BROOKSIDE
Muswellbrook Baptist Church

Procedure for Handling Complaints Against Staff and Volunteers (NSW)

Adopted by Safe Church Team on 11/2/2024

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 is a mandatory requirement for the Church in accordance with the **reportable conduct scheme** (as outlined in Part 4 of the *Children's Guardian Act 2019* (NSW)). The Church has an obligation to have policy and procedures to address the matters set out in the reportable conduct scheme,[1] including:

- requiring staff and volunteers, and allowing others, to report information about reportable allegations and reportable convictions to the head of the relevant entity;
- handling or responding to a reportable allegation or reportable conviction involving a staff member or volunteer in leadership, or child-related work, as outlined in category 1(a) or 2(a) of the *Procedure for Staff and Volunteers*[2]; and
- receiving, handling and disclosing information relating to reportable allegations, reportable convictions, and related investigations and findings.

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 complaints relating to a child abuse offence, child sexual abuse or sexual misconduct involving a child or young person.

Staff and volunteers who are Accredited and Recognised Ministers are subject to the Baptist Churches of NSW & ACT's *Code of Ethics and Conduct* and *Procedures for Handling Allegations*. Under the Church's *Code of Conduct*, if a member of staff or volunteer who is an Accredited or Recognised Minister has been found to have breached the *Code of Ethics and Conduct* this would constitute a breach of the Church's *Code of Conduct*.

[1] See the *Children's Guardian Act 2019* (NSW) including the following sections: S8D(2), 54(2), 54(D), 54(E).
[2] The Children's Guardian Act 2019 (NSW) uses the language of an "Employee of a relevant entity" meaning 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.

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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; and*
- *Privacy Policy*.

Key terms

The following terms used in this Procedure have the same meaning as in the *Children's Guardian Act 2019* (NSW):

Head of relevant entity, means the principal officer of the entity. The head of relevant entity in our Church is the Senior Pastor (or in their absence the Church Secretary or Chair of Church Leadership Team).

Reportable allegation means an allegation that the staff member or volunteer in leadership or child-related work has engaged in conduct that may be reportable conduct, whether or not the conduct is alleged to have occurred in the course of the person's engagement with the religious body.

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 whether or not the conduct occurred in the course of the person's engagement with the religious body.

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

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

Staff member or volunteer in leadership, or child-related work, is described in the Children's Guardian Act 2019 (NSW) as an "employee of the relevant entity". This description aligns with staff and volunteers in category 1(a) or 2(a) of the *Procedure for*

Staff and Volunteers. The Children's Guardian Act 2019 (NSW) defines an "employee of a relevant entity" as 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.

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 any reportable allegation or reportable conviction) by staff or volunteers of the Church to:

- Church leadership;
- the Safe Church Team Leader and the Safe Church Team; or
- any staff or volunteer of the Church.

Complaints or information may be received verbally; however, a written outline of the complaint should be encouraged. In all cases, the Safe Church Team should document all complaints and information received on 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) If 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.

e) If a complaint relates to an issue which may give rise to a potential legal claim or financial liability for the Church, then the Church will usually be required to notify the Church's insurer of the complaint. If the Church leadership is unsure whether or not the insurer needs to be notified, they will seek advice from the insurer.

2.2 Reportable Allegations and Reportable Convictions

a) If the complaint or information relates to a reportable allegation or reportable conviction concerning a staff member or volunteer in leadership, or child-related work then it must be reported by staff and volunteers of the Church to the head of the relevant entity. If it relates to the head of the relevant entity, it must be reported directly to the Children's Guardian.[3]

[3] See s 27(2) of the *Children's Guardian Act 2019* (NSW).

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b) On becoming aware of a complaint or information that may be a reportable allegation or reportable conviction about a staff member or volunteer in leadership, or child-related work, the head of relevant entity, or their delegate, is to:

(i) notify the Office of the Children's Guardian in writing within 7 business days in accordance with the process on their website;[4]

(ii) as soon as practicable:

(A) investigate or arrange for an investigator to investigate the reportable allegation; or

(B) determine whether the information about a conviction is a reportable conviction;[5] and

(iii) provide an interim report, or a final entity report, to the Office of the Children's Guardian within 30 calendar days of having become aware of the reportable allegation or reportable conviction.[6] (see section 11e for more information about the final entity report).

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 (i.e. not clearly false or vexatious) of relating to child abuse or sexual misconduct involving a child and the complaint relates to a staff member or volunteer in leadership or child-related work then the Church leadership would usually suspend the person from such duties while the complaint is considered in accordance with this Procedure.

4. Appointing a Person to Handle the Complaint

a) Where a matter is to be investigated under this Procedure, the Church Leadership is to appoint a person to handle the complaint (the **Investigator**).

b) In appointing the Investigator, the Church Leadership 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).

c) 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).

d) Church leaders should contact the Baptist Churches of NSW & ACT Ministry Standards Manager on 1300 647 780 for assistance in identifying an external Investigator.

