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# SAFEGUARDING & CHILD PROTECTION POLICY FOR CATHOLIC SCHOOLS BROKEN BAY: ADDRESSING ALLEGATIONS OF INAPPROPRIATE BEHAVIOUR BY EMPLOYEES TOWARDS CHILDREN

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January 2021

## PURPOSE

Catholic Schools Broken Bay are committed to providing a safe and supportive environment for both students and employees. School communities have the right to expect that employees will remain professional in their interactions with children at all times by exercising appropriate duty of care and maintaining professional boundaries.

The purpose of this policy is to establish a framework for Catholic Schools Broken Bay (CSBB) to comply with the requirements of the NSW *Children's Guardian Act 2019* (the Act) to address complaints about alleged inappropriate behaviour by employees towards children in a way that protects children and also respects the rights of employees to a procedurally fair and confidential process.

## POLICY FRAMEWORK

CSBB affirms principles central to the Church's teaching as expressed in the Pastoral Care and Wellbeing Framework. Accordingly this Policy:

- is inspired by the life and person of Jesus Christ and the teachings of the Church
- is concerned to ensure the dignity and integral growth of every person
- acknowledges the responsibility entrusted to all members of each Catholic school's community
- seeks to promote healing, reconciliation, justice and liberation.

CSBB is responsible and accountable for promoting a culture in which employees are committed to ensuring the wellbeing, safety and protection of children. In particular employees are required to:

- Act in accordance with their duty of care towards children;
- Maintain professional boundaries with children.

CSBB achieves this by:

- Ensuring that CSBB employees understand the legislated and general duty of care obligation to address allegations against employees or other individuals concerning children;
- Providing employees with training regarding professional conduct and the handling of allegations;
- Providing employees with clear instructions to follow when allegations are made;
- Ensuring that opportunities to prevent harm to children and to promote safety and wellbeing are identified and responded to at an individual and systemic level.

## DEFINITIONS

Acronym	Title
Act	NSW <i>Children's Guardian Act 2019</i>
CSBB	Catholic Schools Broken Bay
Children's Guardian	NSW Office of the Children's Guardian
DCJ	NSW Department of Communities & Justice
HRE	Head of Relevant Entity
NESA	NSW Education Standards Authority

OFS	Office for Safeguarding (CSBB)
WWCC	Working with Children Check

## POLICY CONTENT

### Addressing complaints about alleged inappropriate behaviour by employees towards children

Part 4 of the Act requires that relevant entities outlined in Schedule 1 of the Act (including non-government schools) as well as Religious Bodies (about their staff who hold, or are required to hold, a Working with Children Check – WWCC – for the purposes of their engagement with the religious body) must notify the NSW Office of the Children’s Guardian (Children’s Guardian) of any allegation of reportable conduct or a conviction involving a current employee.

Schedule 1 entities and religious bodies must notify the Children’s Guardian about certain types of alleged conduct that arises in the course of an employee’s work as well as certain types of alleged conduct outside of work or prior to an employee’s commencement at CSBB or prior to the origination of this Act.

These entities are also required to properly investigate and respond to reportable allegations and convictions, and exempt allegations involving misconduct by an employee towards a child.

For the purposes of this legislation, a child is a person under the age of 18 years. CSBB accepts that when a complaint of inappropriate conduct by an employee towards a student who is over 18 years of age is received, that whilst the relevant child protection legislation does not apply, similar transparent and accountable enquiries and pastoral processes will be followed in response to such complaints.

The role of the Children’s Guardian is to audit, oversight, monitor and review the employer’s response to reportable or exempt allegations/convictions including intake decision-making, risk assessment, risk management and appropriateness of findings. CSBB has responsibility for establishing, maintaining and disseminating appropriate policies and procedures for responding to allegations against employees including the equitable implementation of intake, intake assessment, and risk management processes.

