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,

f) the child was the subject of a pre-natal report under *section 25* and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

### **What support is available to help mandatory reporters decide whether to make a report?**

Mandatory reporters are required to report to the Child Protection Helpline as outlined in the Archdiocese *Protocol: Reporting a Child who is at Risk of Significant harm to DCJ*. For support please contact the Safeguarding and Ministerial Integrity Office at [safeguardingenquiries@sydneycatholic.org](mailto:safeguardingenquiries@sydneycatholic.org) or phone 02 9390 5810

### **New protections for reporters: Section 29**

The Royal Commission found that protections for reporters of child sexual abuse varied throughout Australian jurisdictions and a lack of reporter protections can act as a barrier to reporting. To

remove this barrier and comply with the Royal Commission's recommendations, additional protections for reporters have been inserted into the Care Act.

A new section, *Section 29*, has been inserted into the Care Act providing specific protections to reporters who make reports to institutions engaged in child related work. These reporters are protected from liability for defamation and civil and criminal liability. The section also provides that the report does not constitute a breach of professional etiquette or ethics or amount to unprofessional conduct<sup>4</sup>.

All reporters are now protected against retribution for making, or proposing to make, a report<sup>5</sup>.

### **More Information**

For more information on mandatory reporting you can visit the Department of Communities and Justice website at [dcj.nsw.gov.au](http://dcj.nsw.gov.au)

Or access the Mandatory Reporter Guide at [reporter.childstory.nsw.gov.au](http://reporter.childstory.nsw.gov.au)

If you have specific questions about the Care Act in relation to mandatory reporting, you can email the Safeguarding and Ministerial Integrity Office at [safeguardingenquiries@sydneycatholic.org](mailto:safeguardingenquiries@sydneycatholic.org) or phone 02 9390 5810

### **Further Resources**

Visit the Archdiocese Safeguarding website to access the Archdiocese Policy and Protocols including:

- **Fact Sheet:** When is a child at risk of significant harm?
- **Guidance Document:** When is a child at risk of significant harm?
- **Protocol:** Reporting a Child who is at Risk of Significant Harm to DCJ

<sup>4</sup> Children and Young Persons (Care and Protection) Act 1998 section 29AAA from 1 March 2020

<sup>5</sup> Children and Young Persons (Care and Protection) Act 1998 section 29AB from 1 March 2020