



Reportable Conduct

Rationale:

The Victorian Reportable Conduct Scheme seeks to improve organisations' responses to allegations of child abuse and neglect by their workers and volunteers. The scheme is established by the *Child Wellbeing and Safety Act 2005*.

The Commission for Children and Young People is responsible for administering the scheme. Their role includes:

- supporting and guiding organisations that receive allegations in order to promote fair, effective, timely and appropriate responses
- independently overseeing, monitoring and, where appropriate, making recommendations to improve the responses of those organisations.

The Reportable Conduct Scheme has been designed to ensure that the Commission will be aware of every allegation of certain types of employee misconduct involving children in relevant organisations that exercise care, supervision and authority over children. The Commission will also be able to share information where appropriate, including with the Working with Children Check Unit, relevant regulators and Victoria Police, to better prevent and protect children from abuse.

Importantly, a finding that a person has engaged in reportable conduct can trigger an assessment of whether that person is suitable to continue to work or volunteer with children. In turn, this may lead the Working with Children Check Unit to revoke a person's Working with Children Check card.

Aims:

The Reportable Conduct Scheme is focussed on worker and volunteer conduct and how organisations investigate and respond to suspected child abuse. The scheme aims to improve organisational responses to suspected child abuse and to facilitate the identification of individuals who pose a risk of harm to children, but do not have a criminal record.

St Leonard's aims to have systems in place that:

- prevent reportable conduct from being committed
- enable reportable allegations to be made to the principal
- enable reportable allegations that involve the principal to be reported to the Commission
- continuously monitor and improve the effectiveness of systems for preventing child abuse.

Implementation:

Requirements of heads of organisations

The Reportable Conduct Scheme imposes new obligations on heads of organisations that are within the scheme. This includes requirements to:

- have in place systems to prevent child abuse and, if child abuse is alleged, to ensure allegations can be brought to the attention of appropriate persons for investigation and response
- ensure that the Commission is notified and given updates on the organisation's response to an allegation.

What does the head of an organisation need to have in place?

Section 16K of the *Children Wellbeing and Safety Act 2005* requires the head of an organisation to:

Take a preventative approach to keeping children safe

This includes acknowledging children are vulnerable to abuse and taking steps to reduce this risk in their organisation.

An organisation's response to meeting their obligations under Child Safe Standards will help the organisation take a preventative approach to child safety.

Have systems in place to enable anyone to notify their concern or allegation that conduct in line with reportable conduct may have occurred

This includes having clear and well communicated systems to facilitate and support the reporting of concerns.

Your organisation's work to meet [Child Safe Standard 5 – Processes for responding to and reporting suspected child abuse](#) will mean you will have internal reporting processes in place to notify allegations.

Have systems in place to allow other people to report to the Commission if the reportable allegation concerns the head of the organisation

As there may be instances in which the actions of concern are alleged to have been taken by the head of your organisation, organisations must have policies and systems that enable other people in your organisation to notify the Commission of alleged reportable conduct.

Have investigation**processes clearly defined and developed**

Once an allegation has been made, organisations must have processes in place to investigate the matter.

In meeting [Child Safe Standard 5 – Processes for responding to and reporting suspected child abuse](#), your organisation should have developed systems and processes to respond to allegations and report the matter internally, to Victoria Police and other relevant authorities as required.

What the head of an organisation must report to the Commission

Section 16M requires the head of an organisation to initially notify the Commission of a reportable allegation within three business days and update the Commission of progress within 30 calendar days. They must also investigate the reportable allegation and provide the findings of the investigation to the Commission. The Commission will seek the following information at various milestones.

The Commission will also publish *Investigation Standards* to help guide the approach of organisations. An organisation's regulator or government funder may also have investigation requirements and supports.

The head of the organisation must provide information to the Commission about any of these systems described above, if the Commission requests this in writing.

The Commission may make recommendations to the organisation to improve their practices and processes.

A snapshot of a head of organisation's obligations under reportable conduct

What does the Commission do with the allegations it receives?

The Commission will carefully consider each allegation that it receives under the Reportable Conduct Scheme. Based on the information available, the Commission may decide to:

- give the organisation responding to the allegation support and guidance
- check that the organisation is handling the allegation in a timely manner
- refer a substantiated allegation to Working With Children Check or a professional accreditation body.

Who can an allegation be made about under the scheme?

A reportable allegation can be made about any person over 18 years of age who is an employee (including a religious leader), volunteer, contractor or office holder of an organisation covered by the scheme.

Allegations can be made about the conduct of people even if:

- they do not have direct contact with children

- the conduct occurred outside of their work.

Investigations

An investigation into a reportable allegation is a workplace investigation aimed at gathering and examining information to establish facts and make findings in relation to allegations of child abuse against an employee. The investigation may also make recommendations about what disciplinary or other action should be taken (if any).

An effective investigation requires a systematic approach to assessing and managing an allegation, followed by a sound decision-making framework that enables procedural fairness for all parties in the investigation process.

