

PROCEDURE FOR HANDLING COMPLAINTS AGAINST STAFF AND VOLUNTEERS

Adopted by Church Leadership Team on 25 August 2020

PURPOSE

The *Procedure for Handling Complaints Against Staff and Volunteers* (the **Procedure**) sets out a procedure by which a complaint or information relating to a serious breach of the Code of Conduct can be received, investigated and resolved.

The Procedure should also be followed in the event of the Church receiving a complaint or information relating to Reportable Conduct. The Church has an obligation in accordance with Reportable Conduct Legislation to have practices and procedures to deal with Reportable Conduct, including:

- for receiving complaints of Reportable Conduct;
- for dealing with Reportable Conduct allegations; and
- for the receipt, handling and disclosure of information relating to Reportable Conduct and investigations.

SCOPE

This Procedure applies to all staff and volunteers of the Church.

This Procedure applies to all matters which are a serious breach of the *Code of Conduct*, including but not limited to complaints relating to:

- In NSW, a Child Abuse Offence, Child Sexual Abuse or Sexual Misconduct involving a Child.
- In the ACT, a sexual offence having been committed against a child, Sexual Misconduct involving a Child or a child or young person that has experienced, or is experiencing, Child Sexual Abuse or non-accidental physical injury. Please note: Accredited and Recognised Ministers are subject to:
- this procedure in relation to a complaint of a breach of the *Code of Conduct*, (If an Accredited or Recognised Minister is found to have breached the Baptist Association *Code of Ethics and Conduct* that would also constitute a breach of the church's *Code of Conduct*); and
- the Baptist Churches of NSW & ACT *Procedures for Handling Allegations* in relation to a complaint of a breach of the Baptist Association *Code of Ethics and Conduct*.

Please note: This Procedure *does not* apply to matters which would more appropriately be dealt with under the *Procedure for Conflict Resolution* (for example, a low-level breach of the *Code of Conduct*).

If there is any doubt as to whether a complaint or information would fall within the scope of the Procedure, or about any of the steps set out in the Procedure, a church leader should contact the Baptist Churches of NSW & ACT Ministry Standards Manager on 1300 647 780.

The Procedure should be read in conjunction with the *Safe Church Policy* and:

- *Code of Conduct for Staff and Volunteers*
- *Procedure for Responding to Child Protection Concerns*
- *Procedure for Conflict Resolution*
- *Privacy Policy*

1. RECEIVING A COMPLAINT OR INFORMATION

Anyone may make a complaint or pass on information that relates to a breach of the Code of Conduct (including Reportable Conduct) by staff or volunteers of the Church to:

- Church Leadership;
- the Safe Church Team Leader and the Safe Church Team;
- Grievance Team or
- any staff or volunteer.

Complaints or information may be received verbally, however where possible a written outline of the complaint should be encouraged. In all cases, the Safe Church Team should document all complaints and information received in the Safe Church Concerns Form.

2. REPORTING INFORMATION

2.1 Determining appropriate reporting process

- a) Any complaint about a staff member or volunteer which may be considered a serious breach of the Code of Conduct should be reported to the Church Leadership. If the complaint or information relates to a member of the Church Leadership then it should not be reported to them, but instead reported to another person in the Church Leadership or the Safe Church Team.
- b) On receipt of a complaint or information that may relate to any form of child protection concern the person that has received the complaint or information is to also follow the *Procedure for Responding to Child Protection Concerns*.
- c) Any person who has knowledge that a serious crime has been committed, whether or not it is related to children, should report that knowledge to the Police.
- d) If a complaint is, or should be, reported to government authorities the Church Leadership will only commence an investigation under this Procedure after consultation with the government authorities that it has been reported to.

2.2 Allegations regarding Reportable Conduct

- a) The Head of Entity (typically either the paid senior pastor or the chair of the church governance body) is obligated to notify the Reportable Conduct Scheme (in NSW, the Office of Children's Guardian) of Reportable Conduct allegations within a defined timeframe, in accordance with **Reportable Conduct Legislation**.
- b) In NSW,
 - the Reportable Conduct Scheme covers any staff or volunteers who are required to hold a Working With Children Check.
 - this notification must be made within 7 business days of receiving the complaint or information under s29(4) of the *Children's Guardian Act (2019)*.
 - Note that an investigation report (final entity report) must be submitted within 30 days. If it is not possible to submit the final report within 30 days

then an interim report must be submitted within 30 days in accordance with s38 of the *Children's Guardian Act 2019*.

