



North Canberra

Baptist Church

Procedure for Handling Complaints Against Staff and Volunteers (ACT)

Adopted by North Canberra Baptist Church on 17 January 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 Division 2.2A of the Ombudsman Act 1989 (ACT)). The Church has an obligation to have policies 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 designated entity.
- handling or responding to a reportable allegation or reportable conviction involving all staff and volunteers as outlined in 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.

¹ See the Ombudsman ACT 1989 (ACT) Division 2.2A.

² The Ombudsman Act 1989 (ACT) uses the language of an “Employee of a designated entity” meaning an individual who is a minister of religion, a religious leader or officer of the religious body, a person who is engaged under contract of employment or a person who is engaged by the religious body to provide services (other than under a contract of employment) whether or not the services are provided to children. It doesn’t include a person only because they participate in worship.

This Procedure applies to all matters that are a serious breach of the *Code of Conduct*, including reportable allegations or reportable convictions, or complaints relating to a sexual offence having been committed against a child, sexual misconduct involving a child or a child or young person that has experienced or is experiencing, child sexual abuse or non-accidental physical injury.

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*.

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 *Ombudsman ACT 1989 (ACT)*:

Head of the designated entity means the principal officer of the entity. The head of the relevant entity in our Church is the Senior Pastor (or, in their absence, the Church Secretary or Chair of the Church Leadership Team). The church will inform the ACT Ombudsman of this nomination.

Reportable allegation means an express assertion that the staff member or volunteer has engaged in 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 for an offence, under a territory law or a State or Commonwealth law, involving reportable conduct and entered against the person before or after the commencement of the *Reportable Conduct and Information Sharing Legislation Amendment Act 2016 (ACT)*, section 3. This includes

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:

- ill-treatment or neglect of a child;
- exposing or subjecting the child to behaviour or a circumstance that psychologically harms the child.
- misconduct of a sexual nature that does not form part of an offence under the Crimes Act 1900 (ACT).
- offences against parts 2 to 5 of the Crimes Act 1900 (ACT)³; and
- offences against the Education and Care Service National Law (ACT) relating to inappropriate discipline and protection of children from harm and hazards.

Staff member or volunteer is described in the Ombudsman Act 1989 (ACT) as an "Employee of a designated entity", meaning an individual who is a minister of religion, a religious leader or officer of the religious body, a person who is engaged under a contract of employment or a person who is engaged by the religious body to provide services (other than under a contract of employment) whether or not the services are provided to children. It doesn't include a person only because they participate in worship.

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 that 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

³ These include (but are not limited to) offences against the person (e.g., murder) and sexual offences.

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 also to 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.
- e) If a complaint relates to an issue that 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, then it must be reported by staff and volunteers of the Church to the head of the designated entity. If it relates to the head of the designated entity, it must be reported directly to the Ombudsman.
- b) On becoming aware of a complaint or information that may be a reportable allegation or reportable conviction about a staff member or volunteer, the head of a designated entity, or their delegate, according to s17G of the Ombudsman Act 1989 (ACT) is to:
 - (i) notify the Ombudsman in writing within 30 calendar days in accordance with the process on their website: <https://www.ombudsman.act.gov.au/accountability-and-oversight/reportable-conduct/employer-responsibilities>.
 - (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, and
 - (iii) provide a written report as soon as practicable after the end of an investigation by the entity into a reportable allegation or reportable conviction to the Ombudsman in the form outlined on the ACT Ombudsman website: <https://www.ombudsman.act.gov.au/accountability-and-oversight/reportable-conduct/employer-responsibilities>

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, 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) relating to child abuse or sexual misconduct involving a child and the complaint relates to a staff member or volunteer, 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 at 1300 647 780 for assistance in identifying an external investigator.

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 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 2.2A of the Ombudsman Act (1989) (ACT), 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. Putting the Complaint to the Respondent

- a) The Investigator is to put the complaint in writing to the person whose conduct is the 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) allow the respondent to respond to the complaint in writing and within a stated timeframe, not usually exceeding two weeks.

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*⁴;
 - (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 relevant to the investigation report, including any interview 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 volunteer duties, or termination of engagement for staff. It may also require notice to government authorities, such as the Police or Ombudsman.

10. Determination of Complaint and Outcomes

- a) The Church leadership is to consider the Investigator's report and 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 decides 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.

⁴ *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.'

- (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 based on 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.⁵
- c) If the Church has informed its 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 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 is related to a reportable allegation, then the head of the designated entity or their delegate must notify the Ombudsman of the outcome in accordance with the process on their website⁶. This will include a written report which will include the results of the investigation, any action taken or proposed action to be taken, statements taken in the course of the investigation, documents mentioned in the report and any other information the head of the designated entity deems relevant.

⁵ 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.

⁶ <https://www.ombudsman.act.gov.au/accountability-and-oversight/reportable-conduct/employer-responsibilities>