



WWEC Guideline: WWEC's Obligations under child protection law

Purpose

This document is to provide further guidance to the WWEC Safe Ministry Contacts in relation to when an allegation of inappropriate behaviour against a child is made.

Obligations to children

WWEC has obligations under two key programs;

1. **Reportable Conduct Scheme** - managed by the NSW Office of Children's Guardian (OCG)
2. **Mandatory Reporters NSW** - managed by the Department of Community & Justice (DCJ)

1. Reportable Conduct Scheme

Under the Children's Guardian Act 2019 religious institutions, such as WWEC, are required by law to respond to reportable allegations against their relevant employees.

Employees under the act are;

- An individual employed by the entity (entity in this case is WWEC)
- An individual engaged by the entity, directly or indirectly to provide services to children:
 - as a volunteer, whether or not the individual requires a Working with Children Check (WWCC) clearance to do so;
 - as a contractor, if the contractor requires Working with Children Check clearance for the purpose of the engagement.

Reportable conduct is any conduct, whether or not any criminal proceedings in relation to the offence have been commenced or concluded, that includes;

- a sexual offence committed against, with, or in the presence of a child
- sexual misconduct with, towards, or in the presence of a child
- ill-treatment of a child
- neglect of a child
- an assault against a child
- behaviour that causes significant emotional or psychological harm to a child
- an offence under section 43B or 316A of the Crimes Act 1900.

All entities **must** notify reportable allegations that are;

- work-related
- Not connected to the employee's conduct at work - for all persons engaged in circumstances where they require a working with children check clearance*.

(*This is because, if a person is abusive to a child in one environment, this may give rise to a risk in their employment environment if they work with children).

Assistance Available

The NSW Reportable Conduct Scheme is managed by the NSW Office of the Children's Guardian (OCG). Call the OCG at any time to speak to an investigator for; urgent advice, to determine if the allegation is reportable, to ask what to do, for investigation training and support.

Phone OCG Reportable Conduct Directorate: (02) 8219 3800, Mon-Fri 9am-4pm OR

Email reportableconduct@kidsguardian.nsw.gov.au.

2. Mandatory Reporters NSW

In NSW, mandatory reporting is regulated by the Children and Young Persons (Care and Protection) Act 1998 (the Care Act).

On 1 March 2020, mandatory reporter groups in NSW expanded to also include:

A person in religious ministry or a person providing religion based activities to children (e.g. minister of religion, priest, deacon, pastor, rabbi, Salvation Army officer, church elder, religious brother/sister).

WWEC, as a mandatory reporter, is required by law to report to the Department of Communities & Justice (DCJ) suspected cases where a child is at risk of significant harm. Risk of Significant Harm (ROSH) can include neglect, sexual abuse, physical abuse or emotional/psychological abuse.

Further examples of ROSH are detailed on the [DCJ webpage](#).

NOTE: Only allegations against ‘employees’ (as defined by the OCG) are managed by the OCG. Allegations may be managed by one organisation or both the DCJ & the OCG depending on the circumstances (e.g. a child is at risk of significant harm by an employee at WWEC may be managed by both). It is recommended that the WWEC SMCs check with each organisation for all allegations. In addition, as outlined below, the SMCs need to assess if the police should be contacted.

STEPS TO TAKE WHEN AN ALLEGATION IS MADE

STEP*	ACTION
1 Clarify Allegation	<p>SMC’s clarify allegation and determine if it is a reportable allegation and whether it involves a criminal offence. This involves reviewing the definitions of reportable conduct & considering whether the reportable allegation is related to conduct that is in breach of established standards applying to the employee of the relevant entity, having regard to; (a) professional standards, (b) codes of conduct, (c) accepted community standards.</p> <p>Where there is no immediate significant risk of harm to a child, a measured approach can be taken by the employer to assess and plan their response to a reportable allegation before taking action.</p> <p>Note: document the allegation in the words used by the child/complainant. Where needed, clarify the particular details of the allegation with them.</p>
2 Where immediate risk is identified	<p>Where a child is at immediate risk of serious harm WWEC has a duty to take prompt action to manage those risks.</p> <p>Where there are urgent concerns for the child’s health or life call the Police using the emergency line: 000.</p> <p>In the case of harm from employees, this may mean taking immediate steps to cease and prevent further contact between the employee and the child who is the alleged victim. It may involve securing forensic evidence.</p>
3 Report to Police	<p>If the SMCs believe a child has been abused and a criminal offence has been committed, the Senior Pastor, as Head of the Relevant Entity (HRE) (unless there is a conflict of interest (COI)) reports this to the police as soon as possible.</p> <p>Wagga Local Area Command, ph. 6922 2599 (open 24 hours)</p>
4 Mandatory Report to Dept. of Communities & Justice (DCJ)	<p>The SMC (except in COI) needs to report the allegation of the reportable conduct to the DCJ ‘Child Protection Helpline’ where there are reasonable grounds to suspect that a child is at risk of significant harm from abuse or neglect. To help determine the ‘reasonable grounds’ the Mandatory Reporter Guide can be used.</p> <p>Child Protection Helpline: 13 21 11 (open 24/7).</p> <p>(where appropriate the Child Protection Helpline may refer reports to the Joint Child Protection Response Program (JCPRP) via the Joint Referral Unit (JRU)).</p>
NOTE	Where Police &/or the DCJ are conducting inquiries do not take further action unless given permission by the Police &/or DCJ.

