



# Protocol: Managing Safeguarding Complaints

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## 1 Scope of this protocol

This protocol outlines the Archdiocese's procedures for managing, investigating, responding and reviewing Safeguarding Complaints.

This protocol forms part of, and should be read together with, all of the policies, procedures, fact sheets and documents comprising the Archdiocese's Safeguarding Policy (referred to as "*the Policy*").

Please refer to the *Policy Definitions* for the meaning of capitalised terms in this protocol.

### 1.1 To whom does this protocol apply?

As with the Policy, this protocol applies to all:

- Clergy<sup>1</sup>;
- Religious Appointees;
- Employees;
- Contractors; and
- Volunteers

who are currently or have been previously associated with the Archdiocese's Parishes and Agencies who have had, or may be expected to have, contact with Children in the course of their activities.

### 1.2 To whom does this protocol *not* apply?

This protocol does not apply to:

- (a) Sydney Catholic Schools (SCS) and CatholicCare, which have their own protocols;
- (b) Priests of other dioceses or from religious orders who do not have an appointment within the Archdiocese or who are not incardinated in the Archdiocese. In this case, the relevant Bishop or Provincial will respond to complaints relating to these individuals;

### 1.3 To what type of complaints does this protocol apply?

This protocol applies to **Safeguarding Complaints**.

A Safeguarding Complaint may relate to **historical and contemporary Child Abuse**.

"Safeguarding Complaints" are defined in the *Policy Definitions* as any concerns, allegations, reports or notifications of any of the following, **in respect of a Child or Children**:

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<sup>1</sup> Please note that **Clergy** (as defined in the *Policy Definitions*) includes **bishops, priests, assistant priests, deacons**, incardinated in the Archdiocese or not incardinated in the Archdiocese but granted faculties and appointed to a position within the Archdiocese, and **seminarians at the Seminary of the Good Shepherd and the Redemptoris Mater Seminary, Sydney**.

The definition of "Clergy" does **not** include priests from religious orders or other dioceses who have been granted faculties to minister within the geographic confines of the Archdiocese but not appointed to a position at the Archdiocese. These priests report to their Provincials or Bishops who are responsible for them. These priests must, however, comply with this Policy including attending training. If a Safeguarding Complaint is raised in relation to these priests, the Archdiocese will liaise with their Provincials or Bishops who will investigate where appropriate and respond.

- (a) Reportable Allegations; and
  - (b) Convictions considered to be Reportable Convictions;
- that relate to Employees, Volunteers, contractors, Clergy, Religious Appointees and/or any person who holds or is required to hold a Working with Children Check for engagement with the Archdiocese;

- (c) Risks of Significant Harm;
- (d) inappropriate conduct with a Child that may be in breach of the Policy or (where the complaint relates to a member of Clergy or Religious Appointee), provisions or standards of *Integrity in Ministry* relating to Children; and
- (e) alleged inappropriate or unreasonable acts of omission of Workers who had knowledge of the conduct of another Worker involving Child Abuse.

that relate to Employees, Volunteers, Contractors, members of the Clergy or Religious Appointee of a Parish or Agency of the Archdiocese.

This protocol does not apply to:

- (a) conduct relating to adults, including adults who may be vulnerable, or alleged breaches of *Integrity in Ministry* where the allegations do not relate to a Child or Children (e.g. boundary violations regarding an adult).
- (b) conduct by a Child towards another Child (although the Archdiocese recognises that there can be instances of inappropriate conduct or abuse by a Child towards another Child, this protocol is not suited to respond to such allegations as it relates to complaints regarding conduct of Archdiocesan personnel).
- (c) employment grievances (which are managed by the Employee's manager or if necessary the Employment Services Manager); or
- (d) legal proceedings or legal demands (which will be referred to the General Counsel of the Archdiocese in the first instance).

#### **1.4 Who may notify a Safeguarding Complaint?**

Any person who is affected by, or aware of, conduct that may constitute a Safeguarding Complaint (**the Complainant**), can and should notify their Parish Priest or Agency Head in the first instance.

If the Safeguarding Complaint relates to the conduct of the Parish Priest or Agency Head, or if a Complainant feels uncomfortable making a complaint to the Parish Priest or Agency Head, they are encouraged to notify the Safeguarding Office directly.

If a Complainant is unable to notify their Parish Priest, Agency Head or the Safeguarding Office of a Safeguarding Complaint due to their age, a language barrier or a disability, another person may make the notification on the Complainant's behalf.

#### **Anonymous Safeguarding Complaints**

Safeguarding Complaints can be notified to the Archdiocese anonymously. However, Complainants should be aware that their anonymity may limit the ability of the Archdiocese to effectively investigate the Safeguarding Complaint.

Where there is sufficient information provided anonymously in relation to a Safeguarding Complaint and where an investigation is warranted, the Safeguarding Office will consider the appropriate investigative approach to examine the issue raised in the Safeguarding Complaint notwithstanding it was notified anonymously. As an example, where there is

an anonymous allegation of grooming by an Employee through the giving of gifts to a Child, an investigative approach may entail reviewing the use of benefits or credit cards by that Employee.

### **Frivolous or vexatious Safeguarding Complaints or other Safeguarding Complaints not capable of a response**

Not all Safeguarding Complaints notified to the Archdiocese are capable of being (or should be) investigated or require a response. Consideration should be given to whether each Allegation made is substantive and should be investigated, or whether any Allegation is vexatious or frivolous or lacking sufficient detail to investigate after clarification has been sought or, even if made out, would not constitute misconduct or breach of the Policy.

The Safeguarding Office will consider on a case-by-case basis whether a Safeguarding Complaint that it has received is frivolous or vexatious, or capable of a response by the Archdiocese.

Where the Safeguarding Complaint is deemed to be frivolous or vexatious, or otherwise not capable of a response by the Archdiocese, the Safeguarding Office will, if appropriate, inform the Complainant. If it is not appropriate to inform the Complainant, the Safeguarding Office will record its decision for the purpose of internal record keeping.

## **1.5 Roles relevant to Safeguarding Complaints**

### **(a) Archbishop**

- The head of the Archdiocese and of all Parishes and Agencies within the Archdiocese.
- 'Head of the relevant entity' for the purposes of the *Children's Guardian Act 2019* (NSW) and is answerable to the NSW Office of the Children's Guardian, pursuant to that Act.
- The Archbishop has delegated his Reportable Conduct Scheme obligations under the *Children's Guardian Act 2019* (NSW), and more generally, the role of managing and reporting Safeguarding Complaints to the Vicar General.
- The Vicar General reports to the Archbishop and seeks the Archbishop's involvement in dealing with a Safeguarding Complaint, where he considers it appropriate to do so.
- The Archbishop has no day-to-day role in reporting or managing Safeguarding Complaints.

### **(b) Vicar General**

- Is responsible for implementing the Policy, including this protocol, and overseeing the Safeguarding Office.
- Has delegated authority from the Archbishop in respect of Parishes and Agencies (other than CatholicCare and Sydney Catholic Schools) for purposes of the *Children's Guardian Act 2019* (NSW).
- Consults with the Archbishop in relation to standing aside Clergy, Volunteers or Employees and otherwise in relation to managing and responding to Safeguarding Complaints as appropriate.

### **(c) Director of the Safeguarding Office**

- Receives and manages reports of Safeguarding Complaints from Parish Priests, Agency Heads, and others within the Archdiocese.
- Assists Archdiocesan personnel to fulfil their personal legal obligations to report Reportable Crimes to NSW Police.
- Assists the Vicar General to fulfil his obligations to report Reportable Allegations or convictions considered to be Reportable Convictions to the NSW Office of the Children's Guardian.
- Assists Clergy and Archdiocesan personnel who are mandatory reporters to report Children who are suspected of being at Significant Risk of Harm, to the Department of Communities and Justice.
- Provides advice and training regarding Child protection and Child safeguarding to Parish Priests, Agency Heads and others within the Archdiocese.

