

# Attachment 4: NSW Reporting Categories

This is an attachment to the *Disciples of Jesus International Child Protection Policy* August 2021 which captures the categories of allegations and complaints that must be reported to government agencies in NSW. These are to the:

1. Police – *Reportable Crimes*
2. Office of the Children’s Guardian – *Reportable Allegations*, and
3. Department of Communities and Justice – *Risk of Significant Harm*

## 1. Reportable Crimes

Reportable crimes are criminal offences, and for the purposes of this policy, are criminal offences against children.<sup>1</sup> Reportable crimes must be reported to the NSW Police, or to the relevant state or territory Police agency. In NSW, a reportable crime includes the following child abuse offences:

- physical assault of a child,
- sexual or indecent assault of a child,
- sexual touching of a child,
- any other sexual act involving a child,
- possessing, disseminating or producing child abuse material such as child pornography,
- grooming a child for sexual activity,
- recording or distributing intimate images of a child.

For a detailed definition of these crimes, see the Catholic Archdiocese of Sydney Fact Sheet: *What is a Reportable Crime?* at: <https://www.sydneycatholic.org/casys/wp-content/uploads/2020/04/382826-Fact-sheet-What-is-a-Reportable-Crime-as-at-1-March-2020.pdf>.

Also, a failure to report these criminal offences is also a criminal offence under s 43B (failure to protect) or s 316A (failure to report) of the Crimes Act 1900. For further information about the new child protection laws known as the failure to protect offences and also amendments to broaden grooming offences, see the Catholic Archdiocese of Sydney Fact Sheet: *Reporting Crimes to the NSW Police* at <https://www.sydneycatholic.org/casys/wp-content/uploads/2020/04/FACT-SHEET-Reporting-Crimes-to-the-NSW-Police.pdf>,

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<sup>1</sup> Under the NSW Crimes Act, a child is a person under the age of 16 years. However, where a special care relationship has existed with a young person aged 16 or 17 years, a sexual offence may be considered.

## 2. Reportable conduct

From 1 March 2020, the NSW *reportable conduct scheme* extended to include each Branch of Community in NSW as a *religious entity*. The scheme also captured YMT and MGL entities that are in NSW as *religious entities*.

In brief, the head of our entity who is the Branch Leader<sup>2</sup>, is required to notify the NSW Children's Guardian of any *reportable allegation* or *reportable conviction* against an *employee*.

### Who is an employee?

An *employee* includes the following:

- An individual who is an employee of the Community.<sup>3</sup>
- A Member or Associate whom the Community Leader has authorised to provide supervision or ministry to children or young persons via a Child or Youth Ministry.<sup>4</sup>
- MGL Brothers and Sisters who are active Members of a Branch in NSW.<sup>5</sup>

### What is a reportable allegation?

The Children's Guardian Act 2019 defines reportable conduct as:

- a sexual offence
- sexual misconduct
- ill-treatment of a child
- neglect of a child
- an assault against a child
- an offence under s43B (failure to protect) or s316A (failure to report) of the Crimes Act 1900; and
- behaviour that causes significant emotional or psychological harm to a child

For a detailed definition of these categories see the Children's Guardian Fact Sheet 1, *Identifying reportable allegations*, at: [www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au) or [https://www.kidsguardian.nsw.gov.au/ArticleDocuments/1021/Identifying\\_reportable\\_allegations.pdf.aspx?Embed=Y](https://www.kidsguardian.nsw.gov.au/ArticleDocuments/1021/Identifying_reportable_allegations.pdf.aspx?Embed=Y)

### What is a reportable conviction?

The Children's Guardian Act 2019 defines a reportable conviction as:

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<sup>2</sup> Peter Mullins, as the Leader of the Community, and the International Council must decide or affirm that the Branch Leader in NSW is to be the *head of entity* for the purposes of the reportable conduct scheme.

<sup>3</sup> An employee in the normal sense of the word. That is, they receive a salary for their work in the Community or Ministry.

<sup>4</sup> Note: *Employees* are defined by section 16 (c) of the NSW *Children's Guardian Act 2019* as: *an individual who holds, or is required by the religious body to hold a working with children check clearance for the purpose of engagement with the religious body.*

<sup>5</sup> Note: section 13 (a) of the *Child Protection (Working with Children) Regulation 2013* states: *Work for a religious organisation where children form part of the congregation or organisation is child-related work, if the work carried out -(a) as a minister, priest, rabbi, mufti or other like religious leader or spiritual officer of the organisation....*

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

### Reporting and investigating

If an *employee* of the Branch becomes subject to a *reportable allegation*, even if the conduct was alleged to have occurred before they joined Community, or was outside any Community life or ministry, the Branch Leader as the *head of entity* must notify the NSW Children’s Guardian of the allegations within 7 business days, and complete an investigation of the allegation within 30 calendar days, or an interim investigation report.

