



This protocol outlines for Parish Priests and Parish workers the types of reportable conduct which must be reported to the Ombudsman, and how to report this conduct.

# PROTOCOL: REPORTABLE CONDUCT AND THE OMBUDSMAN

## Key obligation

Under the Ombudsman Act 1974 (NSW) and Ombudsman Act 1989 (ACT), the head of a designated government or non-government agency is required to report any reportable allegations or reportable conduct of employees, both paid and volunteer, to the Ombudsman.

The Archbishop of Canberra Goulburn is head of agency for the Archdiocese and has delegated this responsibility to the Manager, Institute for Professional Standards and Safeguarding (IPSS).

## 1. What is reportable conduct?

The following is conduct by an employee towards a child which might arise in the Parish context that must be reported to the ACT or NSW Ombudsman:

- 1.1 Ill-treatment e.g. unreasonable or inappropriate punishment; making degrading comments; emotional abuse; hostile use of force/physical contact; inappropriate, restrictive intervention.
- 1.2 Neglect e.g. failure to provide adequate supervision; exposure to harmful situations.
- 1.3 Sexually explicit behaviour and/or comments e.g. sexual exhibitionism; inappropriate conversations of a sexual nature; watching children undress unless appropriate in the circumstances.
- 1.4 Physical assault e.g. hitting, kicking, punching, shaking, pushing, shoving, grabbing, excessive use of force.
- 1.5 Behaviour that causes psychological harm e.g. unreasonable behaviour that results in significant emotional harm or trauma to a child.
- 1.6 Crossing professional boundaries e.g. having an inappropriate or overly personal or intimate relationship with a child; focussing on a child in an inappropriate or overly personal or intimate way; or behaving towards a child in an overly personal or intimate way. This does not include comforting a child who is distressed.

## 2. Archdiocesan Protocol

### 2.1 Notification to Parish Priest and/or Institute for Professional Standards and Safeguarding (IPSS).

- a) The Archdiocese requires that all Parish workers must immediately report all concerns and complaints involving any inappropriate or unsafe conduct by another adult worker, whether paid or volunteer, towards or in the presence of children immediately to their Parish Priest and/or the Manager of the Institute for Professional Standards and Safeguards (IPSS).
- b) The document *Flowchart: Reporting child-related adult behaviour of concern* will assist with this process.
- c) If the conduct constitutes a reportable crime, the Parish worker will work in collaboration with the Manager of IPSS to immediately report the suspected offence to the AFP or NSW Police in accordance with the *Protocol: Reportable Crimes and the Police*.



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- d) No Parish Priest or Parish worker should attempt to undertake their own investigation prior to reporting the matter.

## 2.2 Notification to ACT or NSW Ombudsman

- a) The Manager of IPSS will then determine whether the matter meets the definition of reportable conduct for reporting to either the ACT or NSW Ombudsman.
- b) In making this determination, the Manager may seek advice from:
- i) external lawyers; or
  - ii) an appropriate contact person in the ACT or NSW Ombudsman's Office.
- c) If appropriate, the IPSS Manager will then formally notify the ACT or NSW Ombudsman of the matter.

## 2.3 Investigations by the Archdiocese

- a) If the matter has been reported to either the ACT or NSW Police and they advise they will not investigate, clearance will be sought to continue the investigation.
- b) For matters reportable to either the ACT or NSW Ombudsman, the investigation will follow all the procedures and processes as required by these two agencies. This will include
- Notification of the allegation of reportable conduct to the Ombudsman.
  - Provision of documents relevant to the investigation as requested by the Ombudsman
  - Provision of full investigation report including findings and action taken.
- c) If the matter is not reportable to the ACT or NSW Ombudsman, or the ACT or NSW Ombudsman indicates the matter does not need to be reported but the allegation is considered serious, the Manager will still undertake an investigation to the standard expected by the Ombudsman's Office.

Fact sheets with further detail on reportable conduct investigations are available from the following links:

- ACT Ombudsman Act <http://www.ombudsman.act.gov.au/reportable-conduct-scheme/resource-kit>
- NSW Ombudsman Act <https://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/child-protection>

A summary of the Archdiocesan Investigative Process for all serious matters is at **Attachment A**.