**(d) Parish Priests and Agency Heads**

- Have a personal legal obligation to report Reportable Crimes to the NSW Police. In practice, the Parish Priest or Agency Head notifies the Safeguarding Office, which files the report and provides a copy to the Parish Priest or Agency Head.
- Parish Priests are mandatory reporters pursuant to the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and have a legal obligation to make a report to the Department of Communities and Justice, if they have reasonable grounds for suspecting that a Child is at Risk of Significant Harm.
- Responsible for verifying the Working with Children Checks of all Workers.
- Responsible for implementation of the Policy within Parishes and Agencies.
- Responsible for reporting Safeguarding Complaints to the Safeguarding Office.

**(e) Support Person**

- The Respondent and the Complainant each have the right to a Support Person during the process outlined in this protocol and will be provided with a written description of the Support Person's agreed role and responsibilities at the commencement of such an arrangement.
- A Support Person is not an advocate, advisor or witness in the investigation of a Safeguarding Complaint, and will not take any active role in interviews that form part of the investigation of the Safeguarding Complaint.
- The Respondent is encouraged to bring a Support Person to face-to-face meetings. If the Respondent does not bring a Support Person, the Archdiocese may appoint one.

**(f) Contact Person**

- Contact Persons will be assigned to both the Respondent and the Complainant and will generally be an Employee working in the Safeguarding Office. The Contact Person may also be the Vicar for Clergy, or some other person allocated to this role.
- The role of a contact person is to keep the Respondent and Complainant informed on the progress of any investigation, assist them to access counselling

and support as necessary, and convey any concerns or relevant information to the Director of Safeguarding or the Vicar General.

- The Contact Person does not play a role in managing or responding to the Safeguarding Complaint and is not provided with access to files or detailed information relating to the Safeguarding Complaint.

**(g) Advisers**

- Respondents and Complainants have the right to engage a civil lawyer or seek advice from any other external advisers at their discretion. However, the investigation and resolution of a Safeguarding Complaint pursuant to this protocol, is not a legal process and any lawyer engaged by a Respondent/Complainant, may not make submissions on behalf of the Respondent/Complainant or answer questions on their behalf in any interview. The Archdiocese will not pay legal fees incurred through the engagement of lawyers.

**(h) External Investigator**

- Depending on the level and nature of the Complaint, the Archdiocese may appoint a suitably qualified external investigator to conduct an investigation into a Safeguarding Complaint.
- An External Investigator must remain objective and impartial at all times during the investigation and avoid expressing views that may reflect actual or perceived bias towards one party.
- A proposed investigator must not conduct the investigation if they hold a preconceived view about one or more of the parties involved, or the merits of the Safeguarding Complaint, or if they have any conflict of interest.<sup>2</sup>
- Prior to appointing an investigator, the Safeguarding Office will provide sufficient details of the Safeguarding Complaint to the investigator so that the investigator is in a position to identify an actual or potential Conflict of Interest. The proposed investigator should consider whether he or she has a personal or financial relationship with the Complainant, Respondent, or any other person(s) identified within the scope of the investigation or has a role or relationship with the Archdiocese or within the broader Catholic Church. Any Conflict of Interest that may arise during the investigation should be notified to the Safeguarding Office and investigative work must cease immediately.
- It is the responsibility of the investigator to note and act on any risks involved in the interview process for either a Child or adult. Any action should be reported to the Archdiocese at the first available opportunity.

## **1.6 Responding appropriately and justly to Safeguarding Complaints**

The Archdiocese takes Safeguarding Complaints very seriously and will respond to any disclosure of a Safeguarding Complaint in a prompt and compassionate manner in

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<sup>2</sup> A Conflict of Interest refers to a situation where a conflict arises between a person's official duties and their private interests, which could influence the performance of their official duties. In general, a Conflict of Interest involves opposing principles or incompatible wishes or needs.

accordance with this Policy and any applicable legislative requirements. The Archdiocese recognises that there are many pathways a person may take when seeking to make a Safeguarding Complaint and will assist the complainant in finding an appropriate pathway. The Archdiocese is committed to cooperating with statutory authorities to ensure that it complies with its obligations to report certain Safeguarding Complaints to the appropriate authorities. The Archdiocese is also committed to adhering to the Child Safe Standards to ensure a Child safe environment and culture within the Archdiocese.

The Archdiocese seeks to respond to Safeguarding Complaints as expeditiously as possible, while ensuring that Safeguarding Complaints are given appropriate consideration and investigation. This protocol does not set out specific timeframes for dealing with Safeguarding Complaints, because each Safeguarding Complaint is different and time taken to consider, investigate and respond to the Complaint may vary.

### **1.7 Procedural Fairness**

The Archdiocese strives to uphold procedural fairness throughout the entire process for all affected individuals including the respondent, if they are alive and their whereabouts is known. The principles of procedural fairness include:

- Affording all those involved a reasonable opportunity to put forward their case, including the opportunity to seek legal advice and representation;
- Providing sufficient detail of all allegations to the respondent to enable an adequate response;
- Providing clear information about processes and potential findings and outcomes, including the right to a review;
- Conducting the investigation without unnecessary delay (allowing for criminal and statutory child protection investigations, which must take precedence);
- Communicating regularly with the persons directly involved about the progress of the investigations. Written communication must be given to relevant persons, including the person subject to the alleged abuse and also the respondent, regarding the outcomes/findings and their right to a review.

## **2 Initial response to Complaints**

### **2.1 Receipt of a Safeguarding Complaint**

A Parish Priest, Agency Head, Employee or a Volunteer who receives a Safeguarding Complaint should remain calm and listen carefully and patiently.

**If they consider a person to be in imminent danger or in a life threatening or emergency situation, they should call 000.**

If there is no imminent danger, they should follow the 3 "R"s rule:

- **Reassure** and engage sensitively with the Complainant, advising them that they were right to disclose their complaint.<sup>3</sup> Explain that the complaint will need to be shared with the Safeguarding Office so that assistance can be arranged for them.

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<sup>3</sup> *Engaging Sensitively with Survivors of Abuse: A Guide for Faith Organisations*, NSW Office of the Children's Guardian.



- **Record** details of the Safeguarding Complaint as fully and accurately as possible, using the **Form: Reporting Details of Safeguarding Complaint**, accessible on the Archdiocese’s website. Any record of the Safeguarding Complaint should be made as soon as possible after receipt of the Complaint, and in the Complainant’s own words.
- **Report** the Safeguarding Complaint to the Director of the Safeguarding Office as soon as possible, by providing the Safeguarding Office with the Form referred to above.

## 2.2 Determining whether the complaint is a Safeguarding Complaint

Upon receipt of a Safeguarding Complaint, the Safeguarding Office will consider:

- (a) Whether the Safeguarding Complaint is of such a nature as to warrant investigation or whether it is frivolous or vexatious.
- (b) Whether sufficient information has been provided to investigate the Complaint.

A Safeguarding Complaint will not progress any further, if it:

- (c) is frivolous or vexatious;
- (d) is lacking in detail sufficient for an investigation, even after clarification and further information have been sought; or
- (e) would not constitute Reportable Conduct, sufficient grounds for suspecting that a Child is at significant risk of harm, or inappropriate conduct that would be in breach of the Policy,

In those circumstances, the Safeguarding Office must keep a record of its findings, and may notify the Complainant that the Safeguarding Complaint will not be further investigated, if it is appropriate to do so.

If the concern that has been raised is not a Safeguarding Complaint, the Safeguarding Office will refer the matter to another appropriate person within the Chancery (for instance, if the matter relates to an employment-related issue regarding an Employee and falls within the Employee Grievance Policy, the matter is referred to the Employment Services Manager).

If the Safeguarding Complaint warrants investigation and there is sufficient detail to conduct an investigation, it will be dealt with in accordance with this protocol.

## Assessing a Safeguarding Complaint

On receipt of a Safeguarding Complaint, the Safeguarding Office will conduct an initial assessment to determine whether the complaint constitutes a Level 1, Level 2 or Level 3 Safeguarding Complaint, and respond to the complaint as detailed in parts 3 to 6 below. If the Safeguarding Complaint relates to two Church Authorities, a lead Church Authority will be agreed.