	STEP*	ACTION
5	Complete an initial risk assessment	Where the allegation is against an ‘employee’, the SMCs complete the initial risk assessment to be able to provide the Office of Children’s Guardian (OCG) with information about how risks are being managed. For guidance see OCG <u>Fact Sheet 3 - Risk management following a reportable allegation</u> .
6	Mandatory 7 day report to OCG	The Senior Pastor, as the HRE, (unless there is a conflict of interest) must make a notification of the reportable allegation to the OCG. This notification is required to be made within 7 business days of becoming aware of the reportable allegation. Use the OCG’s <u>‘7 day Notification Form’</u> .
7	Investigate the allegation	Plan & conduct an appropriate investigation, having regard to the principles of procedural fairness. For guidance see <u>WWEC Guideline - Safe Ministry Management & OCG Fact Sheet 4 - Planning & Conducting an Investigation</u> . At the end a ‘finding of the reportable conduct’ must be made to the OCG. See <u>Fact Sheet 8 - Making a finding of reportable conduct</u> .
8	30 day Report to OCG	By 30 calendar days after becoming aware of a reportable allegation or conviction, the HRE must provide either the investigative ‘Entity’ report (where the investigation is complete) OR If the investigation is not complete, an ‘Interim’ report. Use OCG’s <u>30 day Interim Report Form</u> or <u>Entity Report Form</u> .
9	Entity Report to OCG	When the HRE is satisfied that the investigation has been concluded, they must, as soon as practicable, provide the OCG with an <u>Entity Report</u> .

***At each step plan for managing conflicts of interest, confidentiality and procedural fairness. Document ALL actions, planning and decision making.**

For Further Information

Refer to the OCG NSW Reportable Conduct Scheme website and find all 10 Fact Sheets on Reportable Conduct. The Fact Sheets cover;

- Fact Sheet 1: Identifying reportable allegations
- Fact Sheet 2: Head of Entity & reportable conduct responsibilities
- Fact Sheet 3: Risk management following a reportable allegation
- Fact Sheet 4: Planning & conducting an Investigation
- Fact Sheet 5: Recognising & managing conflict of interest
- Fact Sheet 6: Keeping Records
- Fact Sheet 7: Disclosing information to children, parents & carers
- Fact Sheet 8: Making a finding of reportable conduct
- Fact Sheet 9: FAQ for employees
- Fact Sheet 10: FAQ for employers

Refer to the Department of Communities & Justice website which outlines key information on ‘Protecting our Kids’ webpages including; reporting a child at risk, signs of child abuse and neglect, child protection laws, family preservation, Family & Community services that keep kids safe, Mandatory reporters.

NOTE: failure to report is now a criminal offence.

The NSW Government has amended the criminal law to strengthen the protection of children in response to recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. Two new offences, reflecting these existing legal duties, have been established:

- failure to protect a child from child abuse in which an adult with the power or responsibility to act, knows there is a serious risk of a child becoming a victim of abuse, and negligently fails to reduce or remove that risk (s43B of the Crimes Act 1990)
- failure to report child abuse in which an adult knows, believes or reasonably ought to know that a child abuse offence has been committed against a child and, without reasonable excuse, does not report that offence to the police (s316A of the Crimes Act 1990).

The maximum penalty for each of these offences is 2 years’ imprisonment.