### Related documents

Flowchart: Reporting child wellbeing concerns

Flowchart: Reporting child-related adult behaviour of concern

Protocol: Reportable crimes and reporting to Police



## ATTACHMENT A: ARCHDIOCESAN INVESTIGATIVE PROCESS SUMMARY

### Investigative principles

The principles of natural justice and procedural fairness shall be applied to all investigations. This involves:

1. informing people subject of an allegation about any allegations against them;
2. providing people with reasonable opportunity to address the allegations, whether by interview or in writing;
3. hearing all parties to a matter and considering all submissions made;
4. identifying and addressing any cultural issues and any special needs of relevant parties;
5. making reasonable inquiries, including seeking professional opinion and reviewing all physical evidence and relevant documentation prior to making a decision;
6. respecting the privacy of all parties and confidentiality of the investigation;
7. ensuring conflicts of interest are managed; and
8. acting fairly, without bias and treating all parties with respect.

### Timeliness

The Investigation will commence as soon as the seriousness of the allegation of misconduct against a child is established and will be concluded as quickly as practicably possible.

### Investigators

The IPSS Manager will be responsible for overseeing and appointing an investigator for Parish matters. To ensure maximum accountability and transparency in the investigation process, investigators will not be Archdiocesan workers. All investigators will:

- Provide an investigation plan to the IPSS Manager ensuring the principles of natural justice and procedural fairness are applied.
- Assist with an initial risk assessment in response to the allegation.
- Record interviews and provide transcripts to interviewees for review.
- Finalise the allegation for the person subject of the allegation.
- Inform the person subject of the allegation of their rights, the role of the Ombudsman (if appropriate), details on any other reporting obligations and who the investigation report will be made available to.
- Provide an investigation report to IPSS including an analysis of the inquiry and findings.
- Advise IPSS of any other allegations that arise out of the investigation and provide advice on how these allegations should be addressed.
- Provide to the Archdiocese at the conclusion of the investigation all materials, including emails and voice recordings gathered as part of the investigation process.

### Standard of Proof

The standard of proof to be applied will be 'on the balance of probabilities'. This means that findings should be based on whether it is more likely than not that the misconduct occurred.



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## Support persons

Both the complainant and person subject of the allegation can bring a support person when interviewed by the investigator, noting that other witnesses to the investigation cannot be support people. The support person will be invited to observe the process but cannot unnecessarily interrupt the interview. They will also be required to keep details confidential. Professional counselling will also be available if needed.

## Investigation findings

Investigators will make findings as outlined below:

- **sustained** (i.e. a finding that the conduct occurred), or
- **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), or
- **not sustained** – lack of evidence of weight (i.e. where the evidence is of such poor probative value or lacking in weight, such as to warrant a finding that on the balance of probabilities the conduct did not occur), or
- **false** (i.e. where inquiries into the matter show the conduct did not occur). Some of these matters may 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.

For matters that are being investigated with the oversight of either the ACT or NSW Ombudsman, a further finding of non-reportable conduct will also be considered:

- **non-reportable conduct** i.e. where the investigation identifies the conduct was not reportable to either the ACT or NSW Ombudsman. For example, use of force that was trivial or negligible in the circumstances, conduct that was reasonable in the circumstances or accidental. This may include 'misconceived' matters, where inquiries into the matter show that, even though the allegation was made in good faith, it was based on a misunderstanding of what actually occurred and the incident was not reportable conduct.

## Investigation outcome

Both parties to the investigation will be advised of the investigation outcome. Where appropriate and subject to Australian Privacy Principles, part or all of the investigation report may be available, upon request, for reading at the Chancery office.

If the investigator deems the allegation is sustained, the final decision as to how the worker will be disciplined rests with the Archbishop or his delegate, the Vicar General. Depending on the seriousness of the allegation and the finding, the Archbishop may seek advice from the IPSS Manager and the Professional Standards Advisory Panel as to appropriate disciplinary action that may need to be taken. As a result the worker:

- i) if an employee, may have their employment terminated;
- ii) if a volunteer, may be permanently stood down; and
- iii) if a member of the clergy, may have their faculties removed.

If the investigator deems the allegation is not sustained but through the investigative process deficiencies are identified which would improve the worker's Ministry, the worker may still be asked to attend training and/or have other temporary conditions placed on their Ministry.