

Child Protection Procedures



Policy Number: 41.10.002.1
Released: 13 October 2020
Review by: October 2023
Document Owner: Catholic Education Diocese of Wagga Wagga (CEDWW)
Relevant Contact: Directorate
Related Documents: Complaints Handling Policy, Complaints Handling Procedure, Code of Conduct

CEDWW Child Protection Procedures: Responding to Complaints and Allegations

1. Introduction and Purpose

This document sets out the procedures to be followed in response to child protection complaints or allegations being made against persons employed or engaged by the Catholic Education Diocese of Wagga Wagga (CEDWW). It provides direction for the management of all child protection complaints and allegations made about employees and/or persons engaged by the CEDWW.

2. Scope

This document applies to all persons employed or engaged by the CEDWW whether or not they are employed or engaged in connection with work or activities that relate to children or young persons in a paid or volunteer capacity. This document also applies to all religious and clergy, whether employer, on a stipend, or in a volunteer capacity who are engaged by the CEDWW or a school within the CEDWW, in child-related work.

3. Guiding Principle

All complaints and/or allegations relating to the conduct of persons employed or engaged by the CEDWW towards a child or young person must be reported to the CEDWW Child Protection Team as soon as possible for an initial assessment.

All complaints and/or allegations must be responded to in accordance with the *Catholic Education Diocese of Wagga Wagga Child Protection Policy: Responding to Complaints and Allegations* and this document.

The CEDWW supports the right of any person, child or adult, to report any concerns pertaining to child safety or make a complaint about the conduct of adults employed or engaged by the CEDWW in any capacity.

Complaints can be reported directly to the CEDWW or to the school in accordance with the *Complaints Handling Procedure*.

4. Process for Investigation

4.1. Complaint/Allegation Received

- 4.1.1. When any complaint and/or allegation is received, an initial assessment will determine the nature of the complaint.
- 4.1.2. Depending on the nature of the complaint, it is referred to an appropriate officer within the CEDWW for advice and guidance in the management of the matter.

4.2. Intake Procedures

- 4.2.1. An initial assessment is undertaken by the CEDWW Child Protection Team and includes:
 - (a) Clarifying the allegation, if appropriate.
 - (b) Identifying whether the alleged conduct requires a report to external authorities such as the NSW Police, the Australian Federal Police and/or the Department of Communities and Justice. If the alleged conduct is considered to be criminal in nature, the CEDWW or the school (under the advice of the CEDWW) must make a report to the police regardless of whether or not the complainant wishes to make a police report. It is a matter for the police to determine whether the matter is within its jurisdiction.
 - (c) If the alleged conduct is considered to be of a potentially criminal nature by the police, the

- complainant will be informed that they may also contact the police directly.
- (d) If the complaint and/or allegation identifies a child at risk of significant harm, a report must be made to the Department of Communities and Justice in accordance with the mandatory reporting requirements pursuant to *Children and Young Persons (Care and Protection) Act 1998* (NSW).
 - (e) Where information arises that identifies a need for a report to the NSW Police or the Department of Communities and Justice, the CEDWW will make that report at that time and suspend its own process until such time as clearance is given by the statutory body to continue the internal investigation.
 - (f) Identifying whether the complaint and/or allegation requires a notification to the Office of the Children's Guardian pursuant to Part 4 of the *Children's Guardian Act 2019* (NSW) (the Act).
 - (g) Where a matter falls within Part 4 of the Act, the Head of a Relevant Entity (or their delegate) must be notified and the matter reported to the Office of the Children's Guardian within seven (7) days.
 - (h) Identifying other agencies that should be informed of the process. For example, in the case of an external contractor, their own employer; the Provincial Leader of a Religious Order if the complaint relates to a Religious Member.
 - (i) Strategies to respond to an initial risk assessment are implemented.
 - (j) An investigation plan is developed:
 - i. All matters will be appropriately assessed and investigated.
 - ii. In some cases the CEDWW may engage an external investigator to undertake the investigation on behalf of the CEDWW.
 - iii. Some matters that are exempt from reporting to the Office of the Children's Guardian in accordance with sections 30 and 41 of the Act, may, after assessment, be investigated by the school under the guidance of a relevant officer in the CEDWW.
 - (k) Some matters that are not captured under the definition of Reportable Conduct as prescribed by section 20 of the Act may, after assessment, be investigated by a relevant officer in the CEDWW. This includes but is not limited to complaints of inappropriate conduct by an employee or a person engaged by the CEDWW towards a student who is over 18 years of age.