More information about the investigation process at:

<https://ccyp.vic.gov.au/assets/resources/Investigation-overview.docx>

The Reportable Conduct Scheme does not replace the need to report allegations of child abuse to Victoria Police.

If an allegation is criminal in nature, you MUST get clearance from Victoria Police before beginning your investigation.

What findings can be made?

For the purposes of the Reportable Conduct Scheme, the different findings that can be made are:

- *Substantiated* - This finding should be used when a decision maker has decided that the reportable conduct has been proven to have happened on the balance of probabilities. **The evidence suggests it is more likely than not that the reportable conduct happened because there is enough reliable, convincing, evidence of weight.**
- *Unsubstantiated - insufficient evidence* - This finding should be used when there was some evidence of weight to support the allegation, but not enough for the decision maker to make a substantiated finding. **The evidence does not suggest that it is more likely than not that the reportable conduct happened.**
- *Unsubstantiated - lack of evidence of weight* - This finding should be used when there is not enough evidence to properly investigate the allegation, or the small amount of evidence available is contradictory or confusing. **There is not enough evidence to establish whether the reportable conduct did, or did not happen.**
- *Unfounded* - This finding should be used when there is strong evidence that the reportable conduct did not happen. **The evidence suggests that it is more likely than not that the reportable conduct did not happen.**
- *Conduct outside scheme* - This finding should be used when the decision maker has investigated the conduct and, although the conduct occurred, **it does not fit any of the types of reportable conduct listed in the Act.** An example of this might be slapping a child's hand away from a hot stove.

The Commission can be contacted to provide help to a decision maker about making an appropriate finding.

What are the reasons for the finding?

The head of an organisation must give the Commission the findings and the reasons for those findings as soon as possible after a reportable conduct investigation has finished. The reasons for the findings should explain:

- how the investigation was done
- the evidence that was collected and how it was assessed. This should include the evidence given by the subject of the allegation and the alleged victim where appropriate
- whether the evidence was relevant and reliable
- how the evidence supported or contradicted the allegation of reportable conduct
- how convincing the evidence was in all of the circumstances.

After a finding is made

Once a decision maker has assessed the evidence and made a finding, that finding should then be used to make a decision about:

- what, if any, action should be taken in relation to the employee who was the subject of the reportable allegation to make sure that children are kept safe both now and in the future
- whether the organisation needs to do anything else to manage risks to children
- reporting any findings to relevant professional regulators in addition to reporting to the Commission.

Where to get help

Organisations covered by the Reportable Conduct Scheme should contact the Commission for clarification and guidance, and to talk through any issues of concern.

Telephone: 8601 5281

Email: childsafestandards@ccyp.vic.gov.au

Further information is also available on the Commission for Children and Young People's website at www.ccyp.vic.gov.au

Also see the document – *Guidance for Organisations Investigating a Reportable Conduct Allegation* for further information <https://ccyp.vic.gov.au/assets/resources/Reportable-Conduct-Guidance/CCYP-Investigation-guide.pdf>

Definitions

What types of conduct are reportable?

There are five types of 'reportable conduct' listed in the *Child Wellbeing and Safety Act 2005*:

- sexual offences (against, with or in the presence of, a child)
- sexual misconduct (against, with or in the presence of, a child)
- physical violence (against, with or in the presence of, a child)

- behaviour that is likely to cause significant emotional or psychological harm
- significant neglect.

A short description of the types of reportable conduct is provided below.

What are sexual offences?

In Victoria, it is an offence to engage in certain sexual behaviours against, with or in front of, a child. Many of these behaviours are reportable conduct under the Reportable Conduct Scheme. This includes:

- sexual assault
- indecent acts
- possession of child abuse material
- ‘grooming’ a child in order to commit a sexual offence.

A full list of the relevant sexual offences is set out in clause 1 of Schedule 1 to the *Sentencing Act 1991*.

A person does not need to be charged with, or found guilty of, a sexual offence for their behaviour to be reportable conduct.

What is sexual misconduct?

‘Sexual misconduct’ captures a broader range of inappropriate behaviours of a sexual nature that are not necessarily criminal.

Examples of sexual misconduct include:

- developing an intimate relationship with a child, for example, through regular contact with the child without the knowledge or approval of the organisation’s management
- inappropriately discussing sex and sexuality with a child
- other overtly sexual acts that could lead an organisation to take disciplinary or other action.

What is physical violence?

Physical violence includes an act that causes physical injury or pain. Examples of physical violence can include:

- hitting/kicking/punching
- pushing/shoving/grabbing/throwing/shaking
- using an object to hit or strike
- using inappropriate restraint/excessive force.

Physical violence does not include lawful behaviour. For example:

- reasonable steps taken to protect a child from immediate harm, such as taking a child’s arm to stop them from going into oncoming traffic

- medical treatment given in good faith by an appropriately qualified person, such as a senior first aid officer administering first aid.

Threats of physical violence that do not cause physical injury or pain may be covered by the Reportable Conduct Scheme as behaviour that causes significant emotional or psychological harm (see below).