The reportable conduct scheme responds to matters where a child has or may have been harmed by a person who works with them. Most reportable conduct can be prevented. The following can assist in preventing allegations being made:

- All employees must be familiar with the terms of their employment contract, the CSBB Code of Conduct and the Professional Guidelines for Employees Policy;
- Employees must keep their interactions with children professional, even in less formal environments including extracurricular activities;
- Employees must not engage with students outside of their role including on social media or other electronic media unless there is a clear educative or administrative purpose.

### Who is an employee in the child protection context?

Under the Act, the definition of employee is very broad and includes:

- An individual employed by, or in, the entity
- An individual engaged by the relevant entity – whether directly or indirectly – to provide services to children

- As a volunteer, whether or not the individual requires a WWCC clearance to do so (including parent volunteers)
- As a contractor (either directly engaged or by a third party), if the contractor requires a WWCC clearance for the purposes of the engagement
- A person engaged by a religious body where that person holds, or is required to hold, a WWCC for the purposes of their work with the religious body.

### **Head Relevant Entity function (HRE)**

The Bishop of the Diocese of Broken Bay is the Head of Relevant Entity (HRE) in respect of all legislative responsibilities pursuant to Part 4 of the Act for Catholic systemic non-government schools within the Diocese and for CSBB for the purposes of the Act. Functions of the HRE can be delegated within the Diocese under s65 of the Act.

CSBB undertakes to establish all such policies, procedures, risk management strategies, professional development, and reporting mechanisms pertaining to CSBB to enable the HRE to fulfil its legislative and pastoral responsibilities with respect to matters relating to proactive and responsive safeguarding and child protection practices.

### **Reporting Requirements**

CSBB has responsibility for establishing and maintaining appropriate procedures for preventing, receiving, responding to and recording allegations/convictions of reportable and exempt conduct by an employee towards a child. The Children's Guardian can require information about those systems and can publicly name non-compliant entities. It is an expectation of CSBB, that in addition to their mandated responsibility to report allegations or convictions, that employees have an ethical and moral responsibility to report these concerns regardless of any mandatory reporting obligation that exists.

The reportable conduct scheme is an allegation-based scheme. The threshold for notifying is low and there only needs to be an allegation that an employee has engaged in conduct that *may* be reportable conduct or there is a conviction that is considered a reportable conviction for a notification to be made to the Children's Guardian.

Where it has been determined that an allegation of reportable conduct or conviction has been made to the Office for Safeguarding (OfS), a notification must be made to the Children's Guardian within 7 business days. By 30 calendar days the HRE must also provide an entity report or an update to the Children's Guardian on the progress of the investigation.

Other reporting requirements may also apply in particular circumstances to other agencies including, but not limited to, NSW Police, the Department of Communities & Justice (DCJ) and the NSW Education Standards Authority (NESA).

### **Reportable allegation**

A reportable allegation is an allegation that an employee has engaged in conduct that may be reportable conduct.

### **Reportable conviction**

A reportable conviction means a conviction (including a finding of guilt without the court proceeding to a conviction) in NSW or elsewhere, of an offence involving reportable conduct.

### Reportable conduct

In relation to the Act (s20), reportable conduct includes the following conduct, whether or not a criminal proceeding in relation to the conduct has been commenced or concluded:

- (a) a sexual offence committed against, with or in the presence of a child,
- (b) sexual misconduct with, towards or in the presence of a child,
- (c) ill-treatment of a child,
- (d) neglect of a child,
- (e) an assault against a child,
- (f) an offence under section 43B (failure to protect) or 316A (failure to report) of the Crimes Act 1900,
- (g) behaviour that causes significant emotional or psychological harm to a child.

### Exempt conduct

An allegation of reportable conduct may be exempt from notification to the Children's Guardian under the Act (s41) if it involves:

- (a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or
- (b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- (c) conduct of a class or kind exempted from being reportable conduct by the Children's Guardian under Section 30.

### Addressing complaints procedures

Complaints involving the alleged inappropriate conduct of an employee towards any child are addressed differently to other types of complaints in the school setting because of the legal requirements. A complaint of a child protection nature is any grievance raised by a person concerning the alleged behaviour or conduct of an employee towards any child.

