

## NSW Safe Churches UPDATE May 2019

Dear Pastors and Board members,

This is an important Safer Churches update and recap of the NSW Government legislation changes in response to the recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse.

We recommend that the Church Board discuss these changes and actions needed to ensure that your church is following the law in NSW.

If you need help with the implementation of the NSW legislation  
call the Safer Churches Helpline 1800 070 511

### **1. Child Protection laws introduced in 2018 included (see attachment 1 for details):**

#### **a) Failure to report child abuse offence (S.316A of the crimes act)**

Adults are required to report information to police if they know, believe or reasonably ought to know that a child has been abused (physically or sexually). A person will have a reasonable excuse for not reporting if the victim is now an adult and doesn't want the offence reported, or if the offence has already been reported to FaCS, or if the person fears for their safety or another person's safety if they report.

#### **b) Failure to protect offence**

An adult working in an institution doing child-related work will commit an offence if they know another adult working there poses a serious risk of abusing a child and they have the power to reduce or remove the risk, and they fail to do so.

#### **c) Grooming offences**

Any adult who offers a child a material or financial benefit with the intention of making it easier to access the child for unlawful sexual activity.

Grooming an adult, where a person provides gifts or money to an adult with the intention of making it easier to access a child in their care for unlawful sexual activity. The offence will be punishable by up to six years imprisonment.

## 2. Civil law suits in relation to child abuse (see attachment 2 for details)

The **Civil Liability Amendments (CLA)**, in place from 26 October 2018, mean that:

- a) All organisations (e.g. churches), including unincorporated associations, can be sued (as the proper defendant) in relation to child abuse.
- b) It is now the duty of organisations to prevent child abuse (the burden of proof has been reversed), i.e. *"The organisation is presumed to have breached its duty of care unless the organisation establishes that it took reasonable precautions to prevent the child abuse."*
- c) Organisations can be held responsible for the actions of their employees or anyone 'akin to an employee' if they abuse a child associated with the organisation. This is called "vicarious liability". 'Akin to an employee' is anyone who *"carries out activities as an integral part of the activities carried on by the organisation and does so for the benefit of the organisation"* (includes volunteers).
- d) The Act says: *"An organisation and any successor of that organisation are, for the purposes of this Part, taken to be the same organisation"*, e.g. if an organisation (church) takes over another organisation (church) the new organisation (church) is liable for duty of care failures that occurred previously.

**One practical application for church:** Churches must be able to demonstrate that have done all that was reasonable to prevent child abuse. This means the screening, training, supervision and good record keeping is essential in relation to all workers ...all those who are 'akin to employees', not just kids and youth workers.

## 3. New legislation COMING in 2019



### a) Regulation of the 10 Child Safe Standards

The NSW Government has committed to regulating the 10 Child Safe Standards as recommended by the Royal Commission. The Office of the Children's Guardian ('**OCG**') is currently working through what this will look like in practice. We will update you as this is rolled out by the government.

### b) Reportable Conduct Scheme to extend to religious groups

The Reportable Conduct scheme which has to date been operated by the NSW Ombudsman, will this year be transferred over to the Office of the Children's Guardian. The scheme will also be extended to all religious groups including all our churches. Similar schemes already apply to our Victorian and ACT churches, and we need to be ready to report, and investigate reportable allegations against our workers, which we have previously not been required to do by law.

**We will inform you of training opportunities in regards to Reportable Conduct legislation as they become available.**

#### 4. Requirements of the Office of the Children's Guardian

- a) As part of our legal reporting obligations in NSW, ACC churches are reporting bodies to the Office of the Children's Guardian and are required to report all outcomes (findings) of church disciplinary processes in relation to sexual misconduct and serious physical assault involving children by a child-related worker.  
<http://www.kidsguardian.nsw.gov.au/ArticleDocuments/183/>
- b) WWCC# must be verified by employers. Churches must register with the Office of the children's Guardian as employers in order to verify the WCC# of their staff and volunteers who require them. Records must be kept of the WWCC#, expiry date and date of verification. WWCC# must be updated every 5 years.
- c) It is a requirement that all persons holding a WWCC# in NSW maintain up to date details with the Office of the Children' Guardian eg: email address, contact number or change of name