<b>Level 1</b>	<b>What is a Level 1 Safeguarding Complaint?</b> A complaint that comprises any of the following: <ul style="list-style-type: none"><li>• A Reportable Allegation</li><li>• A conviction considered to be a Reportable Conviction</li></ul>
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	<ul style="list-style-type: none"> <li>• A Child that is at Risk of Significant Harm, or where a person forms a suspicion on reasonable grounds that a child is at Risk of Significant Harm.</li> </ul> <p><b>Examples</b> include (but are not limited to): Sexual Offence, Sexual Misconduct, Assault, Neglect, ill-treatment of a Child, or any other behaviour that causes significant emotional or psychological harm to a Child.</p> <p><b>Who is responsible for managing/responding to a Level 1 Safeguarding Complaint?</b></p> <p>The Safeguarding Office, in conjunction with, and under the oversight of the Vicar General.</p>
<p><b>Level 2</b></p>	<p><b>What is a Level 2 Safeguarding Complaint?</b></p> <p>A complaint that involves:</p> <ul style="list-style-type: none"> <li>• an allegation of serious misconduct regarding a Child or Children; or</li> <li>• a serious breach of the Policy or the principles and standards set out in <i>Integrity in Ministry</i> relating to Children,</li> </ul> <p>that is <u>not</u> a Level 1 Safeguarding Complaint.</p> <p>An <b>example</b> of a Level 2 Safeguarding Complaint is an allegation of otherwise serious misconduct against a Child which for some reason does constitute a Reportable Allegation or Reportable Conduct within the definitions of those terms in the <i>Children’s Guardian Act 2019 (NSW)</i>, because of the circumstances in which it occurred.</p> <p>A Level 2 Safeguarding Complaint may also relate to serious breaches of the Policy but does not reach the threshold of reportable conduct, such as communicating with a Child on a one-on-one basis without the consent of the Child’s parent/guardian.</p> <p><b>Who is responsible for managing/responding to a Level 2 Safeguarding Complaint?</b></p> <p>The Safeguarding Office, in conjunction with and under the oversight of the Vicar General.</p>
<p><b>Level 3</b></p>	<p><b>What is a Level 3 Safeguarding Complaint?</b></p> <p>A Safeguarding Complaint that relates to a <i>less</i> serious breach of the Policy or the principles and standards set out in <i>Integrity in Ministry</i> relating to Children.</p> <p>An <b>example</b> of a Level 3 Safeguarding Complaint is showing favouritism to one Child over another.</p> <p><b>Who is responsible for managing/responding to a Level 3 Safeguarding Complaint?</b></p> <p>Parish Priests and Agency Heads, with the assistance of the Safeguarding Office, if required.</p>

### **3 Responding to a Level 1 or Level 2 Safeguarding Complaint**

#### **3.1 Clarify the allegations and conduct an initial Risk Assessment**

If details of the Safeguarding Complaint are unclear, the Safeguarding Office will seek further information from the Complainant (and if the Complainant is a Child, from their parent/guardian) as is necessary to clarify the allegations and determine a response to the complaint.

The Safeguarding Office will conduct an initial Risk Assessment to identify and mitigate any immediate risk. The initial Risk Assessment will be reviewed and updated as necessary, including in accordance with part 3.8 below.

#### **3.2 Notification to statutory authorities for Level 1 Safeguarding Complaints**

If the Safeguarding Complaint is a Level 1 Safeguarding Complaint, the reports to the relevant authorities must be actioned as follows:

- (a) **NSW Police:** If the Level 1 Safeguarding Complaint constitutes a Reportable Crime and if it has not already been reported to the NSW Police, the Safeguarding Office must report the Safeguarding Complaint to the NSW Police and provide a copy of the notification to the Parish Priest or Agency Head. For further guidance on reporting to the NSW Police, see **Protocol: Reporting Reportable Crimes to the NSW Police**.
- (b) **NSW Office of the Children's Guardian:** If the Level 1 Safeguarding Complaint involves a Reportable Allegation or a conviction considered to be a Reportable Conviction, the Safeguarding Office must notify the NSW Office of the Children's Guardian within 7 business days of becoming aware of the Complaint. For further guidance on reporting to the NSW Office of the Children's Guardian, see **Protocol: Reporting Inappropriate Conduct to the NSW Office of the Children's Guardian**.
- (c) **Department of Communities and Justice:** If the Level 1 Safeguarding Complaint involves a Child that is at Risk of Significant Harm, the Safeguarding Office must report the matter to Department of Communities and Justice, or assist Parish Priests or other Clergy to make that report, as mandatory reporters. For further guidance on reporting to the Department of Communities and Justice, see **Protocol: Reporting a Child who is at Risk of Significant Harm**.

The Safeguarding Office should consult with NSW Police as to whether any police investigation is occurring, and if so, whether the Safeguarding Office should refrain from taking any other steps in relation to the complaint. In particular, the Safeguarding Office must not engage with the Complainant, Respondent, Child, or Child's parent/guardian(s) unless and until it received written authorisation to do so from NSW Police.

Subject to any restrictions imposed on the Safeguarding Office as a result of NSW Police investigating a Level 1 Safeguarding Complaint, the Safeguarding Office should proceed to respond to and manage a Level 1 Safeguarding Complaint or a Level 2 Safeguarding Complaint in accordance with the remainder of this protocol.

### 3.3 Notification to Senior Managers for Level 1 and Level 2 Safeguarding Complaints

The Safeguarding Office must notify the following senior managers of a Level 1 or Level 2 Safeguarding Complaint, including information as to the nature of the complaint, the proposed investigation into/management of the complaint, and any other relevant details, as appropriate:

- (a) Where the Safeguarding Complaint relates to a Respondent working in an **Agency**: the Respondent's Senior Manager, the Agency Head (who may already be aware of the Safeguarding Complaint), the General Counsel (if deemed necessary), and the Employment Services Manager.
- (b) Where the Safeguarding Complaint relates to a Respondent working in a **Parish**: the Vicar General and Parish Priest.
- (c) Where the Safeguarding Complaint relates to a Respondent that is employed by a **contractor** of the Archdiocese: the Contractor.
- (d) Where the Safeguarding Complaint relates to a member of **Clergy**: the Vicar General and the Archdiocese's canonical adviser, in order to obtain the relevant canonical advice regarding canonical obligations to report to The Congregation for the Doctrine of the Faith or competent Dicastery.
- (e) Where the Safeguarding Complaint relates to a **Religious Appointee**: the Vicar General, the Archdiocese's canonical adviser and the Respondent's Religious Leader.
- (f) Where the Safeguarding Complaint relates to a **Bishop or Religious Superior**: The Vicar General who will follow the procedures contained in the **motu proprio, Vos estis lux mundi** ('You are the light of the world') which came into effect on 1 June 2019.

The Safeguarding Office may otherwise consult with the General Counsel, as deemed necessary, for advice on legal risks that may arise. Where a Safeguarding Complaint involves a member of Clergy or Religious Appointee, the Safeguarding Office will consult with the Archdiocese's canonical adviser for advice on canonical requirements and issues.

All persons within the Archdiocese who are responsible for handling Safeguarding Complaints (including receiving notifications of Safeguarding Complaints) must at all times be mindful of the need to respect the privacy and reputation of both the Respondent and the Complainant, particularly while a Safeguarding Complaint is under investigation.

Responses provided by the Archdiocese are trauma informed and are based on best practice. Pastoral support and, where requested, spiritual support will be offered to the complainant.

### 3.4 If the Safeguarding Complaint relates to historical conduct

If the Safeguarding Complaint is made by an adult in relation to historical conduct, the Safeguarding Office will write to the Complainant to provide them with options for addressing the matter, the process for these options and information to support services. This information is also contained within *Fact Sheet: What to expect when you bring forward a Safeguarding Complaint*.

The Safeguarding Office will, if appropriate, inform the Complainant that the matter has been reported to the NSW Police, Department of Communities and Justice or the NSW Office of the Children's Guardian.