What is behaviour that causes emotional or psychological harm to a child?

For behaviour to be reportable under this category:

- a child must have suffered significant emotional or psychological harm
- there must be a clear link between the alleged conduct and the harm suffered.

The behaviour must cause emotional or psychological harm that is 'significant'. This is discussed below. Signs that a child may have been emotionally or psychologically harmed may include:

- patterns of out-of-character behaviour
- regression in behaviour
- distress and anxious behaviours
- other physical symptoms, such as self-harm.

Emotional or psychological harm may also occur where an existing mental health disorder has been exacerbated or aggravated.

A professional psychological or medical assessment of the child may assist to determine whether a child has suffered emotional or psychological harm. However, a clinical diagnosis will not be required in every case. For example:

- the alleged conduct is so serious and/or occurred over such a sustained period, that it can be reasonably inferred that the child has been harmed
- requiring a child to be assessed may unreasonably re-traumatise or otherwise further harm the child.

It is also important to stress that there must be a clear link between the emotional or psychological harm and the alleged conduct. In deciding if there is a clear link, organisations should consider the likelihood that the child would have been harmed, if the alleged conduct had not occurred.

Examples of emotional or psychological harm may include:

- exposure to violence or threats of violence
- self-destructive behaviour
- antisocial behaviour
- persistent hostility/rejection
- humiliation/belittling
- scapegoating.

It will not be reportable conduct if:

- a person takes reasonable steps to protect a child from immediate harm
- a person with responsibility for discipline takes lawful and reasonable disciplinary action, such as sending a child to sit in 'time out' for a period of time, in line with organisational policy
- an appropriately qualified person gives medical treatment in good faith, such as a senior first aid officer administering first aid.

What is neglect?

Neglect occurs when a person does not meet their obligations and responsibilities to keep a child safe and well.

The neglect:

- must be more than minor and insignificant
- does not need to have a lasting or permanent effect
- may be an ongoing situation or a one off incident, as long as it is not minor in nature.

Examples of different types of neglect include:

- supervisory neglect, which is the absence or inattention of a person which places the child at risk of physical harm or injury, sexual abuse or allows other criminal behaviour towards the child
- physical neglect, which is the failure to provide basic physical necessities for a child, such as adequate food, clothing and housing
- medical neglect, which is the failure to provide for appropriate medical care for a child, including a failure to acknowledge the seriousness of an illness or condition, or deliberately withholding appropriate care.

What does 'significant' mean?

The Reportable Conduct Scheme is concerned with significant allegations about worker behaviour or actions towards a child. Accordingly, allegations can only be made about emotional or psychological harm or neglect that is significant.

Allegations may be made about serious forms of harm or behaviours that have a lasting or permanent effect, however, this does not always need to be the case. It is enough that the alleged conduct is more than *trivial* or *insignificant* to fall within the definition of *significant* under the Reportable Conduct Scheme.

We encourage organisations to consult with the Commission for Children and Young People if they need assistance to determine if the alleged conduct meets the level required to make a reportable allegation report.

What is a reasonable belief?

A reportable allegation is made where a person makes an allegation, based on a reasonable belief, that a worker or volunteer has committed reportable conduct or misconduct that **may** involve

reportable conduct. This includes where a reportable allegation is made against the head of the organisation.

A reasonable belief is more than suspicion. There must be some objective basis for the belief. However, it is not the same as having proof and does not require certainty.

For example, a person is likely to have a reasonable belief if they:

- observed the conduct themselves
- heard directly from a child that the conduct occurred
- received information from another credible source (including another person who witnessed the reportable conduct or misconduct).

Heads of organisations do not need to agree with or share the belief that the alleged conduct has occurred. However, they do not need to notify the Commission about the allegation if it is plainly wrong or had no basis at all in reality.

Who is the ‘head of an organisation’?

The head of an organisation is the person who is primarily responsible for an organisation’s compliance with the Reportable Conduct Scheme (the Scheme). Depending on the particular structure or type of organisation, the head of the organisation may be:

- the Chief Executive Officer (CEO)
- the Secretary, if the organisation is a Victorian Government department, or their delegate
- the Principal Officer of the organisation.

Determining who the Principal Officer is of a particular organisation may depend on that organisation’s structure, governance arrangements and legal obligations. Some organisations may wish to obtain their own legal advice to assist them to identify their Principal Officer, in order to ensure they fulfil their organisation’s obligations under the scheme.

While heads of organisations are responsible for ensuring their organisations comply with the Scheme, the Commission does not expect heads to carry out their responsibilities alone. Heads of organisations can get help from other people within their organisation to fulfil their obligations under the Scheme. This may include creating and developing systems, sending approved notifications to the Commission, and conducting investigations on their behalf. While heads of organisations can seek internal support and assistance from within their organisations, it is ultimately their responsibility to ensure the Commission is notified of any reportable allegations they become aware of.

Evaluation

This policy will be reviewed as part of the school’s review cycle.

This policy was last ratified by the Leadership Team on
