

# Professional Standards Code of Conduct and Safeguarding Policy

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# Preamble

This set of policies and procedures is the result of consultation with and among our Franciscan brothers, with experts beyond the Franciscan world, and years of reflection on the violations and crimes of the past. It is written in the light of the Royal Commission into Institutional Responses to Child Sexual Abuse. Through each of these processes, we have examined our past and our present, and been urged from within, and from outside of us, towards moments and processes of ongoing conversion.

This document—a renewal of our policies and procedures—is a new beginning and not an end. It is one part of our commitment to ongoing conversion of heart and of behaviour. As it should, it begins by acknowledging our history.

One of the earliest accounts of child abuse by a Catholic priest in Australia involved an

Irish Franciscan whose name still appears in our necrology as a reminder of shame and betrayal.

In 1870, the Sisters of St Joseph of the Sacred Heart (founded by St Mary of the Cross MacKillop) reported Fr Patrick Keating, a Franciscan and the parish priest at Kapunda, north of Adelaide, for sexually abusing a number of the local school children.

The sisters reported the abuse to the Vicar General of Adelaide, Fr John Smyth. The Vicar General, assessing that the allegations were true, sent Keating back to Ireland where he continued to minister as a priest.

Fr Smyth also criticised another Franciscan, Fr Charles Horan, for possible direct involvement in the abuse.

While the allegations against Fr Horan could not be proven, he was criticised by Fr Smyth for knowing of the abuse and

turning a blind eye to heinous crimes. Fr Charles Horan was also sent back to Ireland under a cloud.

This is a story that reflects well on the Sisters, who took active steps to protect the children in their care, and poorly on the early itinerant friars. It causes me sadness when I recall these tragic events; but a necessary part of ongoing conversion—of changing hearts and behaviour—is that we remember with humility these earliest parts of our history in Australia, and our more recent violations and crimes.

There is much to be learned from our history: the need to be reflective and aware, the importance of vigilance and accountability, the centrality of transparency in ongoing conversion of hearts and behaviour. We are committed to renewal, as individuals and as a province.



# Apology

As Provincial Minister of the Franciscan Friars of the Holy Spirit Province, I acknowledge, with deep shame, that our brothers and priests have not always lived according to the gospel, or according to the vows that they profess.

We are remorseful and angry that some of our brothers and priests have violated the trust that was placed in them.

We are ashamed and saddened that the victims of these violations of trust were those most vulnerable within our community: children and vulnerable adults seeking support, help, and comfort.

On behalf of the Friars, both past and present, I apologise for these past wrongs and acknowledge with deep sorrow the devastation caused by our failure to keep children in our care, and adults seeking guidance, safe and free from harm.

I acknowledge the harm caused by the failures of our forebears, and that this harm is a tragic legacy of involvement with the Franciscans that endures beyond the lifespan of any one of us.

For the crimes, the violations, the transgressions and the failures of our brothers and priests, I am sorry.

# Statement of Commitment

Since the Royal Commission into Institutional Responses to Child Sexual Abuse we have taken significant steps to ensure that such abuse never recurs.

We have developed a comprehensive Professional Standards Code of Conduct and Safeguarding Policy where no such document previously existed.

After significant research and wide consultation, the Professional Standards Code of Conduct and Safeguarding Policy was approved by the Provincial Minister and Definitors, also acting in their capacity as Directors of our civil entity, Franciscan Order of Friars Minor.

We have established a Professional Standards and Safeguarding Office, and we invite anyone who was abused as a child or young person in our care, or indeed as an adult, to come forward and lodge a complaint.

We renew our commitment to justice and redress for survivors of abuse. We are committed to being a model litigant. We will strive to resolve claims against us without litigation. We seek always to limit the stress and anxiety litigation creates for claimants.

Through our Franciscan Code of Conduct and Safeguarding Policy, we commit ourselves to safeguarding children, young people and adults regardless of their age, sex, race or ethnicity, cultural background, sexual orientation, gender identity, physical or mental ability, health status, religious or political beliefs, socio-economic status, family background, or criminal history.

We seek to respond with care and justice towards all who approach us.

We acknowledge and adhere to the principles contained in the Universal Declaration of Human Rights, and in particular, that “all human beings are born free and equal in dignity and rights” (Art. 1). We acknowledge that, no less than others, children have rights which include a right to be safe and a right to be heard in relation to matters that concern them.

We commit ourselves to upholding the United Nations Convention on the Rights of the Child, which specifies, among other rights, that in all actions by institutions concerning children, “the best interests of the child shall be a primary consideration” (Art. 3.1)





The Franciscan Code of Conduct and Safeguarding Policy is a civil document. In the past, our response to child sexual abuse, and to survivors, has not always been marked by a clear acknowledgement that we are members of civil society with rights and responsibilities.

We acknowledge that we have a responsibility to obey the civil law, to report crime when it occurs, and to abide by the obligations imposed on all citizens by the laws of civil society.

We acknowledge that our obligations to the laws of civil society take precedence over church law, "particularly those concerning any reporting obligations to the competent civil authorities" (*Vos estis lux mundi*, Art. 19; cf. *Vademecum*, Art. 48).

*Phillip Miscamble OFM*



Phillip Miscamble OFM  
Provincial Minister

25 March 2020



# Professional Standards Code of Conduct and Safeguarding Policy

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# Introduction





# Purpose and scope

- 1.1 The Holy Spirit Province (the Province) of the Franciscan Order of Friars Minor (the Order) is the Franciscan ecclesiastical and administrative territory comprising Australia and Aotearoa-New Zealand.
- 1.2 This Code of Conduct and Safeguarding Policy (this Policy) expresses the Province's deep commitment to protect all individuals from abuse, exploitation, neglect, harassment, discrimination, or other harm. It is directed especially towards the protection of those who are vulnerable, including children and young people (who are inherently vulnerable by reason of their youth) and those with particular vulnerabilities whether they be children or adults. We recognise that while some people have a particular vulnerability due, for example, to age, illness, disability, cultural background, bereavement, trauma, homelessness, displacement, or domestic violence, any person may be vulnerable in certain circumstances.
- 1.3 This Policy applies to all Franciscan communities, ministries and activities throughout the Province, and to the Province's corporate civil entity in Australia, Franciscan Order of Friars Minor. It sets out the behavioural standards and safeguarding requirements that apply to all Franciscan Personnel throughout the Province—that is, to all friars,<sup>1</sup> and to all employees,<sup>2</sup> and volunteers<sup>3</sup> in their work for and behalf of the Province. For friars, these standards apply to all their personal and professional interactions, both in their ministry and their life in community, including their relationships with each other.
- 1.4 This Policy does not apply to the Friars Minor of New Zealand Trust Board (FMNZTB) or its employees or volunteers. As the separately constituted Franciscan corporate and civil entity in Aotearoa-New Zealand, the FMNZTB is responsible for developing its own policies and procedures, specific to its own operation.
- 1.5 This Policy also does not apply to the dioceses, parishes, universities, schools, or other external institutions where some Franciscan friars work in ministry. These entities have their own policies and procedures. Where friars are engaged or participate in external ministries which do not fall under the governance of the Holy Spirit Province, they must adhere to the policies and procedures of the entity to which the ministry belongs.

- 1 That is, any professed member of the Holy Spirit Province, any friar who is visiting or on loan to the Province, and any candidate or trainee to become a friar (postulant or novice).
- 2 That is, anyone appointed to a position administered by the Province on a full-time, part-time or contract basis.
- 3 That is, anyone appointed to a position administered by the Province on an unpaid or voluntary basis.

## Purpose and scope (cont'd)

- 1.6 While this Policy applies to all Franciscan Personnel, it also includes a section that deals with the life and ministry of friars, which applies only to them. This section enlarges upon the principles that should inform friars' professional interactions with the communities they serve, and their personal lives and interactions with each other.

## Authority

- 1.7 This Policy has been approved by the Provincial Minister and his Definitory acting also in their capacity as directors of Franciscan Order of Friars Minor, which is the corporate civil entity associated with the Franciscan Friars Holy Spirit Province in Australia. The Policy will be reviewed at least once every three years, or as required by legislative changes.
- 1.8 We welcome inquiries or feedback about this Policy, including feedback from any person who has engaged with our process for responding to professional standards complaints and concerns. Feedback should be directed to the Director of Professional Standards and Safeguarding on **1800 411 610** or [profstand@franciscans.org.au](mailto:profstand@franciscans.org.au).

# Guiding Principles and Commitments

1.9 This Code of Conduct and Safeguarding Policy is underpinned by:

- the Gospel imperatives of truth, justice, compassion and reconciliation;
- the Franciscan commitment to respect, protect and care for all creation;
- the obligation at the core of Catholic social teaching, to do good (beneficence) and avoid doing harm (nonmaleficence).

1.10 In order to ensure the safety and wellbeing of all individuals, the Province makes the following commitments:

- to place the safety and wellbeing of children, young people and adults at the heart of everything we do;
- to nurture and sustain a culture of safety and prevention of harm throughout the Province;
- to ensure that our leadership and governance structures embed and support effective safeguarding practices;
- to respect the dignity and human rights of all people and uphold the principles contained in the Universal Declaration of Human Rights, in particular that "all human beings are born free and equal in dignity and rights" (Article 1).<sup>4</sup>
- to respect and uphold the rights of the child as outlined in the United Nations Convention on the Rights of the Child, including Article 3 of the Convention, which states that in all actions by institutions involving children, "the best interests of the child shall be a primary consideration";<sup>5</sup>
- to inform children, young people, and adults of their rights, including the right to be safe, the right to be listened to, and the right to participate in decisions affecting them;<sup>6</sup>
- to treat anyone bringing allegations of abuse in a way that is fair and compassionate and to support the healing of those who have been harmed (see also: Principles for Responding to Complaints or Concerns, para 5.4, below).<sup>7</sup>

4 Universal Declaration of Human Rights, UN General Assembly, 1948.

5 United Nations Convention on the Rights of the Child, 1989, Article 3.

6 See Complaint Handling Guide: Upholding the rights of children and young people, National Office of Child Safety, 2019, <https://www.childsafety.gov.au/resources/complaint-handling-guide-upholding-rights-children-and-young-people>

7 See also: Engaging sensitively with survivors of abuse: A guide for faith organisations, NSW Office of Children's Guardian, 2020, [https://ocg.nsw.gov.au/sites/default/files/2022-01/G\\_CSS\\_EngagingSensitivelywithSurvivors.pdf](https://ocg.nsw.gov.au/sites/default/files/2022-01/G_CSS_EngagingSensitivelywithSurvivors.pdf)



# Guiding Principles and Commitments (cont'd)

- 1.11 The Province is committed to the safeguarding of children, young people and adults, regardless of their age, sex, race or ethnicity, cultural background, sexual orientation, gender identity, physical or mental ability, health status, religious or political beliefs, socio-economic status, family background, criminal history, or any other attribute.
- 1.12 The Franciscan Friars recognise that the Province and all friars, employees and volunteers are part of civil society, and that we have a responsibility to comply with all relevant civil law and cooperate with police and other statutory oversight authorities, acknowledging that where civil law comes into conflict with our commitment to follow canon law or any other church policy or protocol, the civil law prevails.<sup>8</sup>
- 1.13 This Policy has been developed with regard to Australia's National Principles for Child Safe Organisations and legislated Child Safe Standards in New South Wales and Victoria.
- 1.14 In Australia, the Province recognises and adheres to the Catholic Church in Australia's *National Catholic Safeguarding Standards* (NCSS),<sup>9</sup> *Integrity in Ministry*,<sup>10</sup> and *Integrity in the Service of the Church*<sup>11</sup> protocols.
- 1.15 The Province is committed to working co-operatively with the professional standards and safeguarding policies of the Catholic Church in Aotearoa-New Zealand, including *Standards for Creating and Maintaining a Safeguarding Culture*<sup>12</sup> and *A Path to Healing: Te Houhanga Rongo*.<sup>13</sup>

8 See Pope Francis, Apostolic letter issued motu proprio, *Vos estis lux mundi*, 9 May 2019, Art. 19.

9 Catholic Professional Standards Ltd, *National Catholic Safeguarding Standards*, Edition 1, 2019.

10 *Integrity in Ministry: A Document of Principles and Standards for Catholic Clergy & Religious in Australia*, National Committee for Professional Standards, 2004 (Reprinted April 2010).