GLOSSARY

Type	Definition
Child	A person under the age of 18 years at the time the alleged conduct occurred.
Physical Assault	<p>An assault can occur when a person intentionally or recklessly (ie. knows the assault is possible but ignores the risk):</p> <ul style="list-style-type: none"> - applies physical force against a child without lawful justification or excuse - such as hitting, striking, kicking, punching or dragging a child (actual physical force); or - causes a child to apprehend the immediate and unlawful use of physical force against them— such as threatening to physically harm a child through words and/or gestures and regardless of whether the person actually intends to apply any force (apprehension of physical force). <p>A physical assault is not serious where:</p> <ul style="list-style-type: none"> - it only involves minor force; and - it did not, and was not ever likely to, result in serious injury. <p>A physical assault is serious where:</p> <ul style="list-style-type: none"> - it results in the child being injured, beyond a type of injury like a minor scratch, bruise or graze; or - it had the potential to result in a serious injury; or - the injury suffered may be minor, but the assault is associated with aggravating circumstances (in this regard, aggravating circumstances might include associated inhumane or demeaning behaviour by the employee, for example kicking a child, pulling a child by grabbing the child around the neck).
Emotional & Psychological Harm	<p>Behaviour that causes significant psychological or emotional harm is conduct that is intentional or reckless (without reasonable excuse), obviously or very clearly unreasonable and which results in significant emotional harm or trauma to a child.</p> <p>For a reportable allegation involving psychological harm, the following elements must be present:</p> <ul style="list-style-type: none"> - an obviously or very clearly unreasonable or serious act or series of acts that the employee knew or ought to have known was unacceptable, and - evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self-harm, and - an alleged causal link between the employee's conduct and the significant emotional or psychological harm to the child.
Sexual Offence	<p>A sexual offence is an offence of a sexual nature under a law of NSW, another state/territory, or the Commonwealth committed against, with or in the presence of a child, such as:</p> <ul style="list-style-type: none"> - sexual touching of a child - a child grooming offence; - production, dissemination or possession of child abuse material. <p>An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of a sexual offence.</p>

Type	Definition
Sexual Misconduct	<p>Any conduct with, towards or in the presence of a child that is sexual in nature (but is not a sexual offence) and provides the following (non-exhaustive) examples:</p> <ul style="list-style-type: none"> - Descriptions of sexual acts without a legitimate reason to provide the descriptions - Sexual comments, conversation or communications; - Comments to a child that express a desire to act in a sexual manner towards the child, or another child <p>Note - crossing professional boundaries comes within the scope of the scheme to the extent that the alleged conduct meets the definition of sexual misconduct. That is, conduct with, towards or in the presence of a child that is sexual in nature (but is not a sexual offence)</p>
Spiritual Abuse	Controlling or coercive behaviour, aiming to manipulate or pressure individuals, through the misuse of scripture.
III-treatment	<p>Conduct towards a child that is:</p> <ul style="list-style-type: none"> - unreasonable; and - seriously inappropriate, improper, inhumane or cruel. <p>III-treatment can include a range of conduct such as making excessive or degrading demands of a child; a pattern of hostile or degrading comments or behaviour towards a child; and using inappropriate forms of behaviour management towards a child.</p>
Neglect	<p>A significant failure – by a person with parental responsibility for the child, or an authorised carer or an employee if the child is in the employee's care – to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child that causes or is likely to cause harm to the child.</p> <p>Neglect can be an ongoing situation of repeated failure by a caregiver to meet a child's physical or psychological needs, or a single significant incident where a caregiver fails to fulfil a duty or obligation, resulting in actual harm to a child or where the failure is likely to cause harm. Examples of neglect include failing to protect a child from abuse and exposing a child to a harmful environment.</p>
Harassment	<p>Unwelcome conduct, whether intended or not, in relation to another person where the person feels with good reason in all circumstances offended, belittled or threatened. Such behaviour may consist of a single incident or several incidents over a period of time. It includes:</p> <ul style="list-style-type: none"> - making an unwelcome physical contact with a person - making gestures or using language that could reasonably give offence including continual and unwarranted shouting - making unjustified or unnecessary comments about a person's capabilities or attributes - putting up open display pictures, posters, graffiti or written materials that could reasonably give offence - making unwelcome communication with a person in any form (eg phone calls, emails, text messages, social networking), and - stalking a person
Bullying	<p>The repeated seeking out or targeting of a person to cause them distress and humiliation or to exploit them, this may include:</p> <ul style="list-style-type: none"> - exclusion from a peer group - intimidation - extortion