



Guidance Document: What Conduct Must be Reported to the NSW Office of the Children’s Guardian?

Under the Children’s Guardian Act 2019 (NSW), the head of a relevant entity is required to report any Reportable Allegations or convictions considered to be Reportable Convictions of employees (defined broadly to include Employees, Volunteers, contractors, Clergy, Religious Appointees at Parishes or Agencies and anyone who holds or is required to hold a WWCC Clearance for the purpose of engagement with the Archdiocese) to the NSW Office of the Children’s Guardian.

This document provides some guidance as to what constitutes Reportable Allegations and Reportable Convictions.

Overview

The Children’s Guardian Act 2019 (NSW) requires heads of relevant entities to notify the NSW Office of the Children’s Guardian of any Reportable Allegation or conviction considered to be a Reportable Conviction against an employee (broadly defined) of the entity of which the head of the entity becomes aware.

1. A **Reportable Allegation** means an allegation that an employee has engaged in conduct that may be Reportable Conduct, whether or not the conduct is alleged to have occurred in the course of the employee’s employment with the relevant entity. Note that the threshold for notifying an allegation is lower than is required to make a finding of Reportable Conduct. If an allegation is, on its face, reportable, it should be reported.
2. A **Reportable Conviction** means a conviction in NSW or elsewhere, of an offence involving Reportable Conduct, whether or not the conduct occurred in the course of the employee’s employment. It includes a finding of guilt even if the court did not proceed to a conviction.

“**Reportable Conduct**” includes:

1. a sexual offence;
2. sexual misconduct
3. ill-treatment of a Child;
4. neglect of a Child;
5. assault against a Child;
6. an offence under s 43B of the *Crimes Act 1900* (NSW) for failing to reduce or remove the risk of a Child becoming the victim of abuse;
7. an offence under or 316A of the *Crimes Act 1900* (NSW) for concealing a Child Abuse Offence; or
8. behaviour that causes significant emotional or psychological harm to a Child.

In order to be reportable, the conduct must have been undertaken by an employee as defined in the *Children’s Guardian Act 2019* (NSW). The *Children’s Guardian Act 2019* (NSW) defines “employee” broadly to include, for a religious body, an individual who holds, or is required by the religious body to hold, a WWCC Clearance for the purpose of engagement with the religious body.

This definition is broad enough to encompass Clergy, Religious Appointees and contractors.

Specific descriptions

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| <p>What constitutes a “sexual offence”?</p> | <p>A sexual offence is an offence of a sexual nature committed against, with or in the presence of a Child, in any State, Territory or the Commonwealth. Sexual touching of a Child, Child grooming, and the production, dissemination or possession of Child abuse material, are all considered “sexual offences” and Reportable Conduct.</p> <p>For further information on sexual offences, see Guidance Document: What Constitutes a Reportable Crime?</p> |
| <p>What constitutes “sexual misconduct”?</p> | <p>The term “sexual misconduct” is conduct with, towards or in the presence of a Child that is sexual in nature, but is not a sexual offence. This includes:</p> <ol style="list-style-type: none">1. descriptions of sexual acts without a legitimate reason to provide the descriptions;2. sexual comments, conversations or communications; and3. comments to a Child that express a desire to act in a sexual manner towards the Child or another Child. |
| <p>What constitutes “Assault”?</p> | <p>Assault includes:</p> <ol style="list-style-type: none">1. intentionally or recklessly applying physical force without any lawful justification or excuse; or2. any act which intentionally or recklessly causes another person to apprehend immediate and unlawful violence. <p>Examples of Assault include:</p> <ol style="list-style-type: none">1. hitting, striking, kicking, punching or dragging a Child; and2. threatening to physically harm a Child. <p>The following do not constitute Assault:</p> <ol style="list-style-type: none">1. exercising appropriate control over a Child;2. disarming a Child seeking to harm themselves or others or destroy property;3. separating Children who are fighting;4. moving a Child out of harm’s way or touching them to attract their attention; and5. self-defence or the defence of others. |

What constitutes "ill-treatment"?

