

# Reportable Allegations and Convictions Ordinance 2022

No 35, 2022

## Long Title

An Ordinance to facilitate compliance with the *Children's Guardian Act 2019* in relation to reportable allegations and reportable convictions in respect to certain persons within the Diocese.

The Synod of the Diocese of Sydney Ordains as follows.

### 1. Name

This Ordinance is the Reportable Allegations and Convictions Ordinance 2022.

### 2. Interpretation

(1) In this Ordinance –

**CG Act** means the *Children's Guardian Act 2019*, as amended from time to time.

**Children's Guardian** means the period holding office as the Children's Guardian under the CG Act.

**Diocese** means the Anglican Church Diocese of Sydney.

**WWCC Employee** means an individual who holds, or is required by the religious body to hold, a working with children check clearance for the purpose of undertaking ministry in the Diocese.

(2) A reference in this Ordinance has the same meaning as it has in the *Children's Guardian Act 2019* as amended from time to time.

**Note:** The *Children's Guardian Act 2019* includes the following definitions –

**Assault** means—

- (a) the intentional or reckless application of physical force without lawful justification or excuse, or
- (b) any act which intentionally or recklessly causes another to apprehend immediate and unlawful violence.

Examples of assault—

- 1 hitting, striking, kicking, punching or dragging a child
- 2 threatening to physically harm a child

**Employee**, for a religious body, means 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.

**Ill-treatment**, of a child, means conduct towards a child that is unreasonable and seriously inappropriate, improper, inhumane or cruel.

Examples of ill-treatment—

- 1 making excessive or degrading demands of a child
- 2 a pattern of hostile or degrading comments or behaviour towards a child
- 3 using inappropriate forms of behaviour management towards a child

**Neglect**, of a child, means a significant failure 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 a child, by—

- (a) a person with parental responsibility for the child, or
- (b) an authorised carer of the child, or
- (c) an employee, if the child is in the employee's care.

Examples of neglect—

- 1 failing to protect a child from abuse
- 2 exposing a child to a harmful environment, for example, an environment where there is illicit drug use or illicit drug manufacturing

**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 religious body and whether or not the allegation relates to conduct occurring before the commencement 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,
- (b) sexual misconduct,
- (c) ill-treatment of a child,

## Reportable Allegations and Convictions Ordinance 2022

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

Examples of indicators of significant emotional or psychological harm for paragraph (g)—

- 1 displaying behaviour patterns that are out of character
- 2 regressive behaviour
- 3 anxiety or self-harm

Reportable conduct does not include—

- (a) conduct that is reasonable for the purposes of discipline, management or care of a child, having regard to—
  - (i) the age, maturity, health or other characteristics of the child, and
  - (ii) any relevant code of conduct or professional standard, or
- (b) the use of physical force if—
  - (i) in all the circumstances, the physical force is trivial or negligible, and
  - (ii) 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 exempted from being reportable conduct by the Children's Guardian under section 30.

Example of conduct for paragraph (a)— a school teacher raising his or her voice in order to attract attention or restore order in a classroom

Examples of conduct for paragraph (b)—

- 1 touching a child in order to attract the child's attention
- 2 momentarily restraining a child to prevent the child hurting themselves or others
- 3 touching a child to guide or comfort the child

**Reportable conviction** means a conviction, including a finding of guilt without the court proceeding to a conviction, in this State or elsewhere, of an offence involving reportable conduct—

- (a) in relation to an employee of a Schedule 1 entity—whether or not the conduct occurred in the course of the employee's employment with the Schedule 1 entity, or
- (b) in relation to an employee of a public authority—
  - (i) if the employee holds, or is required to hold, a working with children check clearance for the purpose of employment with the public authority—whether or not the conduct occurred in the course of the employee's employment, or
  - (ii) if the employee is not required to hold a working with children check clearance for the purpose of employment with the public authority—unless the conviction relates to conduct that occurred outside the course of the employee's employment with the public authority.

(And includes convictions in respect of conduct occurring before the commencement of the CG Act.)

**Sexual misconduct** means conduct with, towards or in the presence of a child that—

- (a) is sexual in nature, but
- (b) is not a sexual offence.

Examples of sexual misconduct—

- 1 descriptions of sexual acts without a legitimate reason to provide the descriptions
- 2 sexual comments, conversations or communications
- 3 comments to a child that express a desire to act in a sexual manner towards the child or another child.

**Sexual offence** means an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child.

Examples of sexual offences—

- 1 sexual touching of a child
- 2 a child grooming offence
- 3 production, dissemination or possession of child abuse material

(3) The notes in this Ordinance are for explanatory purposes only and do not form part of the Ordinance.

(4) The Diocesan Secretary is authorised to update the notes in this Ordinance to maintain their currency.

### 3. Delegation

(1) The Archbishop may delegate any of the functions of the Head under Part 4 of the CG Act to any person or body and may revoke such delegations at any time by notice in writing to the person or body.

(2) If the Archbishop makes a delegation under subclause (1), references to the Archbishop in this Ordinance are taken to be references to the person or body in respect to the delegated functions.