The Safeguarding Office will work with the Complainant to mitigate risks identified from its initial Risk Assessment. This may involve making changes to the Complainant's or the Respondent's usual activities or whereabouts.

The Safeguarding Office will determine in consultation with the Complainant whether any support is required. Support may take the form of a pastoral response and where requested, spiritual support may also be provided. Information to external counselling services and an Archdiocesan Contact Person will be made available. The Safeguarding Office will also take steps to ensure the overall well-being of the Complainant.

### **3.5 If the Complainant is a Child**

If the Complainant is a Child and the Child's parent/guardian(s) are not aware of the Safeguarding Complaint, the Safeguarding Office will arrange to meet with the parent/guardian(s) of the Child to inform them of the Safeguarding Complaint including, where appropriate, that the matter has been reported to the NSW Police, Department of Communities and Justice or the NSW Office of the Children's Guardian.

The Safeguarding Office will work with the Child's parent/guardian(s) to safeguard the Child from risks identified from in the initial Risk Assessment undertaken by the Safeguarding Office. This may involve making changes to a Child's or Respondent's usual activities or whereabouts.

The Safeguarding Office will determine in consultation with the Child's parent/guardian(s) whether any support should be offered to the Child and/or their parent/guardian(s), and if so, what support should be provided. Support may take the form of a pastoral response or access to external counselling services. The Safeguarding Office will also take steps to ensure the overall well-being of the Child and/or their parent/guardian(s).

In circumstances where the Complainant is an adult who has raised a Safeguarding Complaint about a Child and is not the Child's parent/guardian(s), the Safeguarding Office should meet with the Complainant to obtain any further information about the Safeguarding Complaint. The Safeguarding Office should then notify the parent/guardian(s) of the Child in question, as above if appropriate.

### **3.6 Notifying the Respondent**

The Vicar General and the Director of Safeguarding Office will contact the Respondent to inform them that a Safeguarding Complaint has been received, and to request their attendance at a meeting as soon as practicable and once agreement from relevant authorities has been given. The Respondent will be encouraged to bring a Support Person to the meeting (of their choice, or appointed by the Archdiocese if the Respondent is unable to ask someone to be their Support Person) and will be provided with a copy of *Guidance Document: What to expect if I am the Subject of an Investigation*.

During the meeting, the Respondent will be:

- (a) Provided with a Safety and Support Plan containing, if appropriate, sufficient details of the allegations the subject of the Safeguarding Complaint that would enable the Respondent to understand the nature of the allegation. This may include the name of the Complainant, and the place, date and time of the Safeguarding Complaint.

The Safety and Support Plan will be discussed and signed during this meeting and a copy will be provided to the Respondent. During this meeting, a Contact Person will be provided. It is noted that in the case of Volunteers and particularly contractors, there may

not always be a Safety and Support Plan and the Respondent may just be stood aside pending an investigation. If the Volunteer is a parishioner, however, a Safety and Support Plan would be provided to ensure safe attendance by the Volunteer at the Parish while the Safeguarding Complaint is being investigated.

- (b) Informed of the steps being taken to investigate and respond to the Safeguarding Complaint, including (if appropriate) that the matter has been reported to the NSW Police, Department of Communities and Justice or the NSW Office of the Children's Guardian, and whether an external investigation will occur.
- (c) Informed of their right not to reply to the Safeguarding Complaint at this stage; and
- (d) Offered support throughout the course of the investigation as detailed in the Safety and Support Plan. Support may take the form of counselling, pastoral and, where requested, spiritual support.

At the conclusion of the meeting, the Respondent will be provided with:

- a copy of the Safety and Support Plan;
- information about the process that will be followed at the conclusion of the meeting; and
- a list of appropriate support services to access whilst the investigation is ongoing.

If the Respondent is a member of the Clergy or Religious Appointee, refer to additional steps at part 3.7 below.

### **3.7 If the Respondent is a member of the Clergy**

In respect of Safeguarding Complaints made against Clergy or Religious Appointees, an investigation pursuant to Canon Law may be required. If a Safeguarding Complaint has at least a 'semblance of truth' under Canon Law, the Vicar General will issue a decree to open a 'preliminary investigation'. If there is no semblance of truth to the Safeguarding Complaint, Canon Law does not require any further action in relation to the Respondent.

A 'semblance of truth' is a truth that is not manifestly false or frivolous.

A preliminary investigation is an 'administrative' process which can be completed in a brief time, to clarify the matters in accordance with the requirements of the Code of Canon Law.

Care must be taken not to damage or endanger the good name of anyone throughout the investigation (CIC Can 1717 §2), and any determination made at this point concerns the nature of the Safeguarding Complaint, not the guilt or innocence of the Respondent.

The Vicar General may, at any point during the preliminary investigation, impose temporary, non-punitive and precautionary measures prohibiting the member of Clergy from the exercise of sacred ministry or of some ecclesiastical office duties (CIC can 1722), in order to prevent scandal, protect the freedom of witnesses, or to safeguard the course of justice. Notification to the Australian Catholic Ministry Register (ACMR) will also need to be considered during this stage.

If the preliminary investigation determines that the Safeguarding Complaint does not have a semblance of truth, then any precautionary measures imposed on the member of Clergy may come to an end. The Archdiocese nevertheless has an obligation to consider any risk to Children based on the information contained in the investigation required by the National Response Protocol and any canonical investigation.

The Respondent will be encouraged to appoint a canonical advocate in addition to a Support Person, particularly if an external investigation is to be undertaken. The canonical advocate provides canonical assistance and advice, may examine and draft documents, undertake written and oral defences, and prepares evidence.

If it is likely that a canonical crime has been committed (not yet proven) one of two processes may be pursued: an extra-judicial (administrative) penal process or a judicial penal process. Either of these processes will result in one of three verdicts: conviction (guilt is established), acquittal (innocence is established) or dismissal (guilt not proven).

Particular reporting requirements under Vos Estis Lux Mundi (VELM) must also be adhered to by the Archdiocese. For further information on the VELM reporting process, please refer to: *Fact Sheet: Motu Proprio Vos Estis Lux Mundi*.

During a canonical investigation, the respondent has certain rights. These rights include:

- having the right to have their good name protected (CIC Cann 220, 1717 §2);
- to have the presumption of innocence (CIC Can 1526);
- to be judged according to the law (CIC Can 221 §2);
- to be represented by an advocate/procurator (CIC Can 1481);
- not to be put under oath or to confess to any crime (CIC Can 1728 §2);
- to be punished with a penalty according to the law (CIC Can 221 §3);
- to challenge a decision (CIC Cann 1614, 1625, 1628, 1732-1739);
- appeal a decision (CIC Can 1727 §1); and
- to have access to pastoral, health and material support (CIC Can 1350).

### **Updated Risk Assessment**

The Safeguarding Office will update the initial Risk Assessment to identify and mitigate risk and to offer appropriate support to the Respondent and Complainant.

Once the potential risks and mitigation strategies have been identified in the updated Risk Assessment the Safeguarding Office will discuss the Risk Assessment with the Vicar General and other relevant personnel to ensure appropriate action is taken to mitigate future risk. Where the Respondent is a Religious Appointee, the Vicar General and the Safeguarding Office will discuss with the Respondent's Religious Leader.

Factors to be considered in completing the updated Risk Assessment include, but are not limited to, the:

- nature and seriousness of the Safeguarding Complaint;
- vulnerability of the Children the Respondent would be in contact with in their position or duties;
- nature of the Respondent's position (e.g. level of contact with Children);
- level of supervision available for the Respondent;
- availability of support for, and supervision/monitoring of, the Respondent on a day-to-day basis if their duties are unchanged; and
- Respondent's disciplinary history.

In making a determination as to the appropriate action to mitigate risk, the Safeguarding Office must take into consideration both the needs of the Child (and/or the Complainant) and the Respondent.

Mitigation to address risk may involve asking the Respondent to step aside from his or her position or duties where they may have contact with a Child or Children, or suspending the Respondent from their position or altering duties so that they are not permitted to have contact with Children, pending the outcome of a more thorough investigation.