[4] See s 29 of the *Children's Guardian Act 2019* (NSW) for those matters to be included in the written notification. This information will be requested at the time of lodging the written notice on website of the Office of the Children's Guardian.
[5] See s 34 of the *Children's Guardian Act 2019* (NSW).
[6] See ss 36 to 38 of the *Children's Guardian Act 2019* (NSW).

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5. Providing Support

The Church is to ensure that support is provided to both the complainant and the respondent, including:

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

6. Investigating the Complaint

a) The Investigator is to investigate the complaint (or concern or allegation).
b) 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.

c) If the matter is related to a reportable allegation, the Investigator is to consider matters in Division 6 of Part 4 of the *Children's Guardian Act 2019* (NSW) including:

(i) the nature of the reportable allegation and any defence;

(ii) the gravity of the matters alleged;

(iii) whether the reportable allegation relates to conduct that is in breach of the standards applying to the respondent, including the *Code of Conduct*, the *Code of Ethics and Conduct* (if relevant), and/or accepted community standards; and

(iv) whether the conduct is not reportable conduct.[7]

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:

(i) set out the complaint with sufficient detail for the respondent to understand the complaint;
(ii) state the part of the *Code of Conduct* that is alleged to have been breached;
(iii) set out the potential adverse outcomes for the respondent if there is a finding that the respondent breached the *Code of Conduct*, or is found to have committed reportable conduct (if relevant); and
(iv) provide the respondent with an opportunity to respond to the complaint in writing and within a stated timeframe not usually exceeding 2 weeks.

[7] See s 41 of the *Children's Guardian Act 2019* (NSW).

8. Putting any Further Relevant Information to the Respondent

In the course of the investigation, if further relevant information (including adverse information) is brought forward in relation to the Respondent, the Investigator will:

(a) advise the Respondent in writing of the further relevant information; and

(b) provide the Respondent the opportunity to respond to the new information.

9. Investigators Findings

(a) The Investigator must provide a written report which sets out:

(i) the complaint, including any relevant alleged facts and circumstances;

(ii) the part of the *Code of Conduct* that is alleged to have been breached;

(iii) a preliminary finding about whether the complaint is sustained or not sustained, applying the standard of proof of the 'balance of probabilities' with reference to the principle in *Briginshaw v Briginshaw*[8];

(iv) an analysis of the evidence relied upon to make the finding, including the response of the respondent (if any) to the complaint;

(v) possible outcomes or consequences that the Church leadership may consider implementing; and

(vi) any copies of documents that are relevant to the investigation report, including any interviews notes or transcripts and documented evidence.

(b) The Investigator's report will be provided to:

(i) the Church leadership; and

(ii) Baptist Churches of NSW & ACT Ministry Standards Manager (standards@nswactbaptists.org.au).

(c) A summary of the Investigator's report and its preliminary findings (considering both confidentiality and procedural fairness) will be provided to the Respondent along with:

(i) an invitation to respond in writing to the Church leadership within a defined timeframe; and

(ii) written notice of the possible consequences if the preliminary findings are accepted by the Church leadership. This may include suspension, termination from duties for volunteers, or termination of engagement for staff. It may also require notice to government authorities, such as the Police or Office of the Children's Guardian.

[8] *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J at 361-362:
'.. reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences.'

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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/s put forward by the Investigator.
b) In doing so, the Church leadership is to consider all relevant material available, including the response of the Respondent (if any).
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:

    (i) termination of employment/engagement;

    (ii) suspension from employment/engagement for a period of time; and/or

    (iii) imposing conditions on the employment/engagement.

d) If the Church leadership does not accept the Investigator's finding/s, 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 the Investigator's finding/s (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:

    (i) determination of the complaint;

    (ii) any consequences arising from the determination; and

    (iii) the reasons for the decision.

b) The person who raised the complaint will usually be informed of the outcome of the complaint.[9]
c) If the Church has informed their insurer of the complaint (see section 2.1 e), then the insurer will be notified of the outcome.
d) The Baptist Churches of NSW & ACT Ministry Standards Manager will be informed of the outcome of the investigation.
e) 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).
f) If the matter related to a reportable allegation, then the head of relevant entity or their delegate, must notify the Office of Children's Guardian of the outcome by completing an entity report[10] in accordance with the process on their website, which will include:
    - the Investigator's report;
    - any deviation made by the Church Leadership from the Investigator's finding/s, including reasons for the deviation; and
    - the proposed course of action in response.

[9] For any reportable conduct matters see s 57 of the *Children's Guardian Act 2019* (NSW) which requires that the head of relevant entity provide relevant information about the investigation and determination of a reportable conduct matter to the child or parent of the child unless there is a reason not to.
[10] See s 37 of the *Children's Guardian Act 2019* (NSW) for those matters to be included in the entity report. This information will be requested at the time of lodging the entity report on the website of the Office of the Children's Guardian.

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