11 *Integrity in the Service of the Church: A Resource Document of Principles and Standards for Lay Workers in the Catholic Church in Australia*, National Committee for Professional Standards, 2011 (Reprinted February 2013).

12 *Standards for Creating and Maintaining a Safeguarding Culture*, Catholic Church in Aotearoa New Zealand, October 2018.

13 *A Path to Healing: Te Houhanga Rongo*, Catholic Church in Aotearoa New Zealand, 2007, revised 2010.

# Distribution of responsibilities

## **All Franciscan friars, employees and volunteers:**

1.16 The maintenance of a safe environment for all is the responsibility of all Franciscan Personnel. All Franciscan Personnel are responsible for:

- being vigilant in relation to the safety of children, young people and adults who come into contact with the Province and its personnel;
- making themselves aware of the Province's professional standards and safeguarding policies;
- undertaking regular professional standards and safeguarding training as required by this Policy;
- undertaking regular pastoral supervision as required by this Policy;
- reporting any breaches of the Code of Conduct, any safeguarding concerns, and any mandatory reporting or reportable conduct matters to the Director, Professional Standards and Safeguarding.

## **Leaders within the Order:**

1.17 The Leaders within the Order are those in positions of governance responsibility within the Province. They include: the Provincial Minister, the Vicar Provincial, Definitors, and all Guardians and Vicars. In relation to the implementation of this Policy, they are responsible to all friars and to the wider community for:

- setting and maintaining high standards of personal and professional behaviour on the part of all Franciscan Personnel;
- actively promoting the importance of safeguarding and risk awareness;
- actively monitoring safeguarding compliance on the part of all Franciscan Personnel;
- monitoring the well-being of Franciscan Personnel and taking steps to mitigate sources of stress, such as overwork, isolation or ill health;
- ensuring that, in discharging their safeguarding responsibilities, they seek advice from individuals with relevant professional expertise from a variety of professional backgrounds and including lay men and women (i.e. not clergy or religious);
- ensuring there are no adverse consequences for any friar, employee or volunteer as a consequence of reporting a possible breach of professional standards in accordance with this Policy.

# Distribution of responsibilities (cont'd)

## Provincial Minister (Chairman):

1.18 The Provincial Minister is the Major Superior of the Franciscan Friars of the Holy Spirit Province. He is simultaneously Chairman of Franciscan Order of Friars Minor, which is the corporate and civil legal entity associated with the Province in Australia. The Provincial Minister is responsible for all friars of the Province or present in the territory of the Province with his explicit authorisation, and all those employed directly by the Franciscan Order of Friars Minor in Australia. In relation to this Policy, he has responsibility for:

- overseeing implementation of the Code of Conduct and Safeguarding policy throughout the Province;
- ensuring that all who minister and work within the Province do so within an organisational structure that provides them with appropriate levels of support, accountability, training, and professional development;
- all friars engaged in active ministry, regardless of whether their ministry is under the auspices of the Province directly or through another agency (this accountability arises because it is the Provincial Minister who authorises any contract for and on behalf of the friar in respect of their ministry);
- consulting with the Professional Standards Advisory Panel and taking appropriate action where required.

1.19 While the ultimate responsibility for care of friars, employees and volunteers rests with the Provincial Minister, he will delegate day-to-day management of professional standards matters to the Provincial Delegate for Professional Standards and Safeguarding and the Director of Professional Standards and Safeguarding.

## Definitory (Directors)

1.20 The Definitory is the council of friars who are elected by all the friars of the Province to advise the Provincial Minister on certain matters, as required by the constitutions and statutes of the Franciscan Order of Friars Minor. The Provincial Minister together with the members of the Definitory also constitute the Directors of Franciscan Order of Friars Minor. The Directors of the Company are responsible for approving this policy, and for amending it as required.

# Distribution of responsibilities (cont'd)

## Guardians

1.21 Each local community of friars is led by a Guardian who is responsible for the welfare of friars and the management of the local community. In relation to the implementation of this Policy, the Guardian's responsibilities include:

- ensuring that the Province's professional standards policies and practices are adhered to by those personnel for whom he is responsible;
- reporting any breaches of the Code of Conduct or any safeguarding concerns within the local community to the Director, Professional Standards and Safeguarding;
- providing support for any friar within the local community or any local Franciscan employee or volunteer who is the subject of a professional standards complaint.

## Provincial Secretary (Company Secretary)

1.22 The Provincial Secretary is the person appointed by the Provincial Minister and Definitory to ensure competent administration and good governance of the Province, and fulfils the role of Company Secretary for the civil entity, the company known as Franciscan Order of Friars Minor. In relation to the implementation of this Policy, the Provincial Secretary's responsibilities include:

- ensuring that the Definitors consider and approve policy and procedure documents as required and advised;
- administering the financial elements of any claim;
- maintaining records and archives relating to Franciscan Personnel and professional standards matters.

## Provincial Delegate for Professional Standards and Safeguarding

1.23 The Provincial Delegate for Professional Standards and Safeguarding (the Provincial Delegate) is the friar to whom the Provincial Minister has given delegated authority to oversee all aspects of professional standards and safeguarding for the Province and to advise the Provincial Minister in relation to professional standards and safeguarding policy, complaints, and the settlement of abuse claims. The Provincial Delegate reports directly to the Provincial Minister.



# Distribution of responsibilities (cont'd)

## Director of Professional Standards and Safeguarding

1.24 The Director of Professional Standards and Safeguarding (the Director) is the person authorised to manage the Province's response to professional standards complaints or concerns. The Director reports to the Provincial Delegate and is responsible for:

- promoting a safe environment for children and adults within the life and ministries of the Province and with all Province personnel;
- providing knowledge, leadership, advice and expertise to the Provincial Minister through the Provincial Delegate in relation to professional standards and safeguarding;
- receiving all reports of complaints or concerns relating to actual or suspected breaches of professional standards;
- managing the Province's compliance with all relevant statutory obligations;
- ensuring that any complaint, allegation or concern is assessed, investigated and determined in accordance with this Policy;
- providing regular reports about all professional standards complaints, allegations and concerns to the Professional Standards Advisory Panel for review and advice;
- in consultation with the Provincial Delegate, designing and implementing policies and procedures for screening, formation, education and training of Province personnel in relation to professional standards and safeguarding issues;
- day-to-day management of claims for compensation relating to historical abuse and contemporary complaints;
- monitoring, evaluation and reporting on professional standards compliance;
- regularly reviewing all professional standards policies and practices.

## Professional Standards Advisory Panel

1.25 The Professional Standards Advisory Panel assists the Franciscans by reviewing regular reports from the Director and providing advice to the Provincial Minister, the Provincial Delegate and the Director on all matters referred to it relating to the Province's professional standards and safeguarding policies and practices, including its response to any complaints or concerns.

# 2

## **Professional Standards Code of Conduct**

# Guiding principles and values

2.1 In order to maintain the highest standards of ethical and professional behaviour in their dealings with others, Franciscan Personnel will:

## **Respect**

- show respect and courtesy to every person regardless of their age, sex, race or ethnicity, cultural background, sexual orientation, gender identity, physical or mental ability, health status, religious or political beliefs, socio-economic status, family history, criminal background, or any other attribute;
- treat every person without discrimination;
- respect diversity in all its forms and be sensitive to the needs and interests of people from culturally and linguistically diverse backgrounds;
- not engage in behaviour that amounts to, or could be perceived as discrimination, bullying, harassment or intimidation, or that could be humiliating to others;

## **Honesty and Integrity**

- demonstrate honesty and integrity;
- treat every person fairly;
- respect and honour the trust that may be placed in them by others by reason of their role;
- be sensitive to power imbalances that may exist in their relationships with others and strive never to abuse or exploit power;
- act ethically and responsibly in any matter involving the finances and/or resources of the Order;
- not engage in fraud, corruption or any other dishonest behaviour;
- be sensitive to potential conflicts of interest and declare any such conflicts when they arise to their relevant superior or line manager [the relevant authority] so they can be managed appropriately;

## **Safeguarding**

- act to ensure the safety and well-being of children, young people and adults, protecting them from the risk of harm or abuse;
- be sensitive to the needs and interests of people who are vulnerable, including for example, the elderly, people living with a disability, the homeless, and refugees;



# Guiding principles and values (cont'd)

## **The Environment**

- seek to protect the environment from harm;

## **Accountability**

- be accountable for their actions to the individuals and communities they serve and to legitimate authority;
- take responsibility for understanding and complying with the requirements of this Policy.



# 3

## **Safeguarding Policy and Practices**

# Interactions in general

- 3.1 In all their interactions, Franciscan Personnel should always be concerned to ensure the safety and wellbeing of everyone, including children, young people, and adults. However, in any activity, process or decision where children or vulnerable persons are involved, their safety and best interests should be the primary consideration.
- 3.2 Behaviour by Franciscan Personnel that involves any form of abuse, harassment, bullying, discrimination or vilification of others will not be tolerated.
- 3.3 Franciscan Personnel will observe and maintain appropriate boundaries. This includes physical, sexual, emotional and psychological boundaries. The following are examples of some of the kinds of behaviours towards children, young people, adults, or other Franciscan Personnel which are inappropriate and in breach of the Code of Conduct:
  - inappropriate touching or other physical contact;
  - comments about a person's appearance or other physical attributes;
  - swearing at a person;
  - lewd or suggestive comments or jokes, or remarks that might be taken to have a sexual innuendo;
  - behaviour that a reasonable person would be likely to perceive as bullying, intimidating, demeaning, belittling or humiliating.
- 3.4 Franciscan Personnel should be mindful that some people may be more vulnerable to discrimination, abuse or neglect than others, and may also face greater barriers to disclosure if they experience abuse, due to their circumstances. This includes: people with a disability, and people from culturally or linguistically diverse backgrounds, including but not limited to, Aboriginal and Torres Strait Islander peoples, Maori, and refugees.