If a concern relates to the alleged behaviour or conduct of an employee towards a child, details of the concern must be forwarded to the Principal or Leader who must promptly contact the OfS for advice, assessment, history check, risk assessment and determination of investigation pathway.

In certain circumstances the complaint will also need to be forwarded to DCJ or the NSW Police. After assessment, some complaints may be classified as 'not in jurisdiction'. This means that the matter does not need to be reported to the Children's Guardian. The reason for this is that one of the threshold requirements for notifying a matter has not been met. These matters are referred back to the Principal or Leader to manage at the local level, however a confidential file is maintained by the OfS.

### Risk assessment

CSBB must put measures in place to ensure that any risk an employee may pose to children is mitigated while responding to reportable allegations. Typically a risk assessment is completed at the commencement of a reportable allegation being received by the OfS, midway through an investigation and at the conclusion of an investigation. CSBB will aim to employ the least intrusive risk management action which will address any identified risks.

Any risk management action taken by CSBB should not be misconstrued as disciplinary action and is not an indication that the alleged conduct occurred or is considered to have occurred; does not mean a finding has been made nor will it influence the investigations findings. An employee who is subject of a reportable allegation may not be informed of the

allegation by the OfS until it is satisfied that it does not pose a serious risk to an employee's health or safety or until clearance is provided by another agency such as Police or DCJ.

### **Investigation Pathway and process**

Essentially there are two processes applied to managing child protection complaints:

- (a) Low level complaints (typically exempt conduct) and those involving low risk are managed by the Principal or Leader.
- (b) Complaints involving alleged conduct which is more serious (typically an allegation of reportable conduct/conviction) or suggest a higher level of risk are investigated by the OfS (or outsourced to an external investigator where necessary).

The investigation process will typically involve:

- interviewing the alleged victim and witnesses;
- gathering other relevant evidence;
- writing to the employee detailing the allegations and requesting a response;
- preparing an investigation report;
- making findings on the outcome of the investigation; and
- actioning the outcome and any recommendations associated with it.

### **Confidentiality**

Maintaining confidentiality is considered fundamental to the integrity of the reportable conduct scheme. Only CSBB staff on a needs to know basis will be informed about a reportable allegation. Typically this includes the OfS, Head of Human Resources, Director of Schools, Capability & Enablement Workstream Lead and the Principal.

Any employee subject to a reportable allegation must not discuss the matter with other colleagues (unless they are acting as a support person) or anyone else (including students and families) who they believe may be involved in the investigation. This requirement does not preclude an employee seeking support from industrial or legal representatives. However all parties involved in a reportable conduct investigation will be reminded about the requirement to maintain confidentiality throughout the process and any breach or failure to comply will be dealt with accordingly.

### **Mandatory considerations**

Division 6 of the Act requires the HRE to consider whether the reportable allegation also relates to conduct that is in breach of established standards that apply to the employee, having regard to:

- professional standards
- codes of conduct, including any professional or ethical codes, and
- accepted community standards.

### **Procedural fairness and proposed findings**

The Act requires CSBB to have systems in place to ensure that the handling of and response to reportable allegations has regard to the principles of procedural fairness.

If a finding of reportable conduct is proposed the employee will be informed in writing of the proposed adverse finding and the reasons for it. The employee will be provided with an opportunity to make a further submission which will be given genuine consideration before the HRE finalises the decision.

## Findings

At the conclusion of the process a finding is made in relation to the alleged behaviour of the employee. Findings are made on the balance of probabilities as either:

- A finding of reportable conduct (adverse finding)
- A finding other than reportable conduct (non-adverse finding)

In most cases where an adverse finding has been made, there will also be a finding of misconduct or serious misconduct.

A non-adverse finding may also be a finding of misconduct. In these cases, breaches will be considered against (but not limited to) the Professional Guidelines for Employees, Managing Conduct and Performance Policy and the Code of Conduct.

## Outcome

At the end of an investigation, where there are sustained findings of sexual offence, sexual misconduct or serious physical assault, the employee's name will be sent by the Reportable Conduct directorate to the Working with Children Check directorate within the Children's Guardian. The notification will trigger a risk assessment on the employee's WWCC.