4.3. Risk Assessment

- 4.3.1.** A risk assessment is an ongoing process required in complaint and allegation procedures and investigations.
- 4.3.2.** Risk assessment includes identifying risks and implementing strategies to reduce those risks to:
 - (a) children and young people;
 - (b) person subject of the complaint;
 - (c) other staff in the school or office;
 - (d) broader school community including students, parents and the parish;
 - (e) reputation of persons, the school or the CEDWW; and
 - (f) the integrity of the investigation.
- 4.3.3.** A risk assessment may determine whether interim arrangements on an employee's work status are required, in consultation with relevant external agencies. This may include standing down a person from their role or suspension of their duties. Any decision in relation to the employee's work status will take into account factors such as:
 - (a) the seriousness of the alleged conduct;
 - (b) whether there is a pattern of similar issues;
 - (c) vulnerability of the child/children or employee;
 - (d) capacity of the work environment to manage any risk factors;
 - (e) risks to breaches of confidentiality;
 - (f) wellbeing of the person subject of the complaint and/or allegation;
 - (g) involvement of statutory bodies; and
 - (h) safety of the parties.
- 4.3.4.** Where the CEDWW is notified that an employee or a person engaged by CEDWW has had their Working with Children Check clearance canceled by the Office of the Children's Guardian in accordance with section 23 of the *Child Protection (Working with Children) Act 2012* (NSW) or is subject to an interim bar, the CEDWW will take immediate steps in accordance with law to

remove the person from child related employment.

- 4.3.5.** Where the CEDWW is notified that an employee or a person engaged by the CEDWW is subject to a risk assessment by the Office of the Children's Guardian, the CEDWW may take appropriate steps to manage that person's interaction with children and young persons, in consultation with the Office of the Children's Guardian.

4.4. Investigation Protocols

- 4.4.1. CEDWW complies with any advice or direction from the Office of the Children's Guardian in relation to best practice.
- 4.4.2. The investigation protocols are constantly reviewed. The following protocols are applied:
- (a) The person against whom the allegation is made, is advised in writing of the allegations.
 - (b) Sufficient time is provided to prepare a response.
 - (c) Persons interviewed in the investigation process are permitted to bring a support person if required.
 - (d) All reasonable inquiries are undertaken.
 - (e) Any party to the investigation is provided with an opportunity to nominate witnesses.
 - (f) Information obtained in interviews is written up in a form of statement or recorded, with consent, and transcribed.
 - (g) If a student is being interviewed, they are offered an adult support person of their choice.
 - (h) Parental consent is obtained for formal interview (depending on the student/s age).
 - (i) Counselling services are made available to the child, their family and the employee, recognising that regardless of the seriousness of any complaint, most complaints are stressful and impact on those involved.
- 4.4.3. Principles of procedural fairness must be adhered to at all times and all persons should be treated with dignity and respect at all stages of a complaint process.
- 4.4.4. Any person who is the subject of a complaint has a right to obtain professional advice from their union or a legal practitioner, at any stage, and is encouraged to do so, if required.
- 4.4.5. Where the employee or a person engaged by the CEDWW resigns before the completion of the investigation, the CEDWW will assess whether the investigation should be concluded at that point. With respect to matters reportable to the Office of the Children's Guardian, a finding is required regardless of whether or not the employee remains employed.
- 4.4.6. When all relevant information is obtained the evidence is assessed on the civil standard of proof. A determination is made as to:
- (a) whether or not the alleged conduct occurred;
 - (b) the appropriate finding recorded;
 - (c) appropriate action to be taken based on the finding;
 - (d) any issues arising, such as system issues, performance or safety matters; and
 - (e) review of the risk assessment.
- 4.4.7. An investigation report with all information relevant to the findings is prepared.
- 4.4.8. Findings and outcomes are communicated to the person who is the subject of the allegation, and other persons as appropriate.
- 4.4.9. If an adverse finding is made which may have employment implications, the Director of Schools or their delegate ensures that the employee is afforded a fair procedure in responding further to the findings and outcomes, prior to confirming that finding.
- 4.4.10. Final reports to external authorities such as the NSW Office of the Children's Guardian and the National Education Standards Authority (NESA) are made when appropriate.
- 4.4.11. The investigation file is secured confidentially with the CEDWW. Such records must be retained for a minimum of 100 years.