# Interactions with children and young people

3.5 All children and young people have a right to grow and flourish in a safe environment, and to be protected from violence, exploitation and harm.

3.6 In all interactions with children and young people, Franciscan Personnel will:

- maintain appropriate boundaries that are respectful of the needs, interests and autonomy of the child or young person – this includes physical, sexual, emotional and psychological boundaries;
- respect the primary rights and obligations of parents and guardians to care for the child;
- not engage in activities with a child without the knowledge and consent of those responsible for the care of the child in that context (e.g. parents, teachers or carers);
- always seek to have another adult present or close by when they are interacting with a child or young person.

3.7 The following behaviours are unacceptable in any circumstances in interactions between Franciscan Personnel and a child or young person:

- inappropriate touching;
- any conduct that is sexual in nature;
- the use of force;
- the use of physical restraint (except where a child or young person is causing or at risk of causing injury to themselves or others);
- behaviour that a reasonable person would be likely to perceive as bullying, intimidating, demeaning, belittling or humiliating;
- lewd or suggestive comments or jokes, or other communication of a sexual nature, including suggestive remarks or innuendo;
- any form of sexual exhibitionism, including undressing in the presence of a child or young person;
- watching a child or young person undress, except where this is necessary for appropriate supervision or cannot otherwise be avoided;
- conversation or other communication that explores one's own intimate personal feelings with a child or young person;
- exposing the child or young person to pornography or material with sexual, violent or other adult themes;
- providing alcohol, tobacco or illicit substances to a child or young person;
- sleeping in the same bed, sleeping bag, bedroom or tent with a child or young person;
- having a child or young person spend the night without written permission of a parent/guardian;
- transportation of a child or young person without written permission from a parent or guardian other than in an emergency or abnormal situation.



# Interactions with children and young people (cont'd)

- 3.8 Franciscan Personnel must ensure that they are familiar with the causes and signs of child abuse and neglect, including Grooming and Grooming Behaviours (see box) which may be a precursor to the sexual abuse of a child or young person.

## Grooming and Grooming Behaviours

Grooming is when an adult communicates with a child with the intention of facilitating the child's involvement in sexual conduct, or attempts to build an emotional connection with a child, in order to gain their trust for the purposes of sexual abuse or exploitation. Grooming may include exposing children to sexually explicit material, providing a child with alcohol or drugs, or travelling to meet with a child with the intention of procuring the child for unlawful sexual activity. Grooming does not necessarily involve any sexual activity or even discussion of sexual activity. Signs of grooming may be quite subtle, such as paying special attention to a child or vulnerable person or providing small gifts or favours. Grooming may be directed not only at the child themselves, but also at those close to them including family members or carers.

While intention is relevant to the offence of grooming, it is possible that a person may engage in behaviours that to a reasonable observer have the appearance of grooming even though they are acting innocently and without any intent to abuse or exploit a child. All such behaviours – referred to in this Policy as "Grooming Behaviours" – should be avoided regardless of intent.

- 3.9 Franciscan Personnel will not display favouritism towards a particular child or young person or act in a way that creates inappropriate intimacy or a sense of obligation on the part of the child or young person or makes them more vulnerable, dependent or susceptible to manipulation. In particular, the following behaviours towards children or young people—which are Grooming Behaviours—are to be avoided:
- spending inappropriate "special" time with a child or young person;
  - showing particular favours to one child or young person but not to others;
  - giving gifts to children or young people, other than gifts of a token or minor nature;
  - allowing a child or young person to overstep rules that apply to others;
  - extending the relationship with a child or young person outside normal professional contact;
  - asking a child or young person to keep any aspect of the relationship secret.



# Maintaining a safe physical and online environment

- 3.10 All Franciscan Personnel will ensure that their interactions with children, young people and adults take place in a safe and open physical environment. They should avoid physical settings that risk compromising themselves or others.
- 3.11 While private conversations may sometimes be appropriate, including in the context of providing ministry, wherever possible it is always good practice that such conversations take place within the line of sight of other people, or in a room with glass walls or doors, or with the door open.
- 3.12 Care should be taken to ensure that an appropriate physical distance is maintained during interactions with any other person so that the person feels comfortable at all times.

## Use of communications technology

- 3.13 In order to maintain appropriate boundaries and to minimise cybersecurity risks, all email communications relating to the work or ministry of Franciscan Personnel should only be sent via the Province's email system or the official email system of the agency to which they are directly accountable (e.g. diocese). Personal email accounts should not be used for these purposes.
- 3.14 In order to ensure a safe online environment for all children, young people and adults with whom we work:
- usage of communications technology by Franciscan Personnel should always be professional, respectful and appropriate (online yelling or screaming at another person is inappropriate, as is viewing online pornography, sending sexually explicit, pornographic or offensive emails or text messages, or posting personal photographs of a sexual or suggestive nature);
  - email communications with children, young people or adults relating to the work or ministry of Franciscan Personnel should always be professional and appropriate;
  - in general, text, email or social media communications between adults and children or young people should not take place without the knowledge of parents or guardians;
  - photos of others, whether of children or adults, should not be posted on any website or social media site without the consent of the person concerned;
  - it is not appropriate to post any photo of a child or young person without obtaining the prior consent of their parent or guardian.

# Recruitment and screening

- 3.15 In order to protect children, young people and adults, the Province has rigorous procedures for the selection and screening of anyone who wishes to join the Franciscan Friars, or who seeks to work with us as an employee, or as a volunteer in a position that is likely to involve more than incidental contact with children or vulnerable people.
- 3.16 All job advertisements for positions within the carriage of the Provincial administration will include a reference to the Province's commitment to providing an environment which is welcoming, nurturing, respectful and safe for all and to the Professional Standards Code of Conduct and Safeguarding Policy, and will also include selection criteria that specifically relate to safeguarding.
- 3.17 All positions within the carriage of the Provincial administration will have a clear job description outlining the position's essential or relevant qualifications, experience, and responsibilities in relation to safeguarding.
- 3.18 Any new candidate who wishes to join the Franciscan Friars, and any applicant for any employed or voluntary position that is likely to involve more than incidental contact with children or vulnerable people will first be required to provide the following information:
- proof of personal identity and any relevant academic, professional or other qualifications;
  - a national Police Check in Australia;
  - where applicable, a national Police Check from the country in which they are or have been domiciled, and from any country in which they have been domiciled for an accumulated period of 12 months or more in the previous 10 years;
  - a Working with Children Check (WWCC), Working with Vulnerable People Check (WWVP), or local equivalent;<sup>14</sup>
  - references that address the person's suitability to working with vulnerable people, including children.
- 3.19 Any friar from outside the Holy Spirit Province who is visiting for ministry or relocating to the Province will be required to provide:
- proof of personal identity;
  - a national Police Check from the country in which they are or have been domiciled for an accumulated period of 12 months or more in the previous 10 years;
  - a Working With Children Check (WWCC), Working With Vulnerable People Check (WWVP), or local equivalent.

14 If a police background check or a Working with Children Check is not available or attainable from the country of residence, other options such as a statutory declaration will be considered.

# Recruitment and screening (cont'd)

## Record Keeping

- 3.20 The person responsible for the recruitment will be responsible for gathering, verifying, and recording the above information, a copy of which is to be provided to the Director and kept on file in the Provincial Office. All documentation relating to the recruitment and screening of friars is to be permanently and securely stored in the Provincial Archives.
- 3.21 The Director is responsible for ensuring that the Province's database of personnel with valid Working with Children Checks is maintained and up to date.

# Training and supervision

## Training

- 3.22 All Franciscan Personnel have a role to play in safeguarding those who are vulnerable, including children, young people and adults. In order to fulfil that role effectively, they need to understand safeguarding issues and risks, and to regularly update their knowledge of their statutory obligations and the Province's professional standards and safeguarding policies and procedures.
- 3.23 The Province will ensure that all new friars at the commencement of their novitiate, all new employees, all new volunteers working in positions that are likely involve contact with children or vulnerable people, and all those taking up leadership positions within the Order, will receive formal induction training in relation to:
- this Professional Standards Code of Conduct and Safeguarding policy, including complaint handling processes and how to respond to allegations, disclosures or concerns about abuse;
  - basic safeguarding awareness, including information about child development and developmental needs, how to recognise safeguarding risks, signs of harm and abuse in children and vulnerable people, and Grooming and Grooming Behaviours;
  - their statutory reporting obligations;
  - any relevant role-specific training requirements.



# Training and supervision (cont'd)

- 3.24 The Province will ensure that the initial formation curriculum for friars, and the mandatory professional development that friars receive at regular intervals throughout their lives in ministry, includes training in the following:
- professional standards and safeguarding, including in relation to childhood development, how to recognise and respond to signs of abuse and neglect in children, and Grooming and Grooming Behaviours;
  - how to respond pastorally to victims and survivors of child sexual abuse;
  - how to protect against clericalism and clericalist attitudes;
  - professional and ministerial ethics and ethical decision-making.
- 3.25 All friars in active ministry, Franciscan employees, and volunteers working in roles that involve contact with children or vulnerable people will be required to update their safeguarding training at least once every three years. Records of attendance at training sessions will be required and retained for auditing purposes.

## Supervision

- 3.26 All friars in active ministry and all Franciscan employees and volunteers require a level of line supervision and/or professional or pastoral supervision appropriate for their designated role. The Province will ensure that appropriate professional or pastoral supervision and appropriate support arrangements are provided for all Franciscan Personnel.
- 3.27 All friars in full-time ministry and all Franciscan employees will receive an annual ministry or work appraisal, including in relation to any safeguarding responsibilities relevant to their role.



# Responding to disclosures and safeguarding concerns

- 3.28 Franciscan Personnel will foster an open and trusting environment in which everyone, including children, young people and adults, feels comfortable to report inappropriate behaviour or to voice any concerns they may have.
- 3.29 Franciscan Personnel should be aware that a person seeking to raise a concern about inappropriate behaviour may do so in a way that is subtle or indirect and not framed in terms of a complaint. Franciscan Personnel receiving a disclosure of this kind must be sensitive to what the person is trying to communicate and should respond in a way that makes the person feel comfortable to voice his or her concerns. This is especially important when it is a child or young person making the disclosure. If in doubt, friars or Franciscan Personnel should seek advice from a senior friar or the Director.

