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Child Protection Legislation#5 Reporting Children and Young People At Risk of Harm – 16 January 2001

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1. Introduction

This circular continues the series of circulars dealing with recently enacted child protection legislation. Previous child protection circulars have dealt with the subject of prohibited employment and employment screening. Prohibited employment and employment screening are aspects of the legislation aimed at reducing the risk of abuse of children and young people. The provisions relating to prohibited employment and employment screening came into effect on 3 July 2000.

On 18 December 2000 further child protection legislation came into effect, namely the [Children and Young Persons \(Care and Protection\) Act 1998](#). This Act replaces the similarly named Children (Care and Protection) Act 1987.

This circular mainly deals with when a person *must* make a report under the Act to the Department of Community Services about a child who may be at risk of harm. The circular also deals with when a person *may* make a report under the Act about a child or young person, how such reports can be made and the protections given under the Act for persons who make such reports. Finally other reporting obligations that may be relevant in the context of child protection in this Diocese are briefly considered. Please ensure that all persons in the parish who are or may be affected by reporting under the Act receive a copy of this circular.

2. Meaning of Terms

In this circular:

Act means the Children and Young Persons (Care and Protection) Act 1998

child means a person who is under the age of 16 years

DoCS means Department of Community Services

risk of harm in relation to a child or young person, means a current concern which exists for the safety, welfare or well-being of the child or young person because of the presence of any one or more of the following circumstances:

- (a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,

- (b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,
- (c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
- (d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,
- (e) a parent or caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm.

Note: Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.

young person means a person who is aged 16 years or above but who is under the age of 18 years.

3. Mandatory Reporting

Who must make a report under the Act?

The Act significantly extends the previous categories of persons who, in the appropriate circumstances, must make a report about a child to DoCS. This is known as mandatory reporting.

Under the Act, mandatory reporting applies to:

- (a) a person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children, and
- (b) a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children.

Who must make a report in the parish?

In the context of a parish a judgment will need to be made as to which persons are subject to mandatory reporting in terms of paragraphs (a) and (b) above. If it is unclear as to whether a person is subject to mandatory reporting, it would be prudent to treat the person as a mandatory reporter unless and until the matter is clarified. Even if a church worker is not subject to mandatory reporting, they should be encouraged to make a voluntary report to DoCS if they have reasonable grounds to believe that a child or young person is at risk of harm (see [item 4](#) below).

The following comments seek to provide general guidance about the scope of mandatory reporting in the context of a parish for the purposes of paragraphs (a) and (b) above.

First, paragraphs (a) and (b) each refer to "health care, welfare, education, children's services, residential services, or law enforcement". In the parish context, the operation of a creche, Sunday school, youth group or similar activity would generally constitute "welfare" and/or "education" within the meaning of these paragraphs. A parish would not ordinarily deliver or provide health care, children's services (as defined in the Act), residential services or law enforcement. However a preschool or similar body operating on parish property would generally be involved in the delivery or provision of children's services.

Second, a person who is *paid* to deliver to children health care, welfare, education, children's services, residential services, or law enforcement would be subject to mandatory reporting under paragraph (a). Paragraph (a) probably also extends to a person who, although not paid to do so, delivers any of these services in their *professional capacity*. In either case, paragraph (a) applies even if these services are delivered only partly to children.

Third, a person (whether paid or unpaid) is subject to mandatory reporting under paragraph (b) if they hold a *management position* the duties of which include *direct responsibility* for, or *direct supervision* of, the provision to children of health care, welfare, education, children's services, residential services, or law enforcement. It follows that in a parish the persons subject to mandatory reporting under paragraph (b) would generally include at least the following:

- the minister, whenever the minister appoints another person to provide any of these services to children
- a duly authorised delegate of the minister, whenever the delegate appoints another person to provide any of these services to children, and
- the churchwardens, whenever they employ a person to provide any of these services to children

In any case, paragraph (b) applies even if these services are provided only partly to children.

Fourth, a person is not subject to mandatory reporting if the person delivers services, or is responsible for or supervises the provision of services *wholly* to persons other than children (ie persons aged 16 years or above).

Fifth, there is no longer a specific exemption for ministers of religion in relation to mandatory reporting.

When must a report be made?

A person must make a report to the Director-General of DoCS as soon as practicable if:

- (a) a person who is subject to the mandatory reporting obligation has reasonable grounds to suspect that a child is at risk of harm, and
- (b) those grounds arise during the course of or from the person's work.

Such a report must include the name or a description of the child and the ground for suspecting that the child is at risk of harm.

