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| Title | Reportable Conduct Policy NSW |
| Description of policy | This policy sets out the obligations and processes for Catholic Education Archdiocese of Canberra and Goulburn (CECG) workers to investigate Reportable Conduct and report it to the New South Wales Office of the Children’s Guardian. It applies to all CECG employees, and volunteers and contractors providing services to children, in NSW. |
| Required because? | The head of CECG has legal obligations to notify the Office of the Children’s Guardian of any allegation of Reportable Conduct, and to ensure the organisation has processes in place to investigate and respond to any allegations. |
| Description of changes | <ul style="list-style-type: none"> • Non-material format and language changes. Clarified but did not change roles, responsibilities and process for responding to allegations of reportable conduct except new timeframes noted below due to new legal changes. • Updated to refer to new NSW legislation that transferred responsibilities from the Ombudsman to the NSW Office of the Children’s Guardians. • Included in the policy a new legal obligation for CECG to notify Children’s Guardian of allegations within 7 days. And to complete investigations within 30 days or send an interim report. The obligation was previously to notify within 30 days. |
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1. Summary

- 1.1 This policy sets out the obligations and processes for Catholic Education Archdiocese of Canberra and Goulburn (CECG) workers to investigate Reportable Conduct and report it to the New South Wales Office of the Children’s Guardian. It applies to all CECG employees, and volunteers and contractors providing services to children, in NSW.

2. Reportable Conduct Policy NSW

- 2.1 Under NSW legislation¹, CECG must report to the Office of the Children’s Guardian any allegations that employees, or volunteers and contractors who provide services to children, have engaged in Reportable Conduct (defined below). It doesn’t matter whether the reportable conduct happened to a student or another child – any allegations which meets the legal definition of reportable conduct related to work or in a personal capacity must be reported to the Children’s Guardian.
- 2.2 The Archbishop of the Canberra Goulburn Archdiocese is the head of CECG, which is the relevant entity for Reportable Conduct legislation. The Archbishop delegates power to the Archdiocese Institute for Professional Standards and Safeguarding and to senior CECG employees² to ensure the CECG’s Reportable Conduct obligations are met consistently and in a timely manner. This policy sets out the delegated obligations and processes.

3. Reportable Conduct Process

- 3.1 Reportable Conduct must be notified to the Children’s Guardian within 7 days of first being reported within the workplace (stages 2-6 must occur within 7 days).
- 3.2 If the full Reportable Conduct process is not completed within 30 days of the allegation first being reported in the workplace (stages 2-8 within 30 days), an interim report must be sent to the Children’s Guardian outlining progress and the reasons the process is not complete.

| | Stage of Process | Action |
|--------------|----------------------------------|--|
| One | Incident | An employee, volunteer or contractor becomes aware of concerning conduct or a criminal conviction that might be reportable conduct. |
| Two | Report to manager and CECG | That person must report the alleged conduct to their Principal, ELC Director, School-Aged Care Director or Service Area Leader as soon as practicable – within 24 hours. A ELC Director or School-Aged Care Director will report the matter to their school Principal. The Principal or Service Area Leader must telephone the Child Protection team in CECG School and Family Services to notify them of the alleged reportable conduct. |
| Three | Assessment of initial allegation | The Child Protection Team will assist the Principal or Service Area Leader to identify and response to any risks. |
| Four | Immediate Action | The Principal, ELC Director, School-Aged Care Director or Service Area Leader must implement any mitigation strategies identified in the risk assessment that are immediately necessary to reduce risk. |

¹ *Children’s Guardian Act 2019 (NSW)*

² *Section 65 Children’s Guardian Act 2019 (NSW)*

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| Five | Written Notification to CECG | If the assessment determines the alleged conduct meets the definition of Reportable Conduct, the Child Protection Team must complete the CECG Reportable Conduct form. The CECG Child Protection Team must conduct a risk assessment of the incident. |
| Six | Preliminary notification to the Office of the Children's Guardian | The Child Protection team send the Reportable Conduct form to the CECG Institute for Professional Standards and Safeguarding. The Institute for Professional Standards and Safeguarding must report to the Office of the Children's Guardian that an allegation of reportable conduct has been received and CECG will investigate. This must occur within 7 days of Stage 2 occurring. |
| Seven | CECG Investigation | The Child Protection Team (or an appointed external investigator) will investigate the allegations. The investigator will report the outcome of the investigation and supporting evidence to the School and Family Services Leader. The report makes a recommendation to the Delegate (usually School and Family Services Leader), who determines whether there should be a finding whether Reportable Conduct occurred. The Head of School and Family Service provides the report and decision to the Institute for Professional Standards and Safeguarding. The Office of the Children's Guardian may monitor, oversee or participate in the CECG investigation. |
| Eight | Report to the Children's Guardian | The Institute for Professional Standards and Safeguarding must formally report the outcome of the investigation and the decision to the Children's Guardian within 30 days of the allegation first being reported – or provide an interim report within 30 days. |
| Nine | Corrective Action | If Reportable Conduct has occurred, the People and Culture team will assist the Principal, ELC Director, School-Aged Care Director or Service Area Leader to coordinate support for the people affected, to appropriately manage the worker involved, and to eliminate or reduce the risk of further Reportable Conduct. Where there is an employment sanction this must be determined by the People & Culture, Service Leader. |