## Internal obligation to report Professional Standards breaches & safeguarding concerns

- 3.30 Franciscan Personnel who become aware of any behaviour that may be in breach of the professional standards (Code of Conduct) or safeguarding obligations set out in this Policy, or of any other safeguarding concern, must report it to the Director. The duty to report covers:
- any complaint or concern raised by a third party about conduct on the part of any friar or Franciscan employee or volunteer that may be in breach of this Policy;
  - any disclosure made by a third party which indicates or may indicate conduct by Franciscan Personnel that may be in breach of this Policy, including conduct such as Grooming Behaviours that may be a warning sign for a breach of this Policy;
  - any personally observed conduct by Franciscan Personnel that constitutes a breach of this Policy or raises a suspicion of a breach;
  - any reasonable suspicion or concern that a child, young person or adult has been harmed or is at risk of harm;
  - any concern about safeguarding risks in the physical or online environment.
- 3.31 The report should be made to the Director as soon as possible after the person becomes aware of the matter. Where there could be an ongoing risk of harm to another person, the report must be made immediately.

# Internal obligation to report Professional Standards breaches & safeguarding concerns (cont'd)

- 3.32 Where the sexual abuse of children, young people or adults is concerned, the duty to report also applies to concerning or ambiguous behaviours that may not of themselves constitute abuse but could be a sign that the person has been abused or is at risk of being abused. Not all behaviour is easy to interpret, and the decision about whether to make a report is not always clear-cut. Careful exercise of personal judgement may be required in such circumstances.
- 3.33 There will be cases where the evidence of inappropriate behaviour is weak – sufficient to give rise to a concern, but leaving uncertainty as to whether the concern is well founded. As a general rule, where something is sufficient to give rise to a concern, it should be reported. This applies whether the concern is based on first-hand observation or on second-hand accounts received from another person, and regardless of whether the allegations are disputed by the person in question. In case of doubt, Franciscan Personnel should discuss the matter with the Director, who can advise on an appropriate response.
- 3.34 Where the report is made verbally, the Director must make a contemporaneous and detailed record of what was said. Where possible and appropriate, this record should be provided to the person making the report to confirm the completeness and accuracy of the information recorded.
- 3.35 Other than reporting to the Director, the person reporting a concern or complaint should treat the matter confidentially.
- 3.36 No person who makes a report in good faith will be subjected to any criticism, penalty or other adverse consequence for having made the report.
- 3.37 Individuals who are not Franciscan friars, employees or volunteers cannot be subject to this Code of Conduct and Safeguarding Policy. However, there may be circumstances where the Province has an obligation to respond to allegations or concerns about the conduct of non-personnel (for example, concern that a child participating in one of our activities is being exposed to family violence at home, or the need to manage sexually concerning behaviour between children may demand a response). In some circumstances there may be a legal requirement to report the matter to the police or other external authority.
- 3.38 All reports will be managed in accordance with the Province's Policy on Managing Professional Standards Complaints and Concerns.

# External obligations to report

- 3.39 All Franciscan Personnel must be aware of any civil reporting obligations that apply to them and must comply in all cases. Where necessary, advice or clarification should be sought from the Director.

## Mandatory Reporting laws

- 3.40 All Australian States and Territories have laws – known as Mandatory Reporting laws – that require certain categories of people (e.g. teachers, health professionals, ministers of religion) to report information about known or suspected cases of child abuse and neglect to government child protection authorities. This includes information obtained in the confessional by ministers of religion. These matters may relate to an incident or risk of harm. Mandatory reporting obligations fall on individuals. The specific mandatory reporting obligations vary between jurisdictions. The Director has a key role in supporting and facilitating Franciscan Personnel in complying with such individual reporting requirements. In some cases, it may be necessary to report the same matter to more than one external agency at the same time.

## Reportable Conduct laws

- 3.41 In addition, a number of Australian States and Territories have Reportable Conduct schemes which require agencies in designated sectors that involve child-related work (e.g. schools, out-of-home care, faith-based institutions) to report agency personnel who are the subject of allegations or convictions of sexual, physical or emotional abuse, or neglect, of children to reportable conduct oversight authorities such as the Ombudsman or the Children's Guardian. Designated sectors and specific reporting obligations vary between jurisdictions. All Franciscan personnel have an obligation to notify any reportable conduct matters to the Director, immediately.

## Failure to Report laws

- 3.42 Some jurisdictions have legislation which makes it an offence not to report criminal conduct to the police, or not to report a child abuse offence to the police. However, even in the absence of such legislation, Franciscan Personnel should report criminal conduct to the police. Where Franciscan Personnel reasonably suspect or know that a serious crime has been committed by a friar or any Franciscan employee or volunteer on Franciscan premises or in relation to any Franciscan ministry, they should immediately notify the Director, who will advise and assist in the making of a report.



# Privacy and record keeping

- 3.43 In the course of their official duties and/or ministry, Franciscan Personnel will receive and have access to personal information about other individuals, much of which may be highly sensitive. This information may include:
- personal information disclosed by a person receiving ministry;
  - personal information disclosed by complainants alleging a breach of professional standards;
  - information contained in personnel files.
- 3.44 Franciscan Personnel must be aware of their ethical and legal duty to respect the privacy of personal information, and must comply with the requirements of privacy legislation and the Province's **Privacy Policy**, including in relation to:
- collecting personal information, including the need for consent to the collection of information;
  - using and disclosing that information in accordance with the person's consent or otherwise as permitted by law;
  - secure storage and retention of records;
  - rights of access to the information by the person concerned, including a right to request correction of information;
  - procedures to be followed in the event of a data breach.
- 3.45 Because complaints of abuse or other professional standards breaches by Franciscan Personnel may relate to conduct alleged to have taken place many years or decades earlier, all personnel files must be retained permanently.
- 3.46 Franciscan Personnel must ensure they are familiar with the Province's **Record-Keeping Policy**, their obligations under privacy law in relation to the creation and storage of written records, and rights of access to those records.

# Consequences of breaching this Code of Conduct and Safeguarding Policy

- 3.47 Breaching this Code of Conduct may constitute misconduct and result in disciplinary action up to and including dismissal (with or without notice), possible criminal proceedings, or other outcomes (see also paragraphs 5.50-5.54, below).
- 3.48 The Provincial Minister will permanently remove from ministry of any kind a friar who is:
- the subject of a complaint of sexual abuse of a child or vulnerable adult that is substantiated according to the relevant civil standard;
  - convicted of a criminal offence relating to the sexual abuse of a child or vulnerable adult; or
  - otherwise assessed as posing an unacceptable risk to the safety of children or vulnerable adults.
- 3.49 Any employee who is the subject of a complaint of sexual abuse of a child or vulnerable adult that is substantiated according to the relevant civil standard, or convicted of a criminal offence relating to the sexual abuse of a child or vulnerable adult, or otherwise assessed as posing an unacceptable risk to the safety of children or vulnerable adults, will have their employment terminated.



# 4

## **Life and Ministry of Friars**

# Providing ministry

- 4.1 This section of the Code of Conduct applies to all professed friars, novices and postulants of the Franciscan Friars Holy Spirit Province.
- 4.2 When providing ministry, friars must always act in the best interests of those they seek to support or assist.
- 4.3 Within the pastoral care relationship, friars must ensure there is clarity around their role and the expectations of those they seek to support or assist.
- 4.4 Friars should always be aware of the potential power imbalance between them and the person receiving ministry. They should actively refrain from behaviours that risk exploiting their position of power in ways that might be seen as manipulative or exploitative. In particular, they should be careful not to engage in any form of spiritual abuse by using their position of spiritual authority to exercise inappropriate influence or control. Instead, they should seek to build relationships of collaboration and mutual respect.
- 4.5 Friars must avoid unhealthy levels of dependency on the part of those receiving ministry. While some level of dependency may be inevitable on occasions, particularly where a person is especially vulnerable, friars must be sensitive to the need to manage dependency carefully to ensure that the person is not made more vulnerable. In cases where dependency is an issue, friars should seek advice from their Pastoral Supervisor.
- 4.6 Friars must be aware of the limits of their skills and experience in providing ministry, and should not undertake any role (such as relationship counselling or counselling for abuse or addiction) that is beyond their competence, their qualifications, or the role for which they have been trained. They must be alert to the need to refer a person elsewhere for advice or assistance, where appropriate, such as where the pastoral care relationship is not effective in meeting the person's needs or where specialised professional support may be required.
- 4.7 Where friars propose to keep a written record of information received in the course of providing ministry, this should be explained to the person concerned so that they are aware that records will be kept and can make an informed decision about what information they are comfortable to disclose or have recorded. Any such records must be stored securely in order to prevent any unauthorised access.

# Providing ministry (cont'd)



## Maintaining appropriate boundaries

- 4.8 Friars must understand, and at all times maintain, appropriate professional boundaries. This includes physical, sexual, emotional and psychological boundaries. Friars must not allow inappropriate intimacy to develop in the pastoral care relationship. In particular, the following behaviours are inappropriate:
- inappropriate touching or other physical contact;
  - lewd or suggestive comments or jokes, or remarks that might be taken to have a sexual innuendo;
  - comments about a person's appearance or physical attributes;
  - discussing one's own emotions or intimate personal feelings;
  - behaving in a way that creates a sense of obligation on the part of the person receiving ministry;
  - favouritism towards a particular person receiving ministry that suggests there is a special relationship different from the friar's other pastoral care relationships;
  - extending the relationship beyond normal professional contact.
- 4.9 Friars should exercise careful judgment when determining the setting in which ministry is provided. It should be an environment in which the person receiving ministry feels safe, and should ensure an appropriate level of privacy while still permitting openness and visibility to the extent possible. This standard applies, in particular, to children and young people and to the setting for particular sacraments, such as the sacrament of Reconciliation. A friar's living quarters are not an appropriate place for providing ministry and should not be easily accessible to outsiders.<sup>15</sup>
- 4.10 Friars should also be sensitive to the physical distance between themselves and the person receiving ministry, to ensure the person feels comfortable. Extreme care must be exercised by friars when initiating or responding to any form of physical contact in the course of providing ministry. While it may be appropriate to make a physical gesture of sympathy or concern in some circumstances, friars should be aware that touching or other forms of physical contact may sometimes be unwelcome or open to misinterpretation. Friars should exercise careful judgment when deciding whether any form of touching is appropriate, and should always be sensitive to the response of the other person to ensure so far as possible that there is no discomfort, unease or misunderstanding.
- 4.11 Where a friar becomes frustrated or angry in a pastoral care relationship or feels sexual attraction to the other person, he should immediately seek advice from his Pastoral Supervisor to assist him in managing the relationship ethically and appropriately. This should include consideration of whether the relationship should be terminated.

15 See Canon 667 §1 (Code of Canon Law, 1983).

# Providing ministry (cont'd)

## Managing conflicts of interest in ministry

- 4.12 Friars must not provide ministry in circumstances where there could be a conflict of interest between the duty owed to the person receiving ministry and another person to whom the friar is also providing ministry, or a conflict with the friar's own interests. Examples of this include where the friar is asked to provide certain kinds of ministry to a close friend or family member, or to more than one person from the same family.
- 4.13 While there may be occasions when it is appropriate to provide certain kinds of ministry to family members or friends (e.g. baptisms, weddings, funerals, saying mass), friars must have a clear understanding that, in the main, the pastoral care relationship is a professional relationship, different from relationships they may have with family members or friends. They must also understand that different standards of behaviour are required within a ministry context, since confusion between personal and pastoral relationships can lead to a loss of objectivity and a failure to act in the person's best interests.
- 4.14 Where there is the potential for any actual or perceived conflict, the responsibility for providing ministry should be transferred to a colleague. In case of doubt as to whether a conflict of interest exists, the friar should seek advice from a colleague or his Pastoral Supervisor.