### **Precautionary Measures**

In accordance with Canon Law, a member of Clergy or Religious Appointee may be stood aside in order to prevent scandal, to protect the freedom of witnesses, and safeguard the course of justice (CIC can 1722).

The Vicar General in consultation with the Archbishop may exercise his discretion to stand aside a Respondent pending a more thorough investigation of the Safeguarding Complaint. Where the Respondent is a Religious Appointee, the Vicar General will discuss the matter with the Respondent's Religious Leader.

In respect of a Level 1 Safeguarding Complaint, where the Respondent is a member of the Clergy or Religious Appointee, their faculties will generally be suspended by formal letter from the Archbishop. The Respondent must be notified of the Safeguarding Complaint, before any steps are taken to stand them aside or suspend their faculties.

The decision to stand aside a Respondent on the basis of a Risk Assessment reflects the seriousness of the allegations or risks identified, but is not an indication that the allegations that are the subject of the Safeguarding Complaint occurred. It will not influence any investigation of the Safeguarding Complaint or findings made in that regard.

### **3.8 Carefully communicate with the Parish community, school, and other stakeholders**

Information about a Safeguarding Complaint should not be disclosed to stakeholders if doing so might prejudice criminal proceedings or other formal investigative processes, endanger a person's health or safety, or contravene any legal professional privilege or otherwise compromise any current or future legal proceedings. Any communications made to members of the Parish or school community or any other stakeholders, should be the subject of legal advice.

Any communications with stakeholders are subject to advice, clearance or directions from the NSW Police and it is a pre-condition that the Respondent has been notified of the Safeguarding Complaint before others are notified.

As a general rule, the content of any disclosure should be measured and impartial, and limited to the information necessary to fulfil the purpose of the disclosure. It is important to have regard to the interests of all parties, including the privacy, health, safety and well-being of a Complainant and their family, as well as the privacy and reputation of a Respondent.

Care must be taken in communicating with stakeholders who are not directly involved in a Safeguarding Complaint, but have an interest through their association with the Parish or Agency in which the Safeguarding Complaint has arisen. Stakeholders who are not directly involved may include parishioners, the school principal, staff and school community, or Agency staff members.

There are a number of civil legal and canonical issues to consider where information that reasonably identifies a person is proposed to be disclosed to stakeholders. Under Canon Law, care must be taken to respect a person's right to their good name and a right to privacy (CIC can 220). In light of both civil legal and canonical issues, any names and/or



allegations (other than for the purpose of handling the Safeguarding Complaint within the Archdiocese) must not be disclosed or published unless the disclosure has been approved by the Vicar General in consultation with the Respondent's Senior Manager. The relevant Senior Manager is the Executive Director, Administration & Finance or the Chancellor where the Respondent is working in an Agency, or the Parish Priest where the Respondent is working in a Parish. The Vicar General may also seek canonical advice to inform his decision.

It is recognised that where a Safeguarding Complaint relates to a member of Clergy or Religious Appointee in active ministry and particularly appointed to a Parish this may be upsetting to members of the community. Communications to stakeholders will take this into account and support services will be provided by the Archdiocese to affected stakeholders.

Please refer to the *Guidance Template for Notifying Parishioners of a Safeguarding Complaint Resulting in Standing Aside the Respondent*. The notice assumes that the police will be investigating and that they have provided clearance for such communication to occur. Consideration should be given as to whether the notice should be delivered verbally to the Parish or in writing. Where the Safeguarding Complaint relates to a member of Clergy, the Vicar General or an Auxiliary Bishop will address the Clergy's community personally.

## **4 External investigation of a Level 1 Safeguarding Complaint**

Where the Safeguarding Complaint is a Level 1 Safeguarding Complaint, an external investigator will be appointed to investigate.

### **4.1 Brief and appoint an external investigator**

The Safeguarding Office will assist the Vicar General to prepare a letter of appointment and a brief of relevant materials for the external investigator. It is important that any external investigator appointed to consider the matter, does not have any actual or perceived Conflict of Interest.

For guidance, refer to *Pro Forma Letter of Appointment to an external investigator* to be used by the Vicar General to brief and appoint an external investigator. The pro forma letter is used to commission an investigation, and where the Respondent is a member of Clergy or Religious Appointee, there are options to adapt the pro forma letter to include canonical requirements.

The external investigator is responsible for conducting interviews, providing a written report, making a finding best supported by the available evidence. The responsibilities of the external investigator are detailed in the pro forma briefing letter. If potentially criminal conduct is identified during the investigation the Archdiocese will contact the police and the external investigation will be suspended immediately.

Once an external investigator has been appointed, the Safeguarding Office will request, on behalf of the Vicar General that the investigator prepare a detailed investigation plan for review by the Safeguarding Office which will be kept securely on file by the Safeguarding Office. The investigation plan will contain the following:

- The investigations terms of reference and scope;
- Applicable laws, regulations and Church policies;

- Lines of inquiry;
- Order of interviews to minimise contamination of evidence or collusion; and
- Anticipated timeframes

Where the Respondent is a member of the Clergy or Religious Appointee, there may also be requirements under Canon law. In these cases, if appropriate, the investigation can proceed for the dual purpose of complying with the requirements of the *Children's Guardian Act 2019* (NSW) and canonical requirements. The procedures outlined in Section 8 of *Integrity in Ministry* must also be followed where the Respondent is a member of Clergy or Religious Appointee.

### **Notification of external investigation**

Once an external investigator is appointed, the Safeguarding Office must notify the Complainant, the Child to whom the Safeguarding Complaint relates (if the Child is not the Complainant), the Child's parent/guardian(s) and the Respondent that:

- (a) an external investigator has been appointed to investigate the complaint;
- (b) the external investigator may want to interview the parties involved;
- (c) the investigation will be conducted on a confidential basis; and
- (d) both the Complainant and Respondent have been appointed a Contact Person to keep them updated as to the progress of the investigation.

The Safeguarding Office will keep a detailed record of any discussions they have with the Child, the Child's parent/guardian(s) and/or the Complainant and Respondent throughout the process.

### **4.2 Where the Respondent is a member of Clergy or Religious Appointee**

If the Respondent is a member of the Clergy or Religious Appointee, he or she (in the case of a Religious Appointee who is a religious sister) will be provided with a copy of the Decree that opened the preliminary investigation in accordance with Canon 1717.

The Respondent may be asked to "step aside voluntarily from ministry" whilst the investigation is being conducted. If a member of Clergy refuses to step aside, the Archbishop may issue a decree of cautionary suspension. When standing aside Clergy, the Vicar General considers the following: the seriousness of the allegation, the risk to other Children or, the risk of interfering with an investigation, community expectations, and the reputation of the Respondent. The Vicar General may seek advice from the Archbishop, the Director of the Safeguarding Office, the General Counsel or the Independent Safeguarding Advisory Panel (**ISAP**).

### **4.3 Confidentiality**

In relation to communicating internally within the Archdiocese, all Safeguarding Complaints are dealt with confidentially, to the greatest extent possible. All persons within the Archdiocese who are responsible for handling the Safeguarding Complaint must at all times be mindful of the need to respect the privacy and reputation of both the Complainant and Respondent, particularly while a Safeguarding Complaint is under investigation.

#### **4.4 External investigation process**

The role of the Safeguarding Office is to ensure that the external investigator has suitable structures and strategies in place to conduct the investigation in a manner that provides procedural fairness to both the Complainant and Respondent.

The investigator will exhaust all lines of enquiry and document them carefully, including noting where evidence could not be obtained. Challenges could include but are not limited to:

- The fact that the respondent may be deceased or may not be able to be located; some witnesses may be deceased, may be elderly with poor or no memory, or may not be able to be located;
- An applicant who raises an allegation of Child Abuse through a claim to the National Redress Scheme (NRS) cannot be contacted without the Archdiocese first contacting the NRS to gain their explicit consent;
- A person who raises an allegation of Child Abuse through a civil claim or court proceeding cannot be contacted except through their legal representative;
- The investigator cannot compel witnesses to participate in an investigation if they are no longer a member of, or employed by the Archdiocese but may offer them the opportunity to participate;
- Documents and records may not or may no longer exist; some entities may have closed down and some of the original venues or buildings may have been modified, repurposed or demolished.