4. What is Reportable Conduct?

4.1 In NSW, reportable conduct is

- a sexual offence,
- sexual misconduct,
- ill-treatment of a child,
- neglect of a child,
- an assault against a child,
- an offence of failing to reduce or remove risk of child becoming victim of child abuse by another worker, or of concealing a child abuse offence (43B or 316A of the Crimes Act 1900)
- behaviour that causes significant emotional or psychological harm to a child.

4.2 Examples might include:

- sexual assault of a child, or a child grooming offence, by a teacher or a volunteer (including before they started work/volunteering)
- a teacher or a volunteer pushing or hitting a child
- Domestic violence or assault offences committed in the presence of a child
- Allegations that a teacher or a volunteer was looking at pornography, making sexualised comments, or had sexually explicit communication with students (beyond reasonable sex education purposes).

4.3 Definitions and other examples can be found at sections 20-25 of the *Children's Guardian Act 2019*.

5. What is not Reportable Conduct?

5.1 Reportable conduct does not include reasonable discipline and other conduct that is appropriate under professional teaching standards.

5.2 In NSW the exact definition of what is not reportable conduct is:

- conduct that is reasonable for the purposes of discipline, management or care of a child, having regard to
 - i. the age, maturity, health or other characteristics of the child, and
 - ii. (ii) any relevant code of conduct or professional standard, or
- the use of physical force if—
 - i. in all the circumstances, the physical force is trivial or negligible, and
 - ii. the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures.

5.3 For example, the school receives a complaint that a teacher caused psychological harm to a child. The complaint will be assessed in line with the Reportable Conduct process and CECG Complaints Policy. If the investigation finds that the conduct was reasonable under professional teaching standards, or was negligible, it is not Reportable Conduct.

5.4 Reportable Conduct is different to Mandatory Reporting legislation, which requires separate reporting of harm to children to the NSW Department of Communities and Justice (see CECG Mandatory and Voluntary Reporting Policy). One of the key differences is that Reportable Conduct is conduct by a CECG employee, volunteer or contractor against any child, while Mandatory Reporting is conduct by anyone against a CECG student or ELC child.

5.5 CECG workers can refer to NSW Government Office of the Children's Guardian resources for more information about Reportable Conduct:

6. What is not Reportable Conduct - Section 30 Exemption

- 6.1 In NSW, the Office of the Children’s Guardian has determined under Section 30 of the *Children’s Guardian Act 2019* that CECG (and other organisations) have a standard of investigating complaints so some allegations do not need to be reported as Reportable Conduct. Alleged physical assault, or a threats of a physical assault, do not need to be reported to the Office of the Children’s Guardian as a reportable allegation, unless it is alleged that:
- 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 harm or injury to the child; or
 - a child believed that the threat would result in significant harm or injury to them.
- 6.2 For example, it is not reportable conduct to touch a child in order to attract a child's attention, to guide a child or to comfort a distressed child. A school teacher raising his or her voice in order to attract attention or to restore order in the classroom is not reportable conduct, nor is conduct that is established to be accidental.
- 6.3 All allegations are taken seriously and even if conduct may not be reportable conduct, CECG must:
- assess the allegation, including undertaking a risk assessment and making a finding as a result of that assessment,
 - take appropriate action as a result of that investigation,
 - keep adequate records of the investigation and the reasons for taking or not taking any action as a result of the investigation,
 - keep adequate records of those matters covered by this Determination and store these records in a place accessible to the Office of the Children’s Guardian for auditing purposes, and
 - provide to the Office of the Children’s Guardian, every six months, the total number and category of allegations exempted from notification under the determination.

7. Stage 2 - What to do if you suspect Reportable Conduct?

- 7.1 If a worker becomes aware of any concerning conduct – either because of their own behaviour (e.g. conviction of an offence) or by a colleague – they must report that to their Principal, ELC Director, School-Aged Care Director or Service Area Leader.
- 7.2 Principals, ELC Directors, School-Aged Care Directors or Service Area Leaders who receive any report of alleged Reportable Conduct must notify the School and Family Services team by phone.

