

Information sheet 8

Investigation findings

Making a finding after a reportable conduct investigation

At the end of a reportable conduct investigation, a finding must be made about whether or not the reportable conduct happened. Different organisations will have different systems in place for deciding who will be responsible for making findings (the decision maker). Before making a finding, the decision maker must review and assess the evidence and make a finding on the *balance of probabilities*.

The balance of probabilities

In an investigation into a reportable allegation, a finding needs to be made by the decision maker that, on the balance of probabilities, reportable conduct either did or did not happen. This is a lower standard than is needed in criminal cases, where an allegation must be proved beyond reasonable doubt. The balance of probabilities means that it must be more likely than not.

A decision maker should not fail to make a finding that reportable conduct happened just because there might be serious consequences for the subject of the allegation.

Assessing the evidence

In assessing the evidence, a decision maker must make a judgment about how strong the evidence is, or in other words, how much weight can be given to each piece of evidence. The more weight that can be placed on a piece of evidence, the more it will influence the decision maker.

To decide how much weight to place on the evidence, the decision maker should consider a range of factors. For example, decision makers might ask themselves:

- how reliable is the evidence?
- is there another piece of evidence that either supports or contradicts the evidence in question?
- how convincing is the evidence in all of the circumstances; does it have a 'ring of truth' about it?
- where did the evidence come from? Does the evidence speak for itself such as CCTV footage or is it less reliable such as a rumour?
- do the most reliable witnesses tell very similar stories about what happened including what they saw or what they heard?
- was the employee who is the subject of the allegation given an opportunity to give an explanation about the evidence and tell their side of the story?
- is the evidence being assessed relevant to the reportable allegation?

A decision maker should base their findings on strong evidence of weight that relates specifically to the reportable allegation and not on suspicion, rumours or hunches.

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

The Commission encourages organisations covered by the Reportable Conduct Scheme to seek clarification, talk through issues of concern, or seek guidance by contacting the Commission:

telephone: 8601 5281

email: childsafestandards@ccyp.vic.gov.au

There is also information available at the Commission's website at ccyp.vic.gov.au