Other possible outcomes of an investigation may include:

- no further action,
- disciplinary action,
- targeted professional development,
- mentoring and counselling, or
- changes to policy and practice.

If it is proposed that an employee's employment will be terminated as a result of the findings of the investigation, the employee will be invited to show cause as to why their employment should not be terminated.

For certain employees (ie accredited teaching staff) CSBB may also be required to release information on the outcome of the investigation to NESAs in accordance with the Interim Revocation, Suspension and Voluntary Cancellation of Accreditation Policy.

## Disclosure of the outcome

Under s57 of the Act CSBB must release information about the progress of the investigation, the findings and action taken in response to the findings to the child whom the information relates and their parent or authorised carer, unless it is not in the public interest.

CSBB will undertake careful consideration of all relevant factors prior to releasing this information. In very limited circumstances the Act also allows such information to be released to others for the purpose of promoting the safety, welfare or wellbeing of a child, or class of children, to whom the information relates.

## Rights

According to the Act, the paramount consideration when responding to reportable allegations is to ensure the safety, welfare and wellbeing of children. However, employees have the following rights if a child protection complaint is being investigated:

- Procedural fairness including a timely, impartial and confidential investigation.

- No decision made until the employee has an opportunity to know the details of the complaint and has an opportunity to respond fully.
- Information about the process, adequate and specific details to respond to the complaint, progress on the matter, reasonable notice regarding any meetings and information regarding the outcome and any findings.
- Support throughout the process by family, union or legal representatives and an entitlement to free confidential counselling through the employee assistance program.
- Review of the outcome, by writing to the HRE and/or the Director of Schools or by contacting the Children's Guardian or by pursuing rights through legal or industrial channels.
- Legal protections against retribution for employees notifying a reportable allegation.
- If an actual conflict of interest is identified (that cannot be reasonably managed), concerns can be raised with the OfS and a request for the investigation to be assigned to another person can be made.

### **Record Keeping and Access**

Confidential records will be maintained in a safe and secure file, separate to the employee's personnel file with limited restricted access. The records will be retained according to CSBB Records Retention policy and in accordance with NSW legislation (at a minimum of 50 years). Requests for access to files can be made to the OfS at the conclusion of an investigation and will be considered with reference to the provisions of the Australian Privacy Principles, relevant Enterprise Agreement and/or the *Government Information (Public Access) Act 2009*.

### **Responsibilities**

CSBB employees have responsibilities in the area of child protection and safeguarding. Employees holding certain roles have particular responsibilities. The responsibilities are as follows:

#### ***Head of Relevant Entity***

- Ensure that the Head Relevant Entity responsibilities delegated by the Bishop of the Diocese of Broken Bay are met;
- Ensure specified systems are in place for preventing, detecting and responding to reportable allegations or convictions;
- Make a report to the Children's Guardian within 7 business days of becoming aware of a reportable allegation or conviction;
- By 30 calendar days provide either a finalised entity report or an update (an interim report) to the Children's Guardian;
- Make a finding on whether or not there was reportable conduct, on the balance of probabilities, by considering the evidence provided by the Investigator's entity report and recommendations;
- If a person becomes aware of a reportable allegation or a reportable conviction against the HRE the Act states they must report the allegation directly to the Children's Guardian.

#### ***Director of Schools***

- Ensure the safeguarding and child protection systems and operations in relation to addressing allegations against employees within CSBB comply with the relevant legislation;
- Lead CSBB in fostering a culture which is proactive in ensuring the protection of children;

- Authorise the investigation of allegations of reportable conduct specifically related to the actions of employees and ensure appropriate action is taken in relation to the findings and outcome of such investigations.

### **Principals and CSBB Leaders**

- Ensure that employees are aware of and understand the reporting procedures, professional standards, policies and procedures that inform and direct staff relationships with students and their families within CSBB;
- Ensure compliance with policies, procedures and professional standards;
- Ensure employees receive annual professional development in relation to developing appropriate relationships with students and information about their rights and responsibilities;
- Ensure that the correct procedures specified in this policy and other related procedures are followed in responding to any information, complaint or concern involving alleged inappropriate behaviour by an employee towards any child or young person;
- Ensure any situation involving allegations of reportable conduct is treated with the utmost discretion, sensitivity and regard for the privacy and confidentiality of all persons involved;
- Conduct low level investigations with oversight from the OfS;
- Assist in undertaking risk assessments.