8. Stages 3 and 4 – Risk assessment and Immediate action

- 8.1 NSW law requires that an allegation of reportable conduct must be examined for the risks associated with the alleged conduct. The risk assessment must be documented and details of it provided to the Children’s Guardian when the Guardian is notified of the allegations (stage 6).
- 8.2 The Child Protection Team – or a worker they delegate – must complete the risk assessment and identify actions to mitigate risks to an acceptable or manageable level.
- 8.3 The Reportable Conduct form (Appendix 1) includes a 5-by-5 risk assessment matrix and risk rating table to help classify risks identified.

8.4 Risks that might be assessed include:

Risks relating to children:

- Does the child and other family members require specific protection and support?
- Is the welfare of the child threatened?
- Is the child or employee the subject of the allegation able to interact with parties involved in the allegation in the normal course of school activities?
- Does the allegation constitute a criminal offence?
- Is there risk of self-harm?

Risks relating to employees:

- What personal support is required for the employee?
- Should the employee remain in their current position? This will depend on:
 - Nature and seriousness of the allegation
 - The requirements of the child/ren
 - Reactions of employer to allegation with specific consideration to their current welfare
 - School Community reaction to the allegation (if known) and the viability of the employer remaining in the current position whilst the matter is investigated
 - Nature and type of work done by the employee
 - Supervision controls that are in place or could be put in place
 - Support mechanisms that could be put in place to support the employee in their current role
 - The employee's workplace misconduct history and any current employment sanctions

Risks relates to others, and what changes need to be actioned to ensure:

- Safety
- Wellbeing such as other students and staff who have witnessed or are aware of the allegation
- The ability to continue their role and responsibilities.

8.5 If child welfare agencies or law enforcement agencies are involved, the actions of those organisations should be included in the report as these may affect the actions taken to manage and mitigate risk factors.

8.6 Risk should be managed on a continuing basis. If new risks are identified or risk ratings change, the Child Protection team should identify, implement and record new strategies to manage the risks. If no new risks emerge, the fact of the assessment and no new risks should be noted in records.

8.7 Principal, ELC Director, School-Aged Care Director or Service Area Leader must implement any identified actions that are immediately required to mitigate risk, before moving on to further stages.

9. Stage 5 – Notifying CECG and Record Management

9.1 The Child Protection Team must send the completed risk assessment and Reportable Conduct Form to the School and Family Services Leader.

- 9.2 The report will conclude whether a reportable conduct allegation was sustained; not sustained (lack of evidence); not sustained (lack evidence of weight); false; or not reportable conduct.
- 9.3 The Delegate, usually, School and Family Services Leader will make the formal decision from the five categories and provide the report and decision to Institute for Professional Standards and Safeguarding.
- 9.4 All CECG workers are required to keep copies of the reporting form and any other records of reportable conduct investigations in accordance with the CECG Record Keeping Policy.

10. Stage 6 – Preliminary notification to the Children’s Guardian

- 10.1 The objective of the Reportable Conduct scheme is to ensure the Office of the Children’s Guardian receives notification of *allegations* of Reportable Conduct, within 7 days of them first being reported in the workplace. CECG must notify the Office of the Children’s Guardian of any allegation, before proceeding to formal investigation that meets the legal requirements of reportable conduct.
- 10.2 The Institute for Professional Standards and Safeguarding handles the formal notification process for CECG, once the School and Family Services team forwards the Reportable Conduct form. The Office of the Children’s Guardian may monitor or participate in the subsequent CECG investigation.
- 10.3 The notification must include³:
- that a report has been received in relation to an employee of the relevant entity,
 - the type of reportable conduct the subject of the report,
 - the name of the employee,
 - the name and contact details of the relevant entity and the head of the relevant entity,
 - for a reportable allegation—whether the Commissioner of Police has been notified of the allegation,
 - if a report has been made under section 24 of the Children and Young Persons (Care and Protection) Act 1998—that the report has been made,
 - the nature of the relevant entity’s initial risk assessment and risk management action, and
 - any other information prescribed by the regulations
- 10.4 The notice must also include the following information, if it is known to CECG:
- details of the reportable allegation or conviction considered to be a reportable conviction,
 - the date of birth and working with children number, if any, of the employee the subject of the report,
 - for a reportable allegation of which the Commissioner of Police has been notified—the police report reference number,
 - if a report has been made under section 24 of the Children and Young Persons (Care and Protection) Act 1998—the report reference,
 - the names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or contractor.

³ s29 of the NSW Children’s Guardian Act 2019

Procedural Fairness

10.5 CECG must provide procedural fairness to people that may be adversely affected by a decision. This includes ensuring:

- the decision-maker and process is free from bias
- decisions are based on evidence that supports the facts, and
- any person that may be adversely affected by decisions has an opportunity to present their case and have their input considered before a decision is made.