### Auditing

Also under the scheme, the Branch Leader must also ensure that the Branch has up to date child protection and reporting frameworks, policies and procedures, education and training. The Children’s Guardian has authority to audit any religious entity such as our Branch to determine whether or not the Branch has an effective child protection and reporting framework.

### Branch Leader’s additional responsibilities

In addition to the above responsibilities, Branch Leaders (with the support of their Council and Child Protection Advisors) have the following obligations in regard to their *employees*:

1. Develop and maintain a list of who their *employees* are;
2. Ensure that each *employee* understands the WWCC legislation and reporting obligations under the NSW reportable conduct scheme;
3. Verify the Member or Associate’s WWCC clearances prior to them being authorised as *employees*; and
4. Maintain an accurate and up to date record of those verifications and their expiry dates.<sup>6</sup>

### Employees’ additional responsibilities

In addition to signing the *Declaration*, *employees* should possess full knowledge of:

1. The Branch’s obligations to report and investigate any known reportable allegations against them under the NSW OCG reportable conduct scheme. (The OCG Fact Sheet 1: *Identifying reportable allegations* and Fact Sheet 9: *Information for Employees* should assist).
2. The employee’s obligation to cooperate with WWCC verifications.
3. The employee taking the initiative to undertake the three levels of child protection training outlined in the policy.<sup>7</sup>

For further information about the reportable conduct scheme, see the Fact Sheets at the Children’s Guardian Website at: <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/fact-sheets>

<sup>6</sup> A *Working with Children Clearance* which is required for anyone in child related work as defined by the *Working with Children Regulation 2013*. The relevant entity must verify each WWCC and keep accurate records of these.

<sup>7</sup> The three levels of training are briefings & inductions to the child protection policy, scenario based training and advanced training in specialised areas. See Section 5 of the *Disciples of Jesus International Child Protection Policy August 2021*.



### 3. Risk of significant harm

From 1 March 2020, under the Children and Young Persons (Care & Protection) Act 1998, the definition of a *mandatory reporter* in NSW expanded to include persons in *religious ministry* and/or providing *religion-based activities to children*. Consequently, Members and Associates of the Branch may qualify as a *mandatory reporter* under this Act<sup>8</sup>.

This means that if a Member or Associate has reasonable grounds to suspect that a child is at risk of significant harm, and those grounds arise in the course of our role in providing religious ministry to adults or to children on behalf of the Branch or Community, then we must notify the NSW Department of Communities and Justice via the CP Helpline on 132 111, or via email: <https://reporter.childstory.nsw.gov.au/s/>

A Child is at Risk of Significant Harm if current concerns exist for their safety, welfare or well-being because of the presence, to a significant extent, of any one or more of the following circumstances:

- a) the Child's basic physical or psychological needs are not being met or are at risk of not being met;
- b) the Child's parents or other guardians have not arranged and are unable or unwilling to arrange for the Child to receive necessary medical care;
- c) in the case of a Child who is required to attend school, the parents or other guardians have not arranged and are unable or unwilling to arrange for the Child to receive an education;
- d) the Child has been, or is at risk of being, physically or sexually abused or illtreated, regardless of whether consent has been given;
- e) the Child is living in a household where there have been incidents of domestic violence and, as a consequence, the Child is at risk of serious physical or psychological harm; and
- f) a parent or other care giver has behaved in such a way towards the Child that the Child has suffered, or is at risk of suffering, serious psychological harm.

A Member or Associate's obligation as a mandatory reporter does not cease when they make an internal report about the matter to the Branch or Community leadership. The Member or Associate must ensure to their own satisfaction that the mandatory report has been passed on to the CP Helpline, or make that report themselves.

For further information about mandatory reporting in NSW, see:

<https://www.facs.nsw.gov.au/families/Protecting-kids/mandatory-reporters/about>

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<sup>8</sup> It is open to question whether all lay Members and Associates would qualify as persons in religious ministry, that is, if they are not a priest or religious brother, and they are not involved in a *Child or Youth Ministry*. How Community defines who a person in religious ministry is? should ultimately be decided by the International Council of the Community after legal advice is sought. Until this legal question is resolved, it would be best practice for all Members and Associates to notify the CP Helpline of any child they believed to be at significant risk of harm.