It is important to note that mandatory reporting applies where there are reasonable grounds to suspect that a *child* is at risk of harm. Mandatory reporting does not extend to situations where there are reasonable grounds to suspect that a *young person* is at risk of harm - although young persons can be reported on a voluntary basis under the Act (see item 4 below). It is also important to note that for mandatory reporting, the reasonable grounds to suspect that a child is at risk of harm must arise *during the course of the person's work*. Where such grounds arise in situations outside a person's work, there would be no mandatory reporting obligation although a report could still be made on a voluntary basis under the Act (see item 4 below).

4. Voluntary Reporting

In addition to mandatory reporting, any person who has reasonable grounds to suspect that a child or young person is, or that a class of children or young persons are, at risk of harm may make a report to the Director-General of DoCS under the Act. This is known as voluntary reporting.

5. How to make a Report

Mandatory reports should be made to the 24 hour DoCS helpline on 13 36 27. Voluntary reports should be made to DoCS on 13 21 11.

6. Need for Confidentiality

A person who has information in relation to the abuse or suspected abuse of a child or young person should take care not to disclose the information to another person who does not have a need to know the information. To do so may expose the person to legal proceedings in defamation.

Where the abuse or suspected abuse is taking place in the context of parish ministry, the minister of the parish would ordinarily be a person who has a need to know the information since he has a responsibility to protect the child or young person in that context. Where such abuse involves or may involve sexual misconduct by a church worker, the Archbishop through his nominated contact persons is also a person with a need to know the information (see item 8 below).

7. Protection for Persons Making a Report

If, in relation to a child or young person, a person makes a report in good faith to DoCS or to a person who has the power or responsibility to protect the child or young person, certain protections are given to such a person under the Act. These include the following:

- the report does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct

- there is no liability for defamation because of the report
- the report, or evidence of its contents, is not admissible in any proceedings as evidence against the person who made the report or any other person
- the person cannot be compelled in any proceedings to produce the report or a copy or extract from it or to disclose or give evidence of any of its contents, and
- the identity of the person who made the report, or information from which the identity of that person could be deduced, must not be disclosed by any person except with:
 - (i) the consent of the person who made the report, or
 - (ii) the leave of the court or other body before which proceedings related to the report are conducted.

8. Other Reporting Obligations

Reporting children and young people to DoCS is not the only reporting obligation that needs to be considered in the context of child protection in the parish. Consideration should also be given to the following:

- reporting under the Archbishop's protocol for reporting sexual abuse by church workers
- reporting to the police
- reporting to the Commission for Children and Young People

These avenues for reporting should, as appropriate, be taken in addition or as an alternative to reporting to DoCS. Each is briefly considered below.

Archbishop's protocol for reporting sexual misconduct

The protocol involves the reporting of complaints of sexual misconduct by church workers in the Diocese. The Diocese has appointed 5 contact persons to receive such complaints. The names and telephone numbers of the contact persons can be obtained from the recorded telephone message on (02) 9264 7106 or directly from the Director, Professional Standards Unit on (02) 9265 1514. This information also appears in the *Southern Cross Newspaper*.

Where a complaint involves sexual misconduct by a church worker involving a child or young person and there are reasonable grounds to suspect that the child or young person is at risk of harm, a person should (and may be required) to report the matter to DoCS in addition to a report made under the protocol.

New South Wales Police

The New South Wales Police are responsible for investigating suspected criminal offences. If a person makes a report about a child or young person to DoCS, DoCS should immediately advise the police if the report indicates a criminal offence may have been committed. There are 2 matters that should be kept in mind:

- if emergency assistance is required for the protection of a child or young person, the person should first contact the police
- a person must not, without reasonable excuse, fail to contact the police or other appropriate authority if the person knows or believes that a serious offence has been committed. A serious offence is any offence which carries a maximum penalty of imprisonment for 5 years or more. Abuse of a child or young person that involves a serious offence must therefore be reported to the police or DoCS.

Commission for Children and Young People

Employers are required to notify the Commission for Children and Young People of the following:

- relevant disciplinary proceedings completed against their employees, and
- details of any person whose application for child-related employment has been rejected primarily because of a risk assessment in employment screening.

These matters are discussed more fully in the *Working with Children Check* and the accompanying circular [Child Protection Legislation: Prohibited Employment and Employment Screening](#) dated 13 June 2000.

9. Finally

If you wish to discuss any aspect of this circular, I can be contacted by telephone on 9265 1671 or by email at rjw@sydney.anglican.asn.au.

ROBERT WICKS
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