## Professional Development and Pastoral Supervision

- 4.15 Formation for exercising ministry is an ongoing process that continues throughout the active ministerial life of a friar.<sup>16</sup> Friars should embrace a culture of life-long learning and be willing to undertake ongoing professional development and training, particularly when moving into a new area of ministry where different skills may be required.
- 4.16 Friars must engage regularly and fully in processes to support their ongoing professional development. These processes should include:
- regular Pastoral Supervision with a qualified supervisor who is independent from the Order (see below);
  - mandatory regular training in professional responsibility and boundaries, ethics in ministry, and child-safe practices;
  - regular professional development in areas pertinent to their ministry;
  - annual ministry or work appraisals;
  - personal reflection on appropriate values and behaviours.

16 Cf. Order of Friars Minor, *General Constitutions*, General Curia OFM, Rome, 2010, Article 135.

# Professional Development and Pastoral Supervision (cont'd)

- 4.17 Friars must take responsibility for ensuring they are and remain familiar with the literature and best practice around pastoral care and should actively seek training and other opportunities to update and improve their understanding.
- 4.18 Friars must also ensure that they are familiar with the requirements of this Policy and the obligations imposed on them, such as any relevant Mandatory Reporting obligations. This includes ensuring familiarity with the kinds of behaviours that might be warning signs for breaches of professional standards, such as Grooming Behaviours or behaviour on the part of a friar that might indicate alcohol or other substance abuse.

## Pastoral Supervision

- 4.19 Pastoral Supervision is one of the essential elements of accountability, professional development, and support for the Franciscan friars of the Holy Spirit Province. It contributes to building a capacity for insight and reflection on the part of friars, both of which are critical aspects of any form of ministry.
- 4.20 In accordance with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse<sup>17</sup> and the Catholic Church in Australia's National Catholic Safeguarding Standards,<sup>18</sup> all friars who are engaged in any form of active ministry, including full-time, part-time, or occasional ministry, are required to undertake Pastoral Supervision.
- 4.21 Friars who are engaged in full-time ministry will be required to undertake a minimum of ten (10) one-hour sessions per calendar year with an accredited pastoral supervisor.
- 4.22 Friars who are engaged in part-time or occasional ministry may choose to engage in fewer Pastoral Supervision sessions, on a pro-rata basis to be determined in consultation with the Provincial Delegate.
- 4.23 Every effort will be made to see that Pastoral Supervision is tailored to suit each friar's specific needs and the form of ministry in which they are engaged.<sup>19</sup> Group supervision with an external supervisor may be appropriate where friars are approaching retirement or are semi-retired. Options for consulting which are other than face-to-face may be appropriate in some circumstances.

17 *Final Report, Recommendations 16.25 and 16.45.*

18 National Catholic Safeguarding Standards, 5.5.3.

19 Where friars are engaged within an external agency, such as a school or university, and are already provided with pastoral supervision, this will be considered to have fulfilled the requirement for pastoral supervision.



# Professional Development and Pastoral Supervision (cont'd)

- 4.24 All friars in any form of ministry will be required to show evidence that they have completed the required number of Pastoral Supervision sessions. At the end of each calendar year, or part thereof, the friar will submit the Certification Document (see Appendix 1) to the Director confirming his regular participation in Pastoral Supervision. The original of the Certification Document will be stored at the Provincial Office for the purpose for auditing purposes, and a copy should be kept by the friar.

## Definition of Pastoral Supervision

The Royal Commission into Institutional Responses to Child Sexual Abuse heard that issues such as loneliness, over-work, social isolation and lack of self-care were contributing factors to the sexual abuse of children by Catholic clergy and religious, along with a lack of formal oversight and accountability structures, a lack of support in how to live a celibate life, and a lack of training in pastoral ethics and the proper exercise of power in ministry. The Royal Commission recommended that Professional or Pastoral Supervision should be mandatory for all people in religious or pastoral ministry.

Professional or Pastoral Supervision is accepted practice in many caring professions, including social work and psychology, as a means of supporting practitioners to reflect critically on their practice and its effectiveness in a regular and structured manner. Professional or pastoral supervision is also mandated for chaplains in public hospitals, prisons, universities and the armed services.

## Pastoral Supervision is defined as:

- a regular, planned, intentional working space, with good boundaries, in which an accredited Pastoral Supervisor who is trained and skilled in Professional Supervision or Pastoral Supervision meets with one or more people in religious or pastoral ministry (the Participants) to consider and analyse the pastoral or ministerial practice of the Participants;
- a mentoring of professional practice which provides an opportunity to reflect on pastoral practice in an objective forum, to learn from this reflection, and to review and adapt pastoral practice where necessary;
- a relationship that encourages exploration of complex and sensitive issues arising in pastoral ministry;

# Professional Development and Pastoral Supervision (cont'd)

- a framework involving three ways of thinking and understanding: psychological, spiritual and theological;
- a relationship characterised by trust and safety;
- psychologically informed, in that it draws on relevant psychological theory and insight to illuminate intra-personal, inter-personal and systemic issues that may emerge in the course of pastoral ministry;
- engaging in contextually-sensitive thinking in that the Pastoral Supervision experience pays attention to the particularities of the ministry setting, culture and worldview in which the pastoral ministry is located;
- praxis-based in that the work of Pastoral Supervision focuses on issues that arise in and from the Participant's pastoral practice;
- an opportunity to grow in vocational identity, pastoral competence, self-awareness, spiritual and theological reflection, pastoral interpretation, quality of presence, accountability, response to challenge, mutual learning and an understanding of competence within the pastoral setting;
- attentiveness to the complex issues of fitness to practice, skills development, management of boundaries, management of workload, professional identity and the impact of pastoral ministry on all concerned within the pastoral work environment.

## Pastoral Supervision is not:

- **spiritual accompaniment or direction**, which explores the friar's spiritual life and faith development. Aspects of this may arise in Pastoral Supervision but are not the main focus;
- **counselling or therapy**, which is aimed at helping the friar gain insight into their personal dynamics or to resolve or live more positively with their psycho-social strengths and limitations. Aspects of this may arise in Pastoral Supervision and, if necessary, the person may be encouraged to seek counselling support or therapy;
- **line management supervision**, which addresses work performance, accountability and professional development through a management relationship between the person and their manager or employer;
- **casual conversations with a colleague or friend**, which address the issue of support but lack the structure and accountability necessary for effective Pastoral Supervision.

# Professional Development and Pastoral Supervision (cont'd)

## The Pastoral Supervisor

4.25 The Pastoral Supervisor will be a person who has some training in the psychological sciences through any one of the following disciplines: social work, psychology, clinical pastoral education, or through a specialised course of training focusing on the supervision of pastoral ministry. While trained in a particular discipline, the Pastoral Supervisor will be open to various ways of examining pastoral ministry. The Pastoral Supervisor should not be another friar.

## Confidentiality in the Pastoral Supervision relationship

4.26 Confidentiality is an important aspect of the Pastoral Supervision relationship as it assists in the development of an environment of trust. What transpires between the friar and his Pastoral Supervisor should remain confidential except where the Pastoral Supervisor reaches the conclusion, after careful consideration and consultation, that information received in the Pastoral Supervision relationship should be disclosed to a third party because:

- the friar poses a real and imminent risk of harm to himself or another person;
- the friar has committed a criminal act that must be notified to the relevant authorities;
- disclosure of the information is otherwise required by law.

4.27 In such cases, the Pastoral Supervisor is encouraged to contact the Provincial Delegate with the aim of gaining increased support, assistance or other relevant professional intervention for the friar.

# Communal life and responsibility for personal well-being

- 4.28 Caring for oneself is an essential part of being able to work effectively and safely as a friar. Inadequate self-care, social isolation, depression, and substance abuse by those in religious ministry have been found to increase the risk that they will become perpetrators of abusive behaviour towards those who are vulnerable.
- 4.29 Friars must strive to have a healthy lifestyle that safeguards and promotes their physical and psychological health.
- 4.30 Friars should avoid working excessive hours that interfere with their personal needs and wellbeing. Leisure time and annual leave must be taken regularly. Friars are encouraged to develop interests outside their ministerial activities.
- 4.31 Friars should recognise their own need for personal and emotional support. They should develop and maintain a network of trusted peers and friends able to provide advice and emotional support when needed.
- 4.32 All friars will undergo regular health checks.
- 4.33 Friars must avoid alcohol or other substance abuse, and seek professional help for behaviours of this kind where necessary.
- 4.34 In their relationships both within and outside the Order, friars must foster environments where others feel confident to offer constructive criticism. Within the Order, friars should always be willing to engage in exchanges of constructive criticism in an open, responsive and non-threatening way.

# 5

## **Responding to Professional Standards Complaints and Concerns**



# Introduction



- 5.1 The Franciscan Friars are committed to maintaining high professional standards in everything we do. Our Professional Standards Code of Conduct sets out the principles and standards that are expected of all friars, employees and volunteers.
- 5.2 Where there are complaints or concerns that Franciscan Personnel may have breached the professional standards expected of them, it is essential that they be managed with rigour, consistency and fairness, and in accordance with ethical and legal requirements. The procedures that will be followed by the Province when responding to professional standards complaints and concerns are set out below.
- 5.3 For the purposes of this Policy, a “complaint” encompasses all reports or disclosures about behaviour by Franciscan Personnel that may constitute a breach of professional standards, whether by way of a formal complaint or otherwise, and whether the complaint is internally or externally received. The “complainant” means the person who has made the disclosure or report, whether or not the disclosure has been made as a formal complaint.

# Principles for responding to complaints and concerns

5.4 The Province's response to any professional standards complaints or reports about the behaviour of Franciscan Personnel will be based on the following principles:

- **Transparency:** The complaints process is clear and made known to Franciscan Personnel, and to the individuals and communities with whom we work.
- **Accessibility:** There is a culture that encourages the voicing of concerns. Those who do so are treated with respect and their concerns are taken seriously.
- **Appropriate reporting to police or other relevant government or church authorities:** The Province will comply with all requirements under civil law and church law, including requirements under Mandatory Reporting and Reportable Conduct laws, as well as the criminal law, and will report promptly and cooperate fully with all relevant external authorities.<sup>20</sup>
- **Protection of vulnerable individuals:** Recognising that parties to the complaints process may be highly vulnerable, appropriate steps are taken to support them and safeguard their welfare throughout the process.
- **Responsiveness:** All complaints or concerns are acknowledged and addressed in a timely manner. Complainants are kept informed of the progress of their complaint.
- **Fairness:** The process is fair to all parties involved. Allegations are investigated appropriately and without bias, with all interested parties having an opportunity to be heard.
- **Confidentiality:** To the extent that it is possible and appropriate to do so having regard to both ethical and legal requirements, the privacy of the individuals involved in a complaint investigation is respected.
- **Justice:** Where a complaint is upheld, any action taken against the person who is the subject of the complaint and any remedy offered to the complainant is reasonable, proportionate and consistent.
- **Commitment to continual improvement:** The insights and learning gained from complaints are used to improve professional behaviour and practice within the Province.