4.5. Anonymous Complaints or Reluctant Complainants and Witnesses

- 4.5.1.** The steps and principles in this document apply equally to anonymous complaints.
- 4.5.2.** Notwithstanding the complexities of investigating anonymous complaints, the CEDWW will take all complaints seriously, report if necessary and make reasonable inquiries where practical.
- 4.5.3.** Reluctant witnesses (i.e. those individuals who can be identified but may not wish to proceed or take matters forward), will be advised about the CEDWW's legal obligation to report and respond to certain complaints involving children and young persons.
- 4.5.4.** The CEDWW undertakes to respond to all complaints sensitively, and where required, report to

external authorities and investigate, even if the complainant does not wish for this to occur.

4.6. Inter-agency Cooperation

- 4.6.1.** In cases where a complaint results in more than one Relevant Entity being responsible for reporting to the Office of the Children's Guardian, the CEDWW will work with the other identified Relevant Entity, where appropriate, to assess and manage the risks.
- 4.6.2.** The Office of the Children's Guardian may issue a written exemption to a Relevant Entity pursuant to section 31 of the Act.
- 4.6.3.** Principles of privacy and confidentiality will be carefully considered and managed in such situations.
- 4.6.4.** In the context of fulfilling obligations under the Reportable Conduct Scheme, information may be requested and/or shared with a prescribed body pursuant to Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).

4.7. Complaints of a Historical Nature

- 4.7.1.** Complaints of a historical nature may involve allegations of conduct that occurred at a school before it was under the authority of the CEDWW, or the person subject of the allegation is no longer employed or engaged by the CEDWW.
- 4.7.2.** Where appropriate, the DWW Professional Standards and Safeguarding Officer will refer the complaint to the appropriate agency and the complainant will be informed of this. An appropriate agency may include the Provincial Leader of a Religious Order, other Education Authority, the Bishop or Education Office in another Diocese in NSW or Australia.
- 4.7.3.** Where the CEDWW is identified as being responsible for the matter, then the CEDWW will undertake reasonable inquiries consistent with the procedures outlined in this document, including notification of the complaint to external authorities, where required.
- 4.7.4.** A person reporting an allegation of a potentially criminal nature is encouraged to make their report directly to the NSW Police. In accordance with legislative obligations under the *Crimes Act 1900* (NSW), the DWW Professional Standards and Safeguarding Officer will make a report to the police if the information is identified as possibly criminal in nature, regardless of the decision of the complainant to report to the police.

4.8. Principles of Confidentiality

- 4.8.1.** The principles of confidentiality are applied to all complaint procedures insofar as permitted by law.
- 4.8.2.** The following principles are upheld in managing confidentiality in these processes:
 - (a)** All persons involved in a compliant process are requested to respect confidentiality of the process and other people involved.
 - (b)** Staff are required to comply with requests for confidentiality, and will be advised at the commencement of an investigation not to discuss with other staff, students and parents the complaint or the investigation of the complaint. Breaches of confidentiality by staff will be taken seriously and may result in disciplinary action.
 - (c)** Confidentiality does not restrict any person from obtaining any necessary professional advice or support at any time during the process, including, but not limited to, union advice, legal advice or professional counselling.
 - (d)** Confidentiality does not restrict the school or the CEDWW from making reports to the NSW Police or the Department of Communities and Justice or any other agency as required by law.
 - (e)** Schools and the CEDWW may be subject to strict confidentiality requirements from external authorities such as the Office of the Children's Guardian, the Department of Communities and Justice and the NSW Police.