Where the allegation has arisen through a civil or NRS claim, the Archdiocese still needs to determine if an investigation is required as part of a Risk Assessment and needs to have regard to the outcome of the civil claim or NRS process.

Where the respondent admits misconduct, findings of fact (aided by admission) and assessment are still made and recommendations of what of action are to be taken by the Archdiocese.

##### **(a) Conducting interviews**

The external investigator will ensure that the Complainant, Respondent and witnesses are treated fairly throughout the investigative process.

The external investigator may conduct interviews with the Complainant, the Respondent and any other person(s) that the investigator considers necessary to interview, as to the facts and circumstances giving rise to the Safeguarding Complaint. The Safeguarding Office will assist the investigator in making contact with the interviewees.

If, in the professional opinion of the investigator that it is necessary to conduct an interview with a Child or Children, the Safeguarding Office will assist the investigator to make contact with the Child's parent/guardian(s) to obtain their express written authority to interview the Child or Children. The interview must then be conducted in the presence of the parent/guardian(s).

##### **(b) Evidence**

The investigator is to ensure that evidence collected is relevant, reliable and probative. This may include direct evidence from the alleged victim, witnesses and the respondent

through interviews or written statements; physical evidence; site inspections; and forensic evidence from experts if required.

All reasonable steps are to be taken by the investigator to reduce the risk of contamination of evidence or collusion, including collusion between witnesses. The investigator should consider the order of interviews, prioritising witness interviews where there is a greater risk of evidence contamination or collusion.

All evidence is securely stored and documented for use in any potential legal proceedings.

Refer to the following documents in the Policy for further information on recording and storing records:

- [Fact sheet: Keeping and Sharing Safeguarding Records](#)
- [Protocol: Keeping and Sharing Safeguarding Records](#)

### (c) **Making a finding**

The investigator should document all of the evidence gathered during the investigation, then coherently and objectively analyse and weigh the evidence to support any conclusions on the balance of probabilities (taking into account the standard set in *Briginshaw v Briginshaw*). The investigator will then provide to the Vicar General a report which identifies the finding best supported by the available evidence arising from the investigation. The investigation report will set out as a minimum:

- The allegations
- A summary of the investigation, including:
  - The approach adopted by the investigator;
  - Records of the evidence obtained and the investigator's assessment of the evidence, including the weighting of the evidence;
  - The findings made by the investigator;
  - Assessment of any ongoing unacceptable risk in relation to Children if the respondent were to continue to engage with or re-engage in Child-Related Work; and
  - Formal recommendations to the Archdiocese as to any action to be taken.

The investigator will make a finding as to whether the alleged conduct occurred on the balance of probabilities. Where the Safeguarding Complaint concerns a Reportable Allegation or conviction considered to be a Reportable Conviction, the investigator will make a finding as to whether or not the Safeguarding Complaint involves Reportable Conduct. In relation to Reportable Conduct matter, typically findings will be categorised as follows:

- **'sustained'** (meaning there is sufficient evidence to prove Reportable Conduct occurred);
- **'not sustained'** (meaning there is insufficient evidence to prove Reportable Conduct occurred); or
- **'not reportable conduct'** (meaning that the investigation found that the incident or conduct did occur, but it did not reach the level of Reportable Conduct).

If the Safeguarding Complaint involves Reportable Conduct, the following steps will be taken by the Archdiocese to ensure procedural fairness:

1. Inform the Respondent in writing of the proposal to make the Reportable Conduct finding
2. Provide as much detail about the reasons for the proposed Reportable Conduct finding as is reasonable; and
3. Provide the Respondent with an opportunity to make a further submission in response to the proposed finding and reasons.

Where a finding other than a Reportable Conduct finding is made. The Safeguarding Office will inform the Respondent in writing about the finding and the steps that the Archdiocese will take next.

If, based on the information at hand, it is not possible to make a finding, the investigator should articulate why he or she has been unable to reach a conclusion.

The Archbishop, Vicar General or the Safeguarding Office may seek advice from the Independent Safeguarding Advisory Panel (ISAP) regarding appropriate restrictions concerning a member of Clergy, Religious Appointees, Employees, or Volunteers who are Respondents to the Safeguarding Complaint. ISAP is an advisory panel independent of the Archdiocese that provides advice and recommendations to the Archbishop, the Vicar General and the Safeguarding Office to equip them with a source of informed advice to fulfil their respective responsibilities and inform their decisions in relation to Safeguarding Complaints.

While the investigator will make a finding of fact (i.e. did the conduct occur on the balance of probabilities), the person making decisions as a result of the investigator's report and finding is the Vicar General with delegated authority from the Archbishop. In some cases, the Vicar General may refer a matter to the Archbishop for consideration and final determination.

**Where the Respondent is a Religious Appointee**, the Vicar General will determine the outcome with respect to that person's continued role at the Archdiocese and the Religious Leader will determine that person's future in the religious congregation.

#### **4.5 Actioning the outcome**

Depending on the outcome of the external investigation, the Safeguarding Office must:

1. In the case of an Employee – consider appropriate disciplinary action. Serious breaches of the Policy, or less serious, persistent breaches, could be grounds for disciplinary action or dismissal.
2. In the case of a Volunteer – consider appropriate disciplinary action including permanently standing them down from their position.
3. In the case of a contractor – consider exercising the right of termination under the contract.
4. In the case of a member of Clergy – the Vicar General will consider the investigator's report and any further steps required under Canon law. A Parish Priest would either resign from his role as Parish Priest or he would be removed in accordance with Canon law (CIC Cann. 1740-1747).

5. In the case of a Religious Appointee where the investigation was conducted to investigate a Reportable Allegation or Reportable Conduct, the Vicar General will determine the future (if any) of that Religious Appointee's role in the Archdiocese but otherwise will refer the investigator's report to the relevant Religious Leader to consider any further steps under Canon Law and in relation to that person's role within the religious congregation.

### **Reportable Conduct**

The Archbishop is the "head of the relevant entity" pursuant to the *Children's Guardian Act 2019* (NSW) and has delegated his obligations in respect of Parishes and Agencies (other than SCS and CatholicCare) to the Vicar General. Any allegation relating to Reportable Conduct must follow the **Protocol – Reporting Inappropriate Employee Conduct to the NSW Office of the Children's Guardian**.

Once the investigation is complete the Safeguarding Office will provide an Entity Report to the NSW Office of the Children's Guardian informing them of the outcome of the investigation and any further actions the Archdiocese intends to take.

Where the Respondent is working in an Agency, the Safeguarding Office will notify the Senior Manager, General Counsel and the Manager of Employment Services of the finding.

Where the Respondent is working in a Parish, the Safeguarding Office will notify the Vicar General and Parish Priest of the finding.

### **4.6 Update Risk Assessment**

Following the conclusion of the investigation, the Safeguarding Office will update the Risk Assessment and will, with the Vicar General, consider whether further steps should be taken to address risks to Children.

### **4.7 Communicate with the Complainant at the conclusion of the investigation**

At the conclusion of an investigation, the Safeguarding Office will inform the Complainant or if appropriate the Child's parent/guardian(s) of the finalisation of the investigation and where possible any outcome or action taken in response. The Safeguarding Office will exercise discretion as to whether the following kinds of information will also be disclosed:

- the particular finding that was reached in the investigation;
- the reason or explanation for a finding;
- why a different finding was not reached, or the available evidence did not sustain an allegation;
- how the investigation was conducted, and whether it followed the course that was earlier advised; and
- the action that will be taken in response to a finding and why that action was chosen.

Information about a Safeguarding Complaint should **not** be disclosed if doing so might prejudice criminal proceedings or other formal investigative process, endanger a person's health or safety, or contravene any legal professional privilege or otherwise compromise any current or future legal proceedings.