20 See Pope Francis, *Vos estis lux mundi*, apostolic letter issued *motu proprio*, 7 May 2019, Article 19.

# Making a complaint or reporting a concern

- 5.5 Any person who wishes to make a complaint or report a concern about the conduct of any Franciscan friar, employee or volunteer should do so by contacting the Director of Professional Standards and Safeguarding on **1800 411 610** or at: [profstand@franciscans.org.au](mailto:profstand@franciscans.org.au)
- 5.6 The Director must reply to the complainant acknowledging receipt of the complaint or report as soon as possible, but in any event within 5 days of receipt. When acknowledging receipt of the complaint or report, the Director must:
- outline the process by which the matter will be dealt with;
  - if applicable, advise whether the matter must be reported to any external authorities (e.g., police, child protection authorities, Ombudsman);
  - offer support to the complainant and the person who is the subject of the complaint, in accordance with paragraphs 5.26 – 5.37, below.
- 5.7 In the case of complaints or reports that are made verbally, the Director must make a contemporaneous and detailed record of what was said. In most cases, it will be appropriate for this record to be sent to the complainant to confirm the completeness and accuracy of the information recorded.
- 5.8 Anonymous complaints will be accepted, but extreme caution must be exercised when dealing with them because of the difficulty in verifying relevant facts and being satisfied as to the legitimacy of the complaint. The advice of the Professional Standards Panel must be sought in relation to the management of all anonymous complaints.
- 5.9 Procedural fairness requires that the identity of the complainant should generally be made known to the person who is the subject of the complaint. In some cases, (for example, where the victim and the complainant are not the same person) and subject to any legal requirements, it may be appropriate to keep the complainant's identity confidential to protect his or her welfare or for some other reason.

# Initial assessment and response

## Reporting to external authorities

- 5.10 On receiving a report of a breach of professional standards, the Director must immediately assess the matter to determine whether any external reporting obligations apply (e.g., obligation to report the matter to child protection or reportable conduct oversight authorities or the police).
- 5.11 In cases of historical child sexual abuse, a report must be made to the police regardless of whether the alleged perpetrator is alive or deceased.
- 5.12 Where the Director believes there is a duty to report the matter to an external authority, he or she must, following consultation with the Provincial Delegate, take steps to ensure this occurs. In some cases there may be a need to report to the police or other external authorities immediately; in any event, this should occur within 48 hours of receiving notice of the complaint or concern.

## Reporting to the relevant local church authority

- 5.13 Since 9 May 2020, under norms established by the Australian Catholic Bishops Conference in accordance with Pope Francis' *motu proprio*, *Vos estis lux mundi*, it is a requirement that reports received by clerics or members of religious institutes concerning a number of specified sexual abuse-related offences committed by clerics or members of religious institutes are to be reported to the relevant local church authority.<sup>21</sup>

## Notifying parents or guardian

- 5.14 Where the complaint is reported by or involves a child or young person, and it is safe to do so, the Director must notify the matter to the young person's parents or guardian.

<sup>21</sup> Pope Francis, Apostolic letter issued *motu proprio*, *Vos estis lux mundi*, 7 May 2019. The Catholic Church in Australia has developed a reporting form and an online portal to facilitate the submission of such reports.

# Initial assessment and response (cont'd)

## Risk assessment

- 5.15 Whenever a complaint is received, the Province has a duty to ensure that appropriate steps are taken to address any risk of harm to others while the matter is being investigated. This duty exists even though it will not immediately be possible to determine whether the complaint can be substantiated.
- 5.16 As soon as practicable after receiving a report of a complaint, the Director must undertake a risk assessment of the matter to determine whether there is any ongoing risk in relation to:
- the safety or wellbeing of children, young people, vulnerable people, or any other person;
  - the safety and well-being of the complainant and/or the alleged victim;
  - the safety and well-being of the person who is the subject of the complaint;
  - the well-being of an ecclesial community;
  - the expectations of the broader community.
- 5.17 The risk assessment should include consideration of whether external advice is necessary in order to assess the nature and extent of any risk.
- 5.18 In relation to any risks identified, the Director must develop a risk management plan that will be presented to the Provincial Delegate. The Provincial Delegate will liaise with the Provincial Minister in relation to the implementation of any risk management steps. The risk management plan will also be referred to the Professional Standards Advisory Panel for review and advice. Where the matter is urgent, the Director may need to convene a meeting of the Professional Standards Advisory Panel at short notice in order to seek its advice.
- 5.19 Risk management steps may include: temporarily standing aside a person from their normal duties, or putting measures in place to prevent contact between the person and the complainant, or any other relevant parties. Where the person who is the subject of the complaint is a friar, risk management steps may include, but are not limited to:
- temporarily withdrawing the friar from active ministry;
  - temporarily restricting the scope of ministry provided by the friar;
  - temporarily prohibiting the friar from providing ministry unless accompanied by another friar;
  - referring the friar for medical, psychological or other treatment or assistance;
  - notifying the friar's immediate superior of the nature of the complaint or concern;
  - notifying any external organisation where such notification is reasonably necessary to manage any identified risk.



# Initial assessment and response (cont'd)

- 5.20 Where the person who is the subject of the complaint is a friar and the complaint involves an allegation of sexual abuse of a child, young person or an adult, the friar will normally be withdrawn from providing any form of ministry until the matter has been investigated and concluded. In certain limited and justifiable circumstances, the friar may be permitted, with certain conditions, to engage in a limited form of ministry while the complaint is being investigated.
- 5.21 A decision to temporarily stand aside the person who is the subject of a complaint from their normal duties, including a decision to temporarily withdraw an accused friar from ministry or restrict the friar's ministry is part of risk management and does not constitute a penalty or a judgement about the person's guilt or innocence. All persons are presumed innocent unless or until guilt is admitted or determined by due process.
- 5.22 The authority to stand aside the person who is the subject of a complaint from their normal duties, including the authority to withdraw an accused friar from ministry or restrict the friar's ministry rests with the Provincial Minister. Any such decision will be made in consultation with the Provincial Delegate, the Director and the Definitory, and will also be referred to the Professional Standards Advisory Panel for review.

# Initial assessment and response (cont'd)

## Decision re investigation

- 5.23 The Director must review the reported complaint to determine in consultation with the Provincial Delegate:
- whether the matter requires further investigation; and
  - if so, whether the investigation can be managed internally or should be referred to an independent external investigator.
- 5.24 Cases involving allegations of more serious breaches of professional standards will be referred to an independent external investigator. In jurisdictions with reportable conduct laws, any reportable allegation will need to be notified to the relevant statutory oversight body before being referred to an independent external investigator.
- 5.25 In cases involving allegations of more minor breaches of professional standards, the Professional Standards and Safeguarding Office may decide that it would be more appropriate to investigate the matter internally.
- 5.26 Where the matter has been reported to the police because it may involve criminal conduct, the Director must consult with police before initiating an investigation in order not to compromise the police investigation. Agreement should be sought with the police in relation to when and how the Province will conduct its own investigation of the complaint, and any immediate steps that need to be taken to manage any internal risks. It may be appropriate for the Province to defer investigating the complaint until after the police investigation is completed. Where appropriate, the Director should also liaise with child protection and/or reportable conduct oversight authorities in order to ensure that criminal justice, civil law or other regulatory processes are not compromised by any internal investigation or church process.
- 5.27 The Director must inform both the complainant and the person against whom the complaint has been made about how the matter is to be investigated, the likely timeframe for resolution, and what will be required of each of them during the process.
- 5.28 Depending on the circumstances, the decision about when and how to inform the person who is the subject of the complaint about the details of the allegations and the identity of the alleged victim and/or the person making the complaint, will be a decision for the external investigator, and will be made in consultation with the Director.

# Supporting the complainant and the person who is the subject of the complaint

5.29 It is the duty of the Director to ensure that the process of investigation of any professional standards complaint or concern is fair, and that appropriate support is provided to both the complainant and person who is the subject of the complaint, throughout the complaint process. If necessary, advice should be sought about the most appropriate form of support and who should provide it.

## Support for the Complainant

5.30 Support for the complainant may include, but is not necessarily limited to:

- the offer of an independent support person to assist the complainant through the process;
- medical treatment and/or psychological support and counselling;
- in appropriate cases, interim payments to assist the complainant with certain expenses (such as counselling) or to ameliorate financial hardship;
- an explanation of the range of options available to the complainant to pursue the matter or obtain redress, e.g. criminal charges, civil claim for damages, application to the National Redress Scheme, or request for ex gratia compensation; and
- ongoing communication about the progress of the complaint process.

5.31 Where the Director determines that a complainant has a need for support, this should be referred for authorisation by the Provincial Delegate.

5.32 It is the responsibility of the Director to communicate with the complainant in relation to offers of support and, where necessary, put measures in place to make the support available.

5.33 In some cases, it may be appropriate to offer support to other people involved in or affected by the complaint, such as family-members of the complainant or staff or volunteers affected by the disclosure. The Director must consider in each case whether additional support of this kind should be offered.

5.34 Following the investigation and determination of a complaint, the Director must consider whether any form of ongoing support should be offered to the complainant. In cases where ongoing support is considered appropriate, this should be referred for authorisation by the Provincial Delegate.

5.35 Where the Director considers that support should be offered to the complainant or other people involved in or affected by the complaint, the Director will present a proposed support plan to the Professional Standards Advisory Panel for review and recommendations.

# Supporting the complainant and the person who is the subject of the complaint (cont'd)

## Support for the person who is the subject of a complaint

- 5.36 In each case, the Director must consider what support should be offered to the person who is the subject of a complaint during the process of investigating and determining the complaint.
- 5.37 Support for the person who is the subject of a complaint may include, but is not necessarily limited to:
- an offer to develop a support plan;
  - medical treatment and/or psychological support and counselling;
  - arrangements for a trusted friend or colleague to assist the person through the process;
  - advising the complainant that he or she has a right to independent legal advice;
  - an explanation of the process for managing the complaint, including the likely time-frame for resolution and what will be required of the person in the process; and
  - ongoing communication about the progress of the complaint process.
- 5.38 Whether or not an offer of support is accepted by the person who is the subject of a complaint, the Director has an obligation to assess whether a support plan is required, and if so, to develop an appropriate support plan.
- 5.39 The Director will present a proposed support plan to the Provincial Delegate for Professional Standards and Safeguarding and later to the Professional Standards Advisory Panel for review and recommendations.
- 5.40 If the person who is the subject of the complaint is a friar, the Delegate will inform the Guardian of the community where he lives, on a confidential basis, so that the Guardian can ensure that the friar is supported within his own community.