10.6 Because this stage is a legally mandated notifying of *allegations* (not a decision), the opportunity to provide a response will not occur before this stage. It is a formal part of the investigation (see subsection 34(2) of the Children’s Guardian Act 2019).

11. Stage 7 – Reportable Conduct investigation and relationship to other potential workplace investigations

11.1 The School and Family Services team (or external investigation) will conduct all investigations of Reportable Conduct in line with the CECG Reportable Conduct and Workplace Misconduct Investigation Procedure. This procedure incorporates mandatory considerations in Division 6 of the *Children’s Guardian Act 2019*.

11.2 An allegation of reportable conduct may also involve a breach of the CECG Enterprise Agreements, the Guidelines for Professional Conduct in the Protection of Children and Young Persons, Work Health and Safety Policy, or other policies and procedures.

11.3 The School and Family Services team will investigate alleged breaches of other CECG requirements simultaneously with Reportable Conduct investigations, where possible by the same investigator. This assists to minimise any contamination of evidence, undue effect on the welfare of the parties, and improves the consistency of investigative processes.

12. Stage 8 – Report to the Children’s Guardian

12.1 The Institute for Professional Standards and Safeguarding must report to the Children’s Guardian on the outcome of an investigation or determination within 30 days of the matter first being reported in the workplace (s 36 – see below for mandatory content)). If the final report will not be provided within 30 days, the Institute for Professional Standards and Safeguarding must provide an interim report before the 30 day deadline and a reason the final report is not complete (s 38 – see below for mandatory content).

12.2 Under section 36, the final report must include:

- in relation to a reportable allegation
 - the facts and circumstances of the reportable allegation,
 - the findings made about the reportable allegation after the investigation, including whether the head of the relevant entity has made a finding of reportable conduct,
 - an analysis of the evidence and the rationale for the findings,
- in relation to a conviction considered to be a reportable conviction—
 - information about the conviction considered to be a reportable conviction,
 - the determination the head of the relevant entity has made about the conviction
- a copy of any written submission made by the employee under section 34(2),

- information about what action has been, or will be, taken in relation to the reportable allegation or conviction considered to be a reportable conviction, including:
 - remedial or disciplinary action in relation to the employee,
 - whether information about the matter has been referred to a different entity,
 - changes to systems or policies,
 - if no further action is to be taken—that no further action is to be taken, and
 - the reasons for the action taken, including taking no further action.
- 12.3 The final report must be accompanied by any copies of documents that are relevant to the report, including transcripts of interviews and copies of evidence.
- 12.4 Under section 38, an interim report must include:
- in relation to a reportable allegation—if known, the facts and circumstances of the reportable allegation,
 - in relation to a conviction considered to be a reportable conviction—any known information about the conviction,
 - action taken since the Children’s Guardian received a notification about the reportable allegation or the conviction considered to be a reportable conviction, and
 - further action the head of the relevant entity proposes to take in relation to the reportable allegation or conviction considered to be a reportable.

13. Information sharing under the reportable conduct scheme

- 13.1 Section 57 of the *Children’s Guardian Act 2019* permits information about Reportable Conduct to be shared in specific circumstances. Other information-sharing and privacy legislation may also apply.
- 13.2 To ensure compliance with the reportable conduct scheme and privacy, child protection and other relevant legislation, only the School and Family Services team and the Institute for Professional Standards and Safeguarding are authorised to share information about reportable conduct and reportable convictions.
- 13.3 All requests relating to information sharing must be referred immediately to the Principal, ELC Director, School-Aged Care Director or Service Area Leader, who must refer it to the School and Family Services team.

14. Definitions

- 14.1 **Child:** a person under 18 years of age.
- 14.2 **Reportable allegation:** an express assertion that reportable conduct has happened.
- 14.3 **Reportable conviction:** a conviction or finding of guilt:
- for an offence, under ACT or a State or Commonwealth law, involving reportable conduct; and
 - entered against the person before or after the commencement of the Reportable Conduct and Information Sharing Legislation Amendment Act 2016.

- 14.4 **Worker:** All people carrying out work for CECG including employees (permanent, casual, and temporary), contractors and sub-contractors, volunteers, apprentices, work experience students, or a minister, priest, or other religious leader or member of a religious organisation.

15. Related Documents and Legislation

15.1 Related CECG Documents:

- [Child Safety Policy](#)
- [Reportable Conduct Fact Sheet NSW](#)
- [Mandatory and Voluntary Reporting Policy NSW](#)

15.2 Legislation:

- [Children's Guardian Act 2019](#) (NSW)

15.3 Other Resources:

- [NSW Office of the Children's Guardian Resources](#)

16. Contact

- 16.1 For support or further questions about this policy, contact the CECG School and Family Services team.