- c) The notification of the allegation to the Reportable Conduct Scheme must be in writing and should include:
- the name, date of birth and WWCC (or WWVP) number of the employee or volunteer,
 - the name and contact details of the relevant entity and the head of the relevant entity,
 - details of the allegation,
 - the nature of the relevant entity's initial risk assessment and risk management action,
 - if a report to police has been made, the police report reference number,
 - if a report has been made under **Mandatory Reporting Legislation**, the report reference number, and
 - the names of other relevant entities that employ or engage the employee.

3. RISK ASSESSMENT

- a) In addition to considering or making a report under section 2 above, the Safe Church Team and Pastoral Staff must conduct a risk assessment relating to the safety of the complainant or any other children or vulnerable people and take reasonable precautions to minimise those risks.
- b) The Church should be careful not to prejudice ongoing criminal investigations and so there may be a need to initiate risk management without alerting the person subject of the complaint.
- c) Subject to the view of government authorities, if the Church has received a plausible complaint (ie/ not clearly false or vexatious) of Child Sexual Abuse or Sexual Misconduct involving a Child and the complaint relates to a staff member or volunteer who is engaged in child-related work (in NSW), or a Regulated activity (in ACT) then the Church Leadership is to suspend the person from such duties while the complaint is considered in accordance with this Procedure.

4. APPOINTING A PERSON TO HANDLE COMPLAINT

- a) Where a matter is to be investigated under this Procedure, the Church Leadership is to appoint a Case Response Group (CRG). It can be either an individual or team of up to four people depending upon the nature of the case and the level of leadership being accused. If this is a local church matter then the CRG can be made up of local leaders of suitable qualifications. If the matter involves Pastoral Staff then denominational office holders will be a part of the CRG.
- b) The CRG, dependent on their delegations from the Church Leadership, is responsible to the church leadership to ensure procedural fairness occurs, support arrangements for the stakeholders are in place, privacy and record keeping requirements are met, communication policy to non-participants and reporting to external agencies. The CRG will report to the Church Leadership with findings of the case and include recommendations in relation to possible solutions/outcomes for all parties, ie person(s) making the allegation(s), the person(s) subject of the allegation(s) and the local church leadership. They may need to be allocated a budget for expenses.

5. PROVIDING SUPPORT

The Church is to ensure that support is provided to both the Complainant and the Respondent, including:

- providing them with a contact person to who they can direct inquiries about the progress of the complaint;
- offering them a support person; and
- considering providing them with access to counselling and other support services.

6. APPOINTING AN INVESTIGATOR AND INVESTIGATING THE COMPLAINT

- a) In appointing the Investigator, the Church Leadership, normally through the CRG, will avoid conflicts of interest (for example where there may be a close personal relationship between the subject of the complaint and the proposed investigator).
- b) For any matters related to any form of harm or abuse of a child, the Investigator should be an external person (unless this is not reasonably practicable, and a suitably qualified and independent internal Investigator is available).
- c) Church leaders should contact the Baptist Churches of NSW & ACT Ministry Standards Manager on 1300 647 780 for assistance in identifying an external Investigator.
- d) The Investigator is to investigate the complaint (or concern, or allegation if the investigation arises from information about Reportable Conduct that did not come in the form of a complaint)
- e) In Investigating the complaint, the Investigator is to:
 - i. act in good faith, without bias and without unreasonable delay;
 - ii. collect and document evidence, including by conducting interviews and taking statements from the complainant and other witnesses; and
 - iii. maintain a record of all relevant evidence obtained and steps taken in the investigation
 - iv. Adhere to the principles of procedural fairness.
- f) If the matter is related to a Reportable Conduct Allegation, the Investigator is to consider matters in division six of the Children's Guardian Act (2019) including:
 - i. the nature of the reportable allegation and any defence;
 - ii. the gravity of the matters alleged; and
 - iii. whether the reportable allegation relates to conduct that is in breach of the Code of Ethics and Conduct, the Code of Conduct and/or accepted community standards.

7. PUTTING THE COMPLAINT TO THE RESPONDENT

- a) The Investigator is to put the complaint in writing to the person whose conduct is subject of the complaint (the respondent).
- b) In doing so, the Investigator is to:
 - set out the complaint with sufficient detail for the respondent to understand the complaint;
 - state the part of the *Code of Conduct* that is alleged to have been breached;

- set out the potential adverse outcomes for the respondent in the event that there is a finding that the respondent breached the *Code of Conduct*; and
- provide the respondent with an opportunity to respond to the complaint in writing and within a stated timeframe not exceeding 2 weeks.