## Reportable Allegations and Convictions Ordinance 2022

**Note:** Section 65 of the CG Act permits the Head to delegate any functions under Part 4 of the CG Act to any Employees of the Diocese. It is expected that the Archbishop will delegate his functions to the persons, and bodies comprised of persons, that perform requisite functions under the *Ministry Standards Ordinance 2017*.

### 4. Determinations for the purposes of the CG Act

- (1) For the purposes of the CG Act –
  - (a) the Diocese is a religious body,
  - (b) the Diocese does not include schools or organisations that are constituted by or pursuant to ordinance, unless declared to form part of the Diocese by the Standing Committee by resolution for the purposes of this subclause, and
  - (c) the Archbishop is the Head of the Diocese.
- (2) For the purposes of the CG Act and the definition of ‘Employee’ in the CG Act, a person is required to hold a Working with Children Check clearance by the Diocese for the purpose of engagement in the Diocese if the person is required to hold a unconditional Working with Children Check under the *Safe Ministry to Children Ordinance 2020*.

### 5. Reports to the Archbishop

- (1) A WWCC Employee who becomes aware, knows or has reason to believe that another WWCC Employee has a reportable conviction or has engaged in or is alleged to have engaged in reportable conduct, must as soon as possible report to the Archbishop –
  - (a) the name or a description of the reportable person,
  - (b) details of the alleged reportable conviction or reportable conduct,
  - (c) the date of birth and working with children number (if any) of the WWCC Employee the subject of the report,
  - (d) the grounds for knowing or believing that the reportable person has a reportable conviction or has engaged in in the conduct,
  - (e) whether the conduct has already been reported to any authority, and
  - (f) whether a risk assessment has been undertaken, the outcome of that assessment and any risk management action that has been taken.
- (2) A person making a report under subclause (1) must provide such additional information and reasonable assistance to the Archbishop as he may request to enable the conduct to be investigated and reported to the police, the Children’s Guardian or other authority in accordance with the law.
- (3) Any other person may also make a report to the Archbishop in respect to a WWCC Employee setting out the matters listed in subclause 5(1).

### 6. Action to be taken by the Archbishop

If the Archbishop receives a report under clause 5 or otherwise becomes aware, in relation to a WWCC Employee, of a reportable allegation or a conviction that is considered to be a reportable conviction, the Archbishop must–

- (a) ensure that a report is made or reports are made to the Children’s Guardian in accordance with the CG Act,
- (b) ensure that an initial risk assessment is made based on all known relevant information to ensure that any risk posed by the WWCC Employee the subject of the allegation is managed and revisit that assessment as new information becomes known, including at the end of the investigation,
- (c) ensure that arrangements are made for any reportable allegation to be investigated as soon as practicable (subject to any requirement under the CG Act to defer or suspend the investigation),
- (d) determine whether any conviction considered to be a reportable conviction is a reportable conviction,
- (e) make a finding of reportable conduct if he is satisfied that the case against the WWCC Employee the subject of the reportable allegation has been proved against the WWCC Employee on the balance of probabilities after taking into account any mandatory considerations required under the CG Act, and
- (f) otherwise deal with the allegation or conviction in manner that complies with the CG Act and any directions made by the Children’s Guardian thereunder.

**Note:** By section 36 of the CG Act, after an investigation or determination is completed the Archbishop must provide a report (an “Entity Report”) to the Children’s Guardian, subject to certain exceptions. The Entity Report is to be

## **Reportable Allegations and Convictions Ordinance 2022**

provided within 30 days after becoming aware of the allegation of reportable conduct or reportable conviction, unless the Archbishop gives –

- (a) an interim report to the Children's Guardian within that period that contains the content required by section 38 of the CG Act,
- (b) the reason for not providing the Entity Report, and
- (c) an estimated time period for the Entity Report.

The Entity Report must include the contents required by section 37 of the CG Act.

### **7. Investigations and determinations by the Children's Guardian**

If the Children's Guardian investigates a reportable allegation or makes a determination about a conviction considered to be a reportable conviction, and provides a copy of its report to the Archbishop, the Archbishop must consider the report and may, or on the request of the Children's Guardian must, notify the Children's Guardian of any action taken or proposed as a result of the recommendations.

### **8. Disclosure of information**

The Archbishop must disclose the following information relating to a reportable allegation or conviction considered to be a reportable conviction if required by the CG Act –

- (a) information about the progress of the investigation,
- (b) information about the findings of the investigation,
- (c) information about action taken in response to the findings,

and must not disclose the information in any other circumstance unless disclosure is permitted by the CG Act or required by law.

I Certify that the Ordinance as printed is in accordance with the Ordinance as reported.

R TONG  
Chair of Committee

I Certify that this Ordinance was passed by the Synod of the Diocese of Sydney on 13 September 2022.

D GLYNN  
Secretary

I Assent to this Ordinance.

BISHOP CHRIS EDWARDS  
Commissary for Archbishop of Sydney

26/09/2022