# Investigation of complaints

- 5.41 The Director must consider whether the complaint can adequately be investigated internally or whether an independent external investigator should be appointed. The more serious the complaint, the more likely it will be that an independent external investigation is appropriate.
- 5.42 If the Director determines that the complaint should be the subject of an independent external investigation, this should be referred to the Provincial Delegate for authorisation.
- 5.43 Once a decision to appoint an independent external investigator has been taken, the Director must appoint an investigator without unreasonable delay and provide the investigator with clear terms of reference and an agreed time frame for the investigation.
- 5.44 All investigations, both internal and external, must be conducted in accordance with the following principles:
- the investigator must be impartial, objective and properly trained;
  - there must be no conflict of interest on the part of any of the people involved in conducting the investigation;
  - relevant facts must be identified and established to the fullest extent possible according to the civil standard of the balance of probabilities;
  - the person who is the subject of the investigation must be given a full account of the allegations against them and have a proper opportunity to respond to these allegations;
  - where it is necessary to interview a child or young person as part of the investigation, this should only be done with the consent of the parents or carers and in the presence of an independent third party;
  - the investigation must be completed in a timely manner;
  - each stage of the investigation should be fully documented, including terms of reference, file notes of relevant conversations, witness statements where applicable, and a written record of any other investigations undertaken (e.g. site visits, inspection of documents);
  - the investigation findings together with reasons for those findings and any recommendations must be provided in writing.
- 5.45 At the conclusion of the investigation, the Director will notify the findings of the investigation to the Provincial Delegate and the Professional Standards Advisory Panel. The Provincial Delegate will notify the Provincial Minister and the Definitory.

# Investigation of complaints (cont'd)

- 5.46 Depending on the circumstances, either the Director or the Provincial Minister will notify the findings to:
- the complainant;
  - if the complainant is under the age of 18, the complainant's parents or guardian (if a person is 16 or 17, we may notify them with the consent and in the presence of a parent or guardian);
  - the person who is the subject of the complaint.
- 5.47 When communicating outcomes, the Director should give careful consideration to what level of personal information it is appropriate to provide to the parties to the complaint. Normally, the parties to the complaint will not be provided with a copy of the investigation report.

## Action following investigation of a complaint

- 5.48 In the event that an investigation finds that there has been a breach of professional standards by the person against whom the complaint has been made, the Professional Standards Advisory Panel must consider and make recommendations to the Provincial Minister about what action should be taken in respect of the complaint.
- 5.49 Where the person who is the subject of the complaint is a friar, the recommendations made by the Professional Standards Advisory Panel to the Provincial Minister and Definitory may include, but are not limited to, any or all of the following actions:
- caution and/or reprimand the friar;
  - remove the friar from providing ministry;
  - limit the scope of the ministry provided by the friar;
  - refer the friar for counselling or other psychological support;
  - refer the friar for medical treatment, including treatment for alcohol or other substance abuse;
  - initiate canonical disciplinary action against the friar;<sup>23</sup>
  - offer ongoing support to the complainant or other victim of the breach of professional standards;
  - offer financial redress to the complainant or other victim of the breach of professional standards.



# Action following investigation of a complaint (cont'd)

- 5.50 Where the person who is the subject of the complaint is an employee or volunteer, the recommendations by the Professional Standards Advisory Panel may include, but are not limited to, the following actions:
- training and/or support;
  - formal counselling;
  - a reprimand and/or warning;
  - termination of employment.
- 5.51 The Provincial Minister will consider the outcomes of the investigation and the recommendations of the Professional Standards Advisory Panel and decide, in consultation with the Definitory, what action should be taken in respect of the breach of professional standards. The Provincial Minister may liaise with the Provincial Delegate and/or the Director in relation to the implementation of this action.
- 5.52 Where the complaint is also the subject of a police investigation or criminal justice proceeding, these processes must be completed prior to the Provincial Minister initiating any canon law disciplinary process. Where the matter is also the subject of civil proceedings, care must be taken to ensure that such proceedings would not be prejudiced by the initiation of a canon law disciplinary process.

## Right of review

- 5.53 Where either the complainant or the person who is the subject of the complaint is dissatisfied with the investigation process, the outcome of the investigation, or the decision as to what action should be taken in respect of any breach of professional standards, he or she may make a written submission to the Provincial Minister seeking a review of the matter. Where the complaint is substantiated, the person who is the subject of the complaint should be notified of their right to request a review at the time of being notified of the findings.
- 5.54 A request for review must be made within one month of receiving notification of the outcome of the matter.
- 5.55 Upon receiving a written submission requesting a review of the matter, the Provincial Minister will refer the request to an independent legal counsel to undertake a review of the matter and provide advice on the matters raised in the request for review.
- 5.56 Upon receipt of the advice of the independent legal counsel, the Provincial Minister will reconsider the matter in light of the advice received and may:
- affirm the decision already made in respect of the complaint;
  - vary the decision already made in respect of the complaint;
  - direct that the matter or some aspect of the matter be investigated further.
- 5.57 The Provincial Minister will ensure that the review of the matter is undertaken in a timely fashion and that the outcome of the review is communicated to the complainant, the person who is the subject of the complaint, the Director, and the Professional Standards Advisory Panel.

# Confidentiality and disclosure

- 5.58 Personnel involved in responding to complaints will maintain strict confidentiality in respect of all information relating to the complaint. Disclosure of information during the complaint process is only permitted:
- to external authorities in accordance with applicable legal obligations, including reporting to the police, compliance with Mandatory Reporting obligations, and information sharing laws;
  - for the purpose of taking steps to address an immediate risk to the safety or wellbeing of any person, but only to the minimum extent necessary to do so;
  - for the purpose of providing support to the complainant or the person who is the subject of a complaint in accordance with this Policy, but only to the minimum extent necessary to do so;
  - where the complainant is under the age of 18, to the complainant's parents or guardian where appropriate;
  - with the consent of both the complainant and the person who is the subject of the complaint;
  - in such other circumstances as may be authorised by the Provincial Minister in consultation with the Professional Standards Advisory Panel.
- 5.59 Where a complaint is referred for independent external investigation, the Director must ensure that the external investigator provides a confidentiality undertaking in respect of all information relating to the investigation.
- 5.60 Once a complaint has been investigated, and a determination made as to whether there has been a breach of professional standards, information about the outcome of the matter may only be disclosed:
- to the complainant and the person who is the subject of the complaint;
  - where the complainant is under the age of 18, to the complainant's parents or guardian;
  - to the Professional Standards Advisory Panel, the Provincial Delegate, and the Provincial Minister in accordance with this policy;
  - to external authorities in accordance with legal requirements;
  - in the event that a breach of professional standards is found against a friar, for the purpose of taking any action against the friar that has been recommended by the Professional Standards Advisory Panel in accordance with paragraphs 5.48 – 5.49 of this policy;

# Confidentiality and disclosure (cont'd)

- on a strictly limited basis, to any other person who has a legitimate need to know the outcome of the matter, e.g., for ongoing risk management or for the purposes of managing or providing support to the person who is the subject of the complaint;
- where the findings of the investigation indicate that another organisation or organisations may have a legitimate need to know about the complaint or concern, to those other organisations, but only to the minimum extent necessary to address the legitimate need to know; or
- in such other circumstances as may be authorised by the Provincial Minister in consultation with the Professional Standards Advisory Panel.

## Record keeping

5.61 The Director must ensure that full records are created and maintained in respect of each complaint received including:

- details of the complaint (name of complainant, date complaint received, date of alleged breach, details of allegations);
- any reporting to police or other external authorities;
- all correspondence with the complainant or other third parties in relation to the complaint;
- full documentation of the complaint investigation in accordance with paragraphs 5.43 – 5.47 of this Policy;
- the investigation findings and the reasons for those findings;
- any action recommended by the Professional Standards Advisory Committee or authorised by the Provincial Minister in respect of the complaint.

5.62 The Director must also maintain a complaints register with summary information in respect of each complaint to enable monitoring of complaints trends (e.g. patterns of behaviour by particular friars, areas where further professional standards training may be needed etc.).

# Learning from complaints

- 5.63 Once the process for managing a complaint under this policy has been concluded, and in the event that a breach of professional standards has been found, the Professional Standards Advisory Panel must review the matter to consider:
- what underlying factors may have contributed to the breach of professional standards;
  - what could have been done to prevent or reduce the risk of the breach of professional standards;
  - what safeguards, policies or procedures could be put in place to prevent or reduce the risk of a recurrence of the behaviour in the future by the same person or by other friars or Franciscan Personnel; and
  - any systemic issues that have emerged relating to formation, training and pastoral supervision that may require attention by the Provincial Minister.
- 5.64 In addition, the Professional Standards Advisory Panel must review all reported complaints every three months to ensure that any particular patterns or trends in relation to behaviours of concern or other risk factors for breaches of professional standards are identified.
- 5.65 The Professional Standards Advisory Panel must report on the results of these reviews to the Provincial Delegate and the Provincial Minister, who will bring the reviews to the attention of the Definitory and, where relevant, to the attention of all Franciscan Personnel and will take action as appropriate in response to the results of the reviews.

## Role of the Professional Standards Advisory Panel

- 5.66 The Professional Standards Advisory Panel is the body established by the Franciscan Friars to review and provide advice on the Province's professional standards and safeguarding policies and practices. The Panel has been established in accordance with the recommendations of Australia's Royal Commission into Institutional Responses to Child Sexual Abuse and the National Catholic Safeguarding Standards.<sup>22</sup>

22 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report*, Commonwealth of Australia, 2017, Recommendation 16.37; Catholic Professional Standards Ltd, *National Catholic Safeguarding Standards*, Edition 1, 2019, 1.2.2.

# Role of the Professional Standards Advisory Panel (cont'd)

- 5.67 The members of the Professional Standards Advisory Panel are appointed by the Provincial Minister on the advice of the Provincial Delegate and the Director, and (other than the ex officio members) will comprise at least four and not more than six members with relevant and varied professional expertise and experience in fields such as safeguarding and risk management, child protection, psychology, theology, canon law, social work, investigations, organisational culture and governance, and policy development, of whom:
- at least two shall be women;
  - at least two shall be lay persons (i.e., not clergy or religious);
  - at least one shall be an independent legal practitioner.
- 5.68 Both the Provincial Delegate and the Director are members of the Professional Standards Advisory Panel on an ex officio basis. The Provincial Delegate will chair the meetings. The Provincial Minister always has the right to attend meetings.
- 5.69 The Professional Standards Advisory Panel will generally meet four times each year or as required. The Director will provide regular reports to the Professional Standards Advisory Panel, including in relation to:
- any complaints received and what steps have been taken in response, including decisions about initiating complaint investigations;
  - support provided to complainants and accused during the complaint process;
  - risk assessment and risk management issues relating to a complaint;
  - any action that should be taken in the event that a complaint investigation results in a finding of breach of professional standards;
  - monitoring of patterns or trends in relation to behaviours of concern or other risk factors for breaches of professional standards;
  - recommendations for improvements to the Province's policies, procedures and systems relating to professional standards;
  - the monitoring of any intervention against any friar who is the subject of a complaint;
  - other matters referred to it by the Director, the Provincial Delegate, or the Provincial Minister.
- 5.70 Members of the Professional Standards Advisory Panel must at all times be alert to any conflict of interest they may have due to a personal or professional association with any of the parties to a complaint or for any other reason. In the case of any actual, potential or perceived conflict, the member must declare the conflict to the Chair of the Panel who will determine how the conflict should be managed, and may consult with the rest of the Panel for this purpose.