Ill-treatment occurs when a person treats a Child in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner.

This may include:

1. unreasonable or inappropriate punishment of a Child;
2. a pattern of seriously inappropriate, degrading or hostile comments or behaviour towards a Child; and
3. making excessive and/or degrading demands of a Child.

Raising your voice to attract attention will not be considered ill-treatment.

What constitutes "Neglect"?

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

1. a person with parental responsibility for the Child;
2. an authorised carer of the Child; or
3. an employee, if the Child is in the employee's care.

Examples of Neglect include:

1. failing to protect a Child from abuse;
2. exposing a Child to a harmful environment, such as one in which illicit drugs are being manufactured or used; or
3. failing to provide a Child with basic physical and emotional necessities such as food, shelter, clothing or medical attention.

Although this would rarely arise in a Parish or Agency context, a failure to keep a Child safe from harm by providing adequate supervision or exposure to harmful situations, e.g. outdoors, may in some circumstances be Neglect if the Child does suffer a foreseeable injury.

What constitutes "behaviour that causes significant emotional or psychological harm"?

This refers to conduct that is obviously or very clearly unreasonable and results in significant emotional harm or trauma to a Child. In order to be reportable, there must be evidence of the psychological harm and the harm needs to be shown to have been caused by the conduct of an Employee.

The following are indicators of a Child that has suffered or is suffering significant emotional or psychological harm:

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| | <ol style="list-style-type: none">1. displaying behaviour patterns that are out of character;2. regressive behaviour;3. anxiety or self-harm. |
| <p>What constitutes an “offence under section 43B of the Crimes Act 1900 (NSW)”?</p> | <p>This refers to where an adult working in an organisation that engages Workers in Child-Related work commits an offence if:</p> <ol style="list-style-type: none">1. they know that an adult worker engaged by the organisation in Child-Related work poses a serious risk of abusing a Child (under 18 years), and2. they have the power or responsibility to reduce or remove the risk, and3. they negligently fail to reduce or remove that risk. <p>The offence covers failures to protect against sexual or serious physical abuse and is punishable by up to two years imprisonment.</p> |
| <p>What constitutes an “offence under section 316A of the Crimes Act 1900 (NSW)”?</p> | <p>This refers to all adults in NSW are required to report information to Police if they:</p> <ol style="list-style-type: none">1. know, believe or reasonably ought to know that a child (under 18 years) has been abused, or2. know, believe, or reasonably ought to know that they have information that might materially assist in securing the apprehension, prosecution or conviction of the offender. <p>This offence covers sexual abuse, serious physical abuse and extreme neglect of a child (under 18 years). It has a maximum penalty of imprisonment for two years.</p> <p>A person will not be guilty of the offence, however, if they have a reasonable excuse for not reporting the information to Police. This is similar to the existing requirement to inform Police of a serious indictable offence (section 316 of the Crimes Act 1900). Reasonable excuses for not reporting information to Police include knowing or reasonably believing that:</p> <ol style="list-style-type: none">1. the information has already been reported under mandatory reporting obligations, such as to the Child Protection Helpline, NSW Health Child Wellbeing Unit or to the Office of the Children’s Guardian under the Reportable |

Conduct Scheme, or the person believes on reasonable grounds that another person has reported it

2. the information is already known to Police
3. the alleged victim is an adult at the time of providing the information and doesn't want it reported to the Police, or
4. there are grounds to fear for their safety or another person's safety if they report to Police.

In addition, the person has a reasonable excuse for failing to notify the Police if they were under 18 years of age when they obtained the information.

Related documents

1. **Protocol:** Reporting Inappropriate Conduct to the NSW Office of the Children's Guardian
2. **Flowchart:** Reporting Safeguarding Complaints
3. **Fact Sheet:** What Conduct Must be Reported to the NSW Office of the Children's Guardian?
4. **Guidance Document:** What Constitutes a Reportable Crime?
5. **Table of Reportable Crimes**
6. **Fact Sheet:** What is a Reportable Crime?