4.9. Records and Disclosure

- 4.9.1.** Where required for a relevant investigation or risk assessment, the CEDWW may seek or provide information from 'prescribed agencies' in accordance with Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).
- 4.9.2.** A record of the investigation must be held by the CEDWW, and where required, a copy must be provided to the Office of the Children's Guardian in accordance with Part 4 of the Act.

- 4.9.3. Investigations into matters that are assessed as being exempt from reporting obligations to the Office of the Children's Guardian are held by the CEDWW and the Office of the Children's Guardian may audit these records in accordance with the Act.
- 4.9.4. Records at the CEDWW are kept securely, confidentially and separately from personnel files.
- 4.9.5. The Director of Schools or their delegate, must report to the Head of the Relevant Entity, or their delegate, all matters that are reportable to the Office of the Children's Guardian, when they arise.
- 4.9.6. A person who is the subject of a complaint may request access to records held by the CEDWW in accordance with the relevant Enterprise Agreement, the *Government Information (Public Access) Act 2009* (NSW), or other relevant legislation.

5. Explanatory Notes and Definitions

Act refers to the *Children's Guardian Act 2019* (NSW).

Child means a person under the age of 18 years. With respect to matters notifiable to the Department of Communities and Justice, a child is defined as a person under 16 years.

Complaint/ allegation means any issue raised regarding the conduct of an employee of the CEDWW or a person engaged by the CEDWW in relation to children or young people, including but not limited to conduct identified as reportable conduct within Part 4 of the *Children's Guardian Act 2019* (NSW).

Employee means a person employed by the Relevant Entity; or a person engaged by the Relevant Entity to provide services to children whether directly or by a third party, or in a paid or unpaid capacity.

Head of a Relevant Entity refers to the Bishop of the Diocese of Wagga Wagga, as per Part 4 of the *Children's Guardian Act 2019* (NSW), for all agencies within the Diocese of Wagga Wagga. The Bishop of the Diocese of Wagga Wagga may delegate certain responsibilities for oversight to the Director of Schools in accordance with legislation.

Not Reportable Conduct means:

- (a) Conduct that is reasonable for the purposes of discipline, management or care of a child, having regard to the age, maturity, health or other characteristics of the child, and any relevant code of conduct or professional standard; or
- (b) The use of physical force if in all the circumstances, the physical force is trivial or negligible and the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures; or
- (c) Conduct of a class or kind that is exempted from being reportable conduct by the Children's Guardian under section 30 of the *Children's Guardian Act 2019* (NSW).

Relevant Legislation refers to the following Statutes:

- (a) *Child Protection (Offenders Registration) Act 2000* (NSW)
- (b) *Child Protection (Working with Children) Act 2012* (NSW)
- (c) *Children and Young Persons (Care and Protection) Act 1998* (NSW)
- (d) *Children's Guardian Act 2019* (NSW)
- (e) *Crimes Act 1900* (NSW)
- (f) *Government Information (Public Access) Act 2009* (NSW)
- (g) *Privacy Act 1988* (Commonwealth)
- (h) *Privacy and Personal Information Protection Act 1998* (NSW)
- (i) *Public Interest Disclosures Act 1994* (NSW)
- (j) *Work Health and Safety Act 2011* (NSW)

Relevant Entity means a public authority or Schedule 1 entity or a religious body as per sections 12 (c) and 15A as identified in the *Children's Guardian Act 2019* (NSW).

Report refers to a copy of the investigation file that may be provided to the Office of the Children's Guardian in

accordance with Part 4 of the Act. The Office of the Children's Guardian will review the file and advise the CEDWW whether or not it is satisfied with the process prior to closing the matter.

Reportable Allegation means an allegation that the employee has engaged in conduct that may be reportable conduct whether or not the conduct is alleged to have occurred in the course of the employee's employment with the Relevant Entity.

Reportable Conduct means the following conduct, whether or not a criminal proceeding in relation to the conduct has been commenced or concluded—

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

Standard of Proof refers to a civil standard, that is, whether the case have been proved on the balance of probabilities.

Young person for the purposes of reporting risk of significant harm, means a person who is aged 16 or 17 years.