### **Office for Safeguarding**

- Establish and maintain appropriate procedures for dealing with allegations of reportable conduct and inappropriate behaviour by staff;
- Conduct jurisdiction determinations for all matters reported to the OfS and recommend to the HRE the appropriate investigative pathway;
- Report to the Children's Guardian any reportable allegations and convictions made against staff members;
- Ensure appropriate investigations are conducted and recommendations made to the HRE and Director of Schools regarding appropriate findings and action in a timely manner;
- Develop and provide relevant professional learning to CSBB staff;
- Maintain appropriate records of investigations and store these records in secure confidential storage, separate from employee personnel files;
- Liaise with other agencies such as DCJ, NSW Police, NESA and the Children's Guardian, as required;
- Exchange relevant information to progress investigations, assessments and case management as permitted by law;
- Collaborate and work cooperatively with other agencies in the Diocese of Broken Bay to ensure good practice and appropriate outcomes are achieved;
- Report to the HRE and CSBB leadership team about numbers and types of allegations of inappropriate behaviour by staff.

### **CSBB staff**

- Employees must 'give a report' about any reportable allegation they become aware of and this report must be made as soon as practicable. To comply with this requirement employees must report any allegation, disclosure, complaint, concern, incident or observation that may involve reportable conduct to their Principal or Leader;

- Ensure that the procedures outlined in this policy and other related procedures are followed in responding to any information, complaint or concern involving alleged inappropriate behaviour by an employee towards any child;
- Be familiar and comply with the standards set out in the Professional Guidelines for Employees Policy;
- Promote the safety, wellbeing and protection of children in CSBB.

## **RELATED LEGISLATION, POLICIES AND PROCEDURES**

Children's Guardian Act 2019

Crimes Act 1900

Child Protection (Working with Children) Act 2012

Child Protection (Working with Children) Regulation 2013

Child Protection Legislation Amendment Act 2015

Child Protection (Working with Children) and Other Child Protection Legislation  
Amendment Act 2016

Child Protection (Working with Children Amendment (Statutory Review) Act 2018

Children's Guardian Act 2019

Children and Young Persons (Care and Protection) Act 1998

Government Information (Public Access) Act 2009

Privacy Act 1988 (Commonwealth)

NSW Education Standards Authority – Interim Revocation, Suspension and Voluntary  
Cancellation of Accreditation Policy (2019)

Safeguarding & Child Protection Policy for Catholic Schools Broken Bay: Working with  
Children Check (2020)

Safeguarding & Child Protection Policy for Catholic Schools Broken Bay: Managing Risk  
of Significant Harm and Wellbeing Concerns (2020)

Pastoral Care & Student Wellbeing Policy (2020)

Professional Guidelines for Employees Policy (2020)

Recruitment and Selection of Teaching and General Employees Guidelines (2019)

National Catholic Safeguarding Standards, Catholic Professional Standards Limited (2019)

The National Response Protocol, Australian Catholic Safeguarding Limited (2021)

Child Safe Standards, NSW Office of the Children's Guardian (2019)

National Principles for Child Safe Organisations, Australian Human Rights Commission  
(2018)

The Diocesan Office for Safeguarding Charter (2018)

Further information is also available at: <http://csochildprotection.weebly.com/> and  
[www.kidsguardian.gov.au](http://www.kidsguardian.gov.au)

## **POLICY REVIEW**

A policy review is to be considered following any changes to the NSW Child Protection legislation or associated guidelines and not less frequently than every three years from the date of implementation of the policy.

## **POLICY DATES**

Date of completion of formation and adoption:

January 2021

Date of next review:

January 2024

Authorised by:

Most Reverend Anthony Randazzo  
Bishop of Broken Bay