In responding to the complainant where a finding was sustained, an offer of a personal/pastoral response from the Archdiocese, including an apology and the opportunity to meet with a senior representative of the Archdiocese, will be made

available. Notwithstanding the therapeutic need for closure, the Archdiocese will offer, where appropriate, ongoing engagement and support.

#### **4.8 Option to Review**

The option to review is made available through the Independent Safeguarding Advisory Panel (ISAP), an external body to the Archdiocese. A review is an independent evaluation, not only as to whether there is substance in any of the grounds for complaint but also as to whether the principles established in the Archdiocese Policy and the National Response Protocol have been adhered to. It should be noted that a review of process and findings is not a review of the outcomes determined by the Church.

##### **(a) Who can request a review?**

###### ***Respondents***

A review is available for respondents only if they cooperated with the investigation process. The respondent may seek a review within three months of the time when the investigation report has been furnished to the Archdiocese.

###### ***Complainants***

A Complainant may seek a review within three calendar months of the end of the investigation or otherwise when the Archdiocese gives its response to the complaint, or has failed to offer a response within three months of the time when an investigation has been completed.

###### ***Archdiocese***

The Archdiocese may seek a review within three months of the time when the investigation report has been furnished to the Archdiocese.

##### **(b) Applying for a Review**

A person requesting a review should:

1. Make a request in writing within their specific timeframe to ISAP; and
2. Provide reasons for their dissatisfaction with the process or findings.

##### **(c) Review process**

The Chairperson of ISAP may allow a review outside of the three months' time limit if there are compelling reasons to accept a request for review.

The Reviewer shall determine the procedures for the conduct of the review and may review all relevant documentation. This may involve contact with the Archdiocese, the complainant and the respondent. The review process shall take place within three calendar months unless the Chairperson provides an extension of time.

The parties who did not apply for the review will be notified of the grounds for the review that concern factual matters about which they may be able to provide further information.

At the end of the review, a report shall be provided with written recommendations to the Chairperson of ISAP. The Chairperson shall consider the review's report and make such recommendations to the Archdiocese as it sees fit. A copy of the review shall be provided to each party.

The Archdiocese is to be responsible for all reasonable and ordinary expenses of the review. The Archdiocese cannot replace the findings and recommendations with their

own but can modify the recommendations consistent with any facts that present through the assessment of the investigation report. If the Archdiocese does not agree with the decision of the review, they may seek advice on how to proceed in response to the determination and recommendations.

#### **4.9 Continuous Improvement**

After the finalisation of a response to a concern or allegation of abuse, a review is undertaken by the Safeguarding Office to identify and address potential causes of abuse, including monitoring risks to Children within the Archdiocese and identifying key learning areas and any systemic issues or failures. From time-to-time, feedback will be sought from adults who were subjected to childhood abuse and involved in a response to identify improvements that can be made to processes.

## **5 Investigating a Level 2 Safeguarding Complaint**

In respect of a Level 2 Safeguarding Complaint, the Safeguarding Office and the Vicar General may determine whether an internal or external investigation should be conducted, depending on the seriousness and complexity of the complaint. The process pursuant to section 3 in this protocol remain the same for a Level 2 Safeguarding Complaint.

### **5.1 Appointing an investigator**

The Safeguarding Office and the Vicar General are responsible for appointing either an internal or external investigator to investigate the Safeguarding Complaint. Before an investigator is appointed, it is necessary to establish whether the investigator has any actual or perceived Conflict of Interest. Where a Conflict of Interest is established, the investigator cannot be appointed to investigate the matter. Similarly, if an investigator becomes aware of a Conflict of Interest once the investigation has commenced, the investigator must immediately notify the Safeguarding Office and cease their investigation. Both internal and external investigators are responsible for conducting interviews, providing a written report and making a finding best supported by the available evidence.

Once an investigator has been appointed, the Safeguarding Office will request, on behalf of the Vicar General, that the investigator prepare a detailed investigation plan for review by the Safeguarding Office.

The Safeguarding Office will ensure that the investigator has suitable structures and strategies in place to conduct the investigation in a manner that provides procedural fairness to both the Complainant and Respondent.

An external investigator is likely to be appointed in circumstances where:

- the Level 2 Safeguarding Complaint relates to very serious allegations or is complex or relates to multiple allegations or issues;
- there is a lack of resources, skills or expertise to conduct the investigation internally; or
- the proposed internal investigator has an actual or perceived Conflict of Interest and there is not another appropriate person to conduct an internal investigation.

### **5.2 Confidentiality**

In relation to communicating internally within the Archdiocese, all Safeguarding Complaints are dealt with confidentially, to the greatest extent possible. All persons within the Archdiocese who are responsible for handling the Safeguarding Complaint must at all



times be mindful of the need to respect the privacy and reputation of both the Complainant and Respondent, particularly while a Safeguarding Complaint is under investigation.

### **5.3 Investigation process**

#### **(a) Conducting interviews and gathering evidence**

The investigator will ensure that the Complainant, Respondent and witnesses are treated fairly throughout the investigative process.

The investigator may conduct interviews with the Complainant, the Respondent and any other person that the investigator considers necessary to interview, as to the facts and circumstances giving rise to the Safeguarding Complaint. The Safeguarding Office will assist the Investigator in making contact with the interviewees.

If, in the professional opinion of the investigator that it is necessary to conduct an interview with a Child or Children, the Safeguarding Office will assist the investigator to make contact with the Child's parent/guardian(s) to obtain their express written authority to interview the Child or Children. The interview must then be conducted in the presence of the parent/guardian(s)

The investigator will gather other evidence, if it is available, relevant to the Safeguarding Complaint.

The Safeguarding Office will keep the Complainant and Respondent informed of the progress of the investigation, particularly if there are any delays.

#### **(b) Making a finding**

The investigator will make a finding as to whether the alleged conduct occurred on the balance of probabilities.

The investigator should document all of the evidence gathered during the investigation, then coherently and objectively analyse and weigh the evidence to support any conclusions on the balance of probabilities. The investigator will then provide to the Vicar General a report which identifies the finding best supported by the available evidence arising from the investigation.

A finding in the investigation of a Level 2 Safeguarding Complaint will be that the allegation is:

- **'sustained'** (meaning there is sufficient evidence on the balance of probabilities to make a sustained finding); or
- **'not sustained'** (meaning there is insufficient evidence on the balance of probabilities to make a 'not sustained' finding).

If, based on the information at hand, it is not possible to make a finding, the investigator should articulate why he or she has been unable to reach a conclusion.

### **5.4 Actioning the outcome**

While the investigator will make a finding of fact (i.e. did the conduct occur on the balance of probabilities), the person making decisions as a result of the investigator's report and finding is the Vicar General. In some cases, the Vicar General may refer a matter to the Archbishop for consideration and final determination.

It is noted in relation to a Respondent who is a Religious Appointee, the Vicar General decides outcomes in relation to that person's role at the Archdiocese. The Religious Leader decides outcomes for that person in terms of their future with the religious congregation.

The Archbishop, Vicar General or the Safeguarding Office may seek advice from the Independent Safeguarding Advisory Panel on ministry and other restrictions concerning a member of Clergy, Religious Appointees, Employees, or Volunteers who are Respondents to the Safeguarding Complaint. The Panel is an advisory panel independent of the Archdiocese that provides advice and recommendations to the Archbishop, the Vicar General and the Safeguarding Office to equip them with a source of informed advice to fulfil their respective responsibilities and inform their decisions in relation to Safeguarding Complaints.

In circumstances where an internal investigator reached a finding that an allegation has been sustained:

1. in the case of an Employee – consider appropriate disciplinary action. Serious breaches of the Policy, or less serious, persistent breaches, could be grounds for disciplinary action or dismissal.
2. in the case of a Volunteer – consider appropriate disciplinary action including permanently standing them down from their position.
3. in the case of a contractor – consider exercising the right of termination under the contract.
4. in the case of a member of Clergy – the Vicar General will consider the investigator's report and any further steps required under Canon Law.
5. In the case of a Religious Appointee, the Vicar General will determine the future (if any) of that Religious Appointee's role in the Archdiocese but otherwise will refer the investigator's report to the relevant Religious Leader to consider any further steps under Canon Law and in relation to that person's role within the religious congregation.