# Definitions

## **Abuse:**

means all forms of deliberate ill-treatment or harm of another person, including sexual abuse, physical abuse, emotional or psychological abuse, spiritual abuse, and neglect.

- **Sexual abuse:** refers to the use of power, force or authority to involve a child or vulnerable person in any form of unwanted or illegal sexual activity. This can range from kissing or fondling, to sexual penetration, making sexual comments, voyeurism, and exposing a child to pornography, or the possession of child pornography, or taking sexually explicit photos or videos of children, or forcing or coercing children to engage in sexual acts.
- **Physical abuse:** means any non-accidental physical violence, injury or harm caused to a child or vulnerable person, such as hitting, beating, kicking, shaking, biting, strangling, scalding, burning, poisoning, or suffocating. Physical abuse of children is often inflicted by a parent or carer with the object of punishment.
- **Emotional or psychological abuse:** means persistent emotional or psychological ill-treatment of another person that could cause emotional harm, or lower their self-esteem or confidence. Emotional abuse may take the form of behaviour that is controlling, manipulative, intimidating or isolating, and may include subjecting the person to excessive or repeated blaming or criticism, undermining or ridicule, teasing, name calling, insults, yelling, withholding of praise or affection, or conveying that a person is worthless, inadequate, or valued only insofar as they meet the needs of another person.
- **Spiritual abuse:** is a form of emotional or psychological abuse characterised by the use of religious or spiritual power or authority to coerce or control a person's behaviour.

- **Neglect:** means a significant failure to provide the necessary care or assistance to dependent children or adults by those responsible for their care. It may include failure to provide adequate food, clothing, shelter, hygiene, medical care, or supervision.

## **Bullying:**

means when an individual or group repeatedly and deliberately misuse their power or behave unreasonably towards another person or group of people in a way that creates a risk to health and safety. Bullying is a form of harassment and can be either overt or covert. In the workplace, it may include repeated verbal, physical or other behaviours such as yelling, screaming or offensive language; excluding or isolating; psychological harassment; intimidation; assigning meaningless tasks unrelated to the person's job; deliberately changing work rosters to inconvenience particular employees; undermining a person by deliberately withholding information vital for effective work performance; constant unconstructive criticism; suppression of ideas; overloading a person with work, or setting impossible deadlines. The term "cyberbullying" refers to harassment via text or online.

## **Child:**

means any person under the age of 18 years.

## **Child abuse:**

means any assault or non-accidental injury or harm committed by an adult against a child or young person. It can take the form of sexual abuse, physical abuse, emotional or psychological abuse, spiritual abuse, and/or neglect.

# Definitions (cont'd)



## **Child-related work:**

means work performed in an environment where children are present or might reasonably be expected to be present. For the purposes of this Policy, all active ministry is deemed to be child-related.

## **Complaint:**

means a report, allegation or disclosure about behaviour by Franciscan Personnel that may constitute a breach of professional standards, or about an experience of harm or abuse. Complaints may be formal or informal. Complaints may be made anonymously. Sometimes, complaints or disclosures may be conveyed indirectly through verbal or behavioural indicators. Any such complaint should be reported to the Director of Professional Standards and Safeguarding.

## **Concern:**

means a suspicion about the safety, welfare or wellbeing of a child, young person or adult, or a worry or suspicion about the behaviour of a Franciscan friar, employee or volunteer. Any such concern should be reported to the Director of Professional Standards and Safeguarding.

## **Conflict of interest:**

means situations where a conflict arises between a person's official duties and their private interests which could influence the performance of their official duties. Conflicts of interest can be actual, potential, or perceived.

## **Definitory (Definitors):**

means the council of friars who are elected by friar-delegates at the Provincial Chapter to advise the Provincial Minister on certain matters, and to approve certain matters, as required by the constitutions and statutes of the Franciscan Order of Friars Minor. The Provincial Minister and the Definitors are also Directors of the company, Franciscan Order of Friars Minor.

## **Dependency:**

means relying on another person to meet one's own physical, psychological, emotional, social or financial needs. Some level of dependency in human relationships is considered to be normal, and some individuals will be more dependent on others due to age, health, disability, bereavement, trauma, or financial or other life circumstances. Excessive or unhealthy levels of dependency may be harmful.

## **Discrimination:**

means when a person or group of people are treated less favourably or disadvantaged due to their background or some personal characteristic such as age, sex, race, religion, disability, sexual orientation, gender identity, marital or relationship status, pregnancy or breastfeeding. Discrimination on these grounds in areas such as employment, education and the provision of services is against the law in Australia and New Zealand, although some exemptions apply.

## **Employee:**

means anyone who is appointed to a paid position administered by the Franciscan Friars Holy Spirit Province on a full-time, part-time, or contract basis.

# Definitions (cont'd)

**Franciscan Personnel:**

means all friars, and all Franciscan employees and volunteers of the Franciscan Friars Holy Spirit Province.

**Friar:**

means any professed member of the Franciscan Friars Holy Spirit Province, any friar who is visiting or on loan to the Holy Spirit Province, or any candidate or trainee to become a friar (postulant or novice).

**Guardian:**

means the leader of a local community or house of friars within the Province.

**Harassment:**

means any form of unwanted or unwelcome conduct towards another person which a reasonable person would find offensive, humiliating or intimidating. Harassment may take physical, verbal or written form and may involve only a single incident. It may be sexual in nature, and can include physical or online stalking, or invasion of a person's privacy. Sexual harassment, or harassment that involves treating a person unfairly on the basis of certain personal characteristics such as race, sex, age, disability, sexual orientation, gender identity, marital or relationship status, pregnancy or breastfeeding, may be against the law, meaning that employers can be held liable for harassment by their employees.<sup>23</sup>

**Historical abuse:**

means an allegation about non-recent abuse, including an allegation made by an adult about childhood abuse.

**Ministry:**

means all work done by friars to provide of any form of pastoral assistance to others. Ministry takes many forms (e.g. the provision of liturgical and sacramental services, spiritual guidance, teaching at a school or university, chaplaincy at a prison or hospital, therapy or counselling in a professional setting, and practical assistance and support) and may take place in a variety of contexts, both formal and informal. It comprises both voluntary and paid work, including work done by a friar on a part-time or occasional basis after his retirement from full-time ministry. Within the Franciscan context, the most visible form of active ministry occurs within a parish setting.

**Provincial Delegate for Professional Standards and Safeguarding:**

means the friar who is appointed by the Provincial Minister as his delegate in the oversight and administration of all matters relating to Professional Standards and Safeguarding within the Province.

**Provincial Minister:**

means the leader of the Franciscan Friars, Holy Spirit Province.

23 This definition draws on the definition used by the Australian Human Rights Commission.

# Definitions (cont'd)



## **Provincial Secretary (company secretary):**

means the friar elected by the Provincial Minister and Definitory for a specific role defined by constitutions, statutes and civil law (company secretary). The principal role of the Secretary is to record all that is done by the Definitory and the Provincial Minister, to review all documents and acts pertaining to the whole Province, and to maintain the archives (GGSS Art. 218). The Provincial Secretary is accountable directly to the Provincial Minister and also acts as the Company Secretary for the civil entity, the company known as Franciscan Order of Friars Minor.

## **Safeguarding**

means protecting children, young people, and adults from all forms of abuse and exploitation.

## **Vicar Provincial:**

means the friar who is deputy to the Minister Provincial, and who acts in the place of the Provincial Minister as defined by the Constitutions and Statutes of the Franciscan Order of Friars Minor.

## **Vilification:**

means any public act that could incite hatred, serious contempt, ridicule or violence towards a person or a group of people on the basis of a particular characteristic such as their race, religious belief or affiliation, sexual orientation, gender orientation, or health status.

## **Volunteer:**

means anyone who is appointed to a position administered by the Franciscan Friars Holy Spirit Province on an unpaid or voluntary basis.

## **Vulnerable person:**

means a child or a person aged 18 years or above who is in need of care and support, or at risk of harm, abuse, exploitation or neglect due to their age, illness, disability, trauma, homelessness, displacement, or any other reason.<sup>24</sup> Any person may be vulnerable in certain circumstances - for example, a refugee or asylum seeker, a person who has experienced a major catastrophe or life within a war zone, a person who is intoxicated by alcohol or drugs, or a person who has recently suffered bereavement, marriage breakdown, or other such adversity that causes them to be in particular need of pastoral support. Vulnerable persons may include any persons who participate or engage in the Province's ministries or activities, or who otherwise are or have been involved with the Province – including as friars, employees, or volunteers.

## **Young person:**

means a person who is aged 16 or above but under the age of 18 years.<sup>25</sup>

24 This definition draws on the definition of "vulnerable persons" used by the Commonwealth Department of Social Services, <https://www.dss.gov.au/about-the-department/doing-business-with-dss/vulnerable-persons-police-checks-and-criminal-offences> and the Australian Law Reform Commission's definition of "at risk" adults.

25 This is the definition of "young person" used in the NSW *Children and Young Persons (Care and Protection) Act*.

# Appendix 1.1:

## Pastoral Supervision Agreement

As a Franciscan friar engaged in active ministry, I agree that I will engage in regular Pastoral Supervision with the Pastoral Supervisor named in this agreement. Should I need to change Pastoral Supervisor, I will notify the Director, Professional Standards and Safeguarding and initiate a new Pastoral Supervision Agreement.

### **FRANCISCAN FRIAR:**

Date: .....

Name of friar: .....

Signature of friar: .....

### **PASTORAL SUPERVISOR:**

Date: .....

Name: .....

Signature: .....

### **DIRECTOR, PROFESSIONAL STANDARDS AND SAFEGUARDING:**

Date: .....

Name: .....

Signature: .....



# Appendix 1.2:

## Pastoral Supervision Annual Certification

**YEAR:** .....

This Annual Certification for Pastoral Supervision is for the calendar year.....and for the Pastoral Supervision between:

**Franciscan friar:** .....

**Pastoral Supervisor:** .....

### CERTIFICATION

I hereby certify that the following details about my Pastoral Supervision are accurate for the calendar year stated above:

**Number of sessions during the calendar year:** .....

**If not a full calendar year, state the period:** .....

**Number of hours during the calendar year:** .....

**Dated:** .....

**Name of friar:** .....

**Signature of friar:** .....

### VERIFICATION:

**Date:** .....

**Name of Pastoral Supervisor:** .....

**Signature of Pastoral Supervisor:** .....

### ACKNOWLEDGEMENT:

**Director, Professional Standards and Safeguarding:** .....

.....





## Contact:

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