8. PUTTING ANY FURTHER ADVERSE INFORMATION TO THE RESPONDENT

If, in the course of the investigation, further adverse information is brought forward in relation to the respondent, the Investigator will:

- advise the respondent in writing of the further adverse information; and
- provide the respondent the opportunity to respond to the information.

9. INVESTIGATORS FINDINGS

- a) The Investigator must provide a written report which sets out:
 - the complaint;
 - the part of the *Code of Conduct* that is alleged to have been breached;
 - the proposed finding
 - the evidence relied upon to make the finding, including the response of the respondent (if any) to the complaint; and
 - a finding about whether the complaint is sustained or not sustained (with reference to section 40 of the *Children's Guardian Act 2019* and the standard of proof of the 'balance of probabilities' as set out in *Briginshaw v Briginshaw*¹).
 - possible outcomes or consequences that the Church Leadership may consider implementing
- b) If the matter relates to an allegation of Reportable Conduct the Investigator should ensure that the report also sets out
 - information about the facts and circumstances of the reportable allegation, and
 - the findings after completing the investigation including an analysis of the evidence and the rationale for the findings,
 - a copy of any written submission made by the employee or volunteer
 - any copies of documents in the relevant entity's possession that are relevant to the report, including transcripts of interviews and copies of evidence.
- c) The Investigator's Report will be provided to
 - the Church Leadership; and
 - Baptist Churches of NSW & ACT Ministry Standards Manager (standards@nswactbaptists.org.au)
- d) A summary of the Investigator's report will be provided to the Respondent along with
 - an invitation to respond in writing to the Church Leadership within a defined timeframe
 - written notice of the possible consequences if the Investigator's Report is accepted by the Church Leadership. This may include suspension, termination from duties for volunteers, termination of engagement for staff. It may also require notice to Police, Ombudsman and/or the Office of Children's Guardian, which may impact the individual's WWCC or WWVP clearance.

10. DETERMINATION OF COMPLAINT AND OUTCOMES

- a) The Church Leadership is to consider the report of the Investigator and to decide whether to accept the finding put forward by the Investigator.
- b) In doing so, the Church Leadership is to consider all of the relevant material available.
- c) If the Church Leadership makes a determination that a complaint is sustained and the *Code of Conduct* has been breached, they are to determine an outcome for the respondent, which may include, but is not limited to:
 - termination of employment/engagement for staff or volunteers;
 - suspension from employment/engagement for staff or volunteers, for a period of time; and
 - imposing conditions on the employment/engagement of staff or volunteers.
- d) If the Church Leadership does not accept the Investigators finding, the Church Leadership should decide whether there is another available finding on the basis of the evidence presented to it, and record written reasons for departing from Investigators finding (and if relevant, propose an outcome for the respondent as above).

11. COMMUNICATION OF OUTCOME

- a) The respondent will be informed in writing of the:
 - determination of the complaint
 - any consequences arising from the determination
 - the reasons for the decision
- b) The person who raised the complaint will be informed of the outcome of the complaint.
- c) The Baptist Churches of NSW & ACT Ministry Standards Manager will be informed of the outcome of the investigation
- d) If the matter constitutes a **Child Abuse Offence** or other serious criminal offence, a report must be made to the local police station (unless a report has already been made).
- e) If the matter is Reportable Conduct, the 'Head of Entity', must notify the Reportable Conduct Scheme (in NSW, the Office of Children's Guardian, in ACT, the Ombudsman) in accordance with Reportable Conduct Legislation, including the:
 - Investigator's report;
 - any deviation made by the Church Leadership from the Investigator's findings, including reasons for the deviation; and
 - the proposed course of action in response.
- f) In NSW, if the matter relates to a finding that a staff member or volunteer has engaged in a **Child Abuse Offence**, Child Sexual Abuse or Sexual Misconduct involving a Child, the Church is to make a report to the NSWOCG in accordance with WWCC Legislation. The respondent should be provided with written notice of this report having been made.

Church leaders should seek advice from the Baptist Churches of NSW & ACT Ministry Standards Manager on 1300 647 780 to ensure that the-determination and outcome is consistent with the evidence gathered.