### **5.5 Notify Senior Managers**

Where the Respondent is working in an Agency, the Safeguarding Office will notify the Respondent's Senior Manager, the General Counsel and the Manager of Employment Services of the finding.

Where the Respondent is working in a Parish, the Safeguarding Office will notify the Vicar General and Parish Priest of the finding.

### **5.6 Update Risk Assessment**

Following the conclusion of the investigation, the Safeguarding Office will update the Risk Assessment and will, with the Vicar General, consider whether further steps should be taken to address risks to Children.

### **5.7 Communicate with the Complainant at the conclusion of the investigation**

At the conclusion of an investigation, the Safeguarding Office will inform the Complainant or if appropriate the Child's parent/guardian(s) of the outcome of the investigation and any action taken in response to the outcome. The Safeguarding Office will, in consultation with relevant statutory authorities and the General Counsel, exercise discretion as to whether the following kinds of information will also be disclosed:

- the particular finding that was reached in the investigation;
- the reason or explanation for a finding;
- why a different finding was not reached, or the available evidence did not sustain an allegation;
- how the investigation was conducted, and whether it followed the course that was earlier advised; and
- the action that will be taken in response to a finding and why that action was chosen.

Information about a Safeguarding Complaint should **not** be disclosed if doing so might prejudice a formal investigative process, endanger a person's health or safety, or contravene any legal professional privilege or otherwise compromise any current or future legal proceedings.

In responding to the complainant where a finding was sustained, an offer of a personal/pastoral response from the Archdiocese, including an apology and the opportunity to meet with a senior representative of the Archdiocese, will be made available. Notwithstanding the therapeutic need for closure, the Archdiocese will offer, where appropriate, ongoing engagement and support.

## **5.8 Option to Review**

The option to review is made available through the Independent Safeguarding Advisory Panel (ISAP), an external body of the Archdiocese. A review is an independent evaluation, not only as to whether there is substance in any of the grounds for complaint but also as to whether the principles established in the Policy and the National Response Protocol have been adhered to. It should be noted that a Review of process and findings is not a review of the outcomes determined by the Church.

### **(a) Who can request a review?**

#### ***Respondents***

A review is available for respondents only if they cooperated with the investigation process. The respondent may seek a review within three months of the time when the investigation report has been furnished to the Archdiocese.

#### ***Complainants***

A Complainant may seek a review within three calendar months of the end of the investigation or otherwise when the Archdiocese gives its response to the complaint, or has failed to offer a response within three months of the time when an investigation has been completed.

#### ***Archdiocese***

The Archdiocese may seek a review within three months of the time when the investigation report has been furnished to the Archdiocese.

### **(b) Applying for a Review**

A person requesting a review should:

1. Make a request in writing within their specific timeframe to ISAP; and
2. Provide reasons for their dissatisfaction with the process or findings.

### (c) **Review process**

The chairperson of ISAP may allow a review outside of the three months' time limit if there are compelling reasons to accept a request for review.

The reviewer shall determine the procedures for the conduct of the review and may review all relevant documentation. This may involve contact with the Archdiocese, the complainant and the respondent.

The parties who did not apply for the review will be notified of the grounds for the review that concern factual matters about which they may be able to provide further information.

The reviewer will have access to all relevant documentation and the review process shall take place within three calendar months unless the chairperson provides an extension of time.

At the end of the review, a report shall be provided with written recommendations to the chairperson of ISAP. The chairperson shall consider the review's report and make such recommendations to the Archdiocese as it sees fit. A copy of the review shall be provided to each party.

The Archdiocese is to be responsible for all reasonable and ordinary expenses of the review. The Archdiocese cannot replace the findings and recommendations with their own but can modify the recommendations consistent with any facts that present through the assessment of the investigation report. If the Archdiocese does not agree with the decision of the review, they may seek advice on how to proceed in response to the determination and recommendations.

## **5.9 Continuous Improvement**

After the finalisation of a response to a concern or allegation of abuse, a review is undertaken by the Safeguarding Office to identify and address potential causes of abuse, including monitoring risks to Children within the Archdiocese and identifying key learning areas and any systemic issues or failures. From time-to-time, feedback will be sought from adults who were subjected to childhood abuse and involved in a response to identify improvements that can be made to processes.

## **6 Responding to a Level 3 Safeguarding Complaint**

Agency Heads and Parish Priests are responsible for responding to Level 3 Safeguarding Complaints. The Safeguarding Office is available as a resource in the event the Parish Priest or Agency Head requires guidance in relation to the handling of the Level 3 Safeguarding Complaint.

The Parish Priest or Agency Head will typically take the following steps to respond to and resolve the Level 3 Safeguarding Complaint:

- (a) **Acknowledge the Safeguarding Complaint and clarify the issue(s):** It is important to acknowledge Safeguarding Complaints quickly. For example, if someone writes a letter or sends an email to a Parish or Agency, receipt should be acknowledged as soon as possible and an indication of next steps should be provided. If the Safeguarding Complaint is unclear, the Parish Priest or Agency Head should further discuss the Safeguarding Complaint with the Complainant and seek to obtain any additional details and to identify the outcome (if any) that the Complainant seeks to achieve. Where the Complainant is a Child, this step may also involve notifying the Child's parent/guardian(s) of the Safeguarding Complaint made and determining what resolution the parent/guardian(s) seeks

also. In respect of Level 3 Safeguarding Complaints, the desired outcome is likely to be the cessation of the conduct that triggered the Safeguarding Complaint.

- (b) **Assess the risk:** Although Level 3 Safeguarding Complaints are less serious than Levels 1 and 2, there could still be risks. The role of the Respondent within the particular Agency or Parish should be reviewed and risks of their continuation in that role considered. It may be necessary to inform others about the Safeguarding Complaint, for instance, inform a school if the Safeguarding Complaint relates to a Child's attendance at a Parish or local school.
- (c) **Notify the Respondent:** The Parish Priest or Agency Head must arrange to meet with the Respondent to notify the Respondent that a Safeguarding Complaint has been made against the Respondent, providing as much detail as possible. The Respondent should not be asked to respond to the Safeguarding Complaint at this stage but be advised that he/she will be given the opportunity to address the Safeguarding Complaint and/or explain the conduct at issue once the Safeguarding Complaint has been investigated further.
- (d) **Gather any additional information:** It may not be necessary for the Parish Priest or Agency Head to gather any additional information. However, if the Parish Priest or Agency Head requires additional information to resolve the issue, confidentiality should be maintained to the greatest extent possible in doing so. Speaking to witnesses is one means through which Parish Priests or Agency Heads may gather additional information.
- (e) **Put the Safeguarding Complaint to the Respondent:** Once all available information has been gathered, the Safeguarding Complaint should be put to the Respondent who should be given ample opportunity to provide a response including the ability to provide evidence or material in support of the response.
- (f) **Reach a determination:** Once the Parish Priest or Agency Head has considered the Level 3 Safeguarding Complaint and any additional information gathered, the Parish Priest or Agency Head should determine and action:
  - (i) **Any action necessary in respect of the Respondent:** Depending upon the conduct that is the subject of the Safeguarding Complaint, the Parish Priest or Agency Head may take action including requiring the Respondent to undergo further Child protection and safeguarding training.
  - (ii) **An appropriate response to the Complainant:** Depending upon the conduct that is the subject of the Level 3 Safeguarding Complaint, this may involve an apology from the Respondent or some form of acknowledgment that the conduct was inappropriate, and/or any other support deemed necessary by the Parish Priest or Agency Head.
- (g) **Inform the Complainant and Respondent of the determination:** Both the Respondent and Complainant should be provided with the determination and action and offered support.

The Parish Priest or Agency Head should keep a detailed record of any discussions with the Complainant, the Respondent or any other person in the course of resolving the Level 3 Safeguarding Complaint, and the outcome of the Safeguarding Complaint.

The Parish Priest or Agency Head should also consider whether any risk mitigation strategies may be implemented to prevent the reoccurrence of similar conduct.