



28 February 2020

NEW GOVERNMENT REQUIREMENTS FOR MINISTERS

This circular explaining new government requirements for all Ministers is being sent to all those with a licence or authority from the Archbishop of Sydney and is also being sent to parish Safe Ministry Representatives for information.

This circular contains **three** important updates concerning safe ministry in your parish.

- Changes under NSW legislation to the definition of *mandatory reporter* in relation to children at risk of significant harm.
- Expansion of the NSW Reportable Conduct Scheme to cover religious bodies.
- New Safe Ministry Requirements/Assessment process set out in the *Safe Ministry to Children Ordinance 2018*.

1. CHANGES TO THE DEFINITION OF MANDATORY REPORTER

From 1 March 2020, the definition of *mandatory reporter* will expand to include persons in religious ministry or persons providing religion-based activities to children. This includes both clergy and paid workers as well as volunteers. A mandatory reporter must make a report to the Department of Communities and Justice¹ when they have 'reasonable grounds to suspect that a child is at risk of significant harm' and the grounds for the suspicions arise in the course of, or from, their work or role.

This change enshrines in law the policy position that we have taken in the Diocese of Sydney for a number of years and promoted in Safe Ministry training, which is that *anyone* who suspects on reasonable grounds, that a child or young person is at risk of neglect or physical, sexual or emotional abuse should report it to the relevant authorities.

Action required by your church: No change in existing practice required, as our Safe Ministry policies and training already meet the requirements of the updated legislation.

2. NSW REPORTABLE CONDUCT SCHEME

As of 1 March 2020, religious bodies become part of the NSW Reportable Conduct Scheme. The Reportable Conduct Scheme has existed for many years but up until now has not applied to religious bodies in general.

Previously the Scheme was administered by the NSW Ombudsman's Office, but under the new *Children's Guardian Act 2019* (the Act) oversight of the Scheme has transferred to the Office of the Children's Guardian ("the OCG").

¹ Formerly known as Family and Community Services (FaCS).

What is the Reportable Conduct Scheme?

The Reportable Conduct Scheme will require religious bodies to report to the OCG allegations of certain types of conduct and convictions (defined below) engaged in by a person who holds, or is required to hold, a working with children check clearance for the purpose of engagement with the religious body.

There are strict timeframes for reporting. Notice of an allegation must be reported to the OCG by the “head” of the religious body within 7 days of it becoming known and an investigation report (or interim report, if the investigation is not complete) must be lodged with the OCG after a further 30 calendar days.

What Conduct is Reportable?

According to section 20 of the Act, “*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 committed against or within the presence of a child;
- b) Sexual misconduct 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 or 316A of the *Crimes Act 1900* (Note: A previous circular was sent out on 7 June 2019 with information concerning these sections of the Crimes Act); or
- g) Behaviour that causes significant emotional or psychological harm to a child.

A “*reportable conviction*” is a conviction or a finding of guilt from a court (even if it doesn’t lead to conviction) of an offence involving reportable conduct.

What about conduct that occurred outside the church context?

Religious bodies must report allegations of reportable conduct and convictions even if the conduct or conviction is not connected to the activities of the church or the exercise of the person’s role in the organisation.

Further definitions and explanation of what constitutes reportable conduct can be found in the Act. However for the purposes of this circular and for understanding what action you need to take to ensure that as a Diocese we are meeting our obligations under the Scheme you do not need to have a comprehensive understanding of the type of conduct concerned.

What do I need to do?

The Act imposes a legal obligation upon the head of the religious body to report relevant allegations and convictions to the OCG within the stipulated timeframes. Employees (including volunteers) of the religious body also have a corresponding obligation to report their knowledge of any relevant allegations and convictions to the head of the religious body.

The Act defines “*religious body*” to mean

- (a) a body established for a religious purpose, and
- (b) an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles.

Both the relevant Parish and the Synod would be religious bodies under this definition.

The Act defines “*head*” as being the chief executive officer or principal officer, however described. In our context this would appear to be the Rector (Parish) and the Archbishop (Diocese).

While the identity of the *head* is important for determining who has reporting obligations under the Act, in practice all reportable allegations and convictions are investigated and dealt with by the PSU.

Action required by your church: Parishes should report relevant allegations and convictions to the PSU who will deal with the OCG on behalf of the head of the religious body and conduct an investigation.

If you become aware of an allegation of conduct or a conviction that you think might be reportable you should **contact the PSU immediately** for further advice and so that the matter can be dealt with as soon as possible.

The Office of the Children's Guardian are running information sessions about the Reportable Conduct Scheme during March and April. These are specifically aimed at faith based organisations. If you are interested in attending an information session you can find details and register through the [OCG website](#).

3. DEFFERAL OF THE START OF NEW DIOCESAN SAFE MINISTRY REQUIREMENTS

On 31 October 2019, the Diocesan Secretary circulated a report on significant matters which had been considered by Synod that month. The report included the following:

By resolution 49/19, Synod requested that Standing Committee defer the start date of the operation of the Safe Ministry to Children Ordinance 2018 by four months, until 1 May 2020. Synod invited members of Synod and parish Safe Ministry Representatives to send concise suggestions about the new Safe Ministry Assessment process, in a way that honours our desire to protect children by conducting ministry as safely as possible. [Feedback to diocesan.secretary@sydney.anglican.asn.au by 30 November 2019.]

On 18 November 2019 Standing Committee passed the necessary ordinance to defer the start of the new arrangements until 1 May 2020 and also asked a committee to consider the issues involved and review the submissions received from Synod members and others.

On 17 February 2020 Standing Committee asked the relevant committee to consider

(a) the feedback provided by Synod members in response to Synod Resolution 49/19 (New Safe Ministry Assessment process and timing) asking for suggestions to streamline or simplify the new Safe Ministry Assessment process,

(b) whether the forms of Safe Ministry Check previously prescribed should be amended in any respects, and

(c) whether it would be preferable to replace the Ordinance with more accessible legislation that maintains consistent standards for safe ministry in our Diocese.

Ministers and Safe Ministry Representatives need to be aware that Standing Committee is still in the process of determining what action should be taken in relation to this matter. This means that the Safe Ministry Check that was posted on the website last year for your review does **not** need to be completed by any of the people in your parish at this stage.

Once the Standing Committee has determined what processes will be required for the Safe Ministry Assessment and approved any associated forms parishes will be informed and given time to implement and comply with those new processes prior to their commencement.

Action required by your church: No changes in existing practice for now. When the Standing Committee has made its determination, all parishes will be informed of the new processes.



Lachlan Bryant

Director of Professional Standards