

Information sheet 13

Workers and Volunteers and the Reportable Conduct Scheme

Purpose

The purpose of this information sheet is to provide guidance to workers and volunteers (you) about the Reportable Conduct Scheme (the scheme), particularly if you are the subject of a reportable allegation.

About the Reportable Conduct Scheme

The 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*.

Under the scheme, heads of organisations must notify the Commission for Children and Young People (the Commission) about allegations of certain types of conduct involving a child by their workers and volunteers.

Allegations must be reported about workers and volunteers even if:

- they do not have direct contact with children as part of their work
- the conduct occurred within or outside the course of employment.

Heads of organisations then have to investigate these allegations.

What types of workers and volunteers are covered by the scheme?

The scheme applies to the conduct of any person over the age of 18 years who is employed or engaged by an organisation covered by the scheme including:

- those directly engaged by an organisation covered by the scheme to provide services, including as a volunteer, contractor, office holder, officer or other position
- foster or kinship carers
- ministers of religion, religious leaders or officers of a religious body.

The Commission uses the term 'workers and volunteers' to describe these people above.

If the organisation that you work or volunteer for is covered by the scheme then your conduct is covered by the scheme.

More information about organisations covered by the scheme can be found on the [Commission's website](#).

What is reportable conduct?

There are five types of reportable conduct:

1. sexual offences
2. sexual misconduct
3. physical violence
4. behaviour that causes significant emotional or psychological harm to a child
5. significant neglect of a child.

Sexual offences, sexual misconduct, and physical violence are covered by the scheme if they are committed with, against or in the presence of a child.



A child is a person under the age of 18.



Reportable conduct covers more than just criminal offences.

What is the role of the Commission?

The Commission's role is to:

- provide an organisation responding to a reportable allegation with support and guidance to promote a fair and appropriate response
- independently oversee and monitor organisations' responses to reportable allegations and, when appropriate, make recommendations to improve responses
- in certain circumstances, notify the Secretary to the Department of Justice and Regulation of a finding that reportable conduct has been committed for the purposes of a Working with Children Check reassessment under the *Working with Children Act 2005*

- in certain circumstances, notify other regulators (such as Victorian Government Departments and the Australian Health Practitioner Regulation Agency), that reportable conduct has been committed and provide other relevant information
- notify the Victorian Institute of Teaching (VIT) if an allegation is made and the findings of reportable conduct investigations are about a registered teacher.

What is a reportable allegation?

A reportable allegation is an allegation based on information that has led any person to form a reasonable belief that a worker or volunteer has committed:

- reportable conduct, or
- misconduct that may involve reportable conduct.

A reasonable belief is more than suspicion. There must be some objective basis for the belief. It does not require proof but must be more than rumour or speculation.

 The head of the organisation is required to notify the Commission of a reportable allegation even if they do not believe it.

What happens when a reportable allegation is made?

If the head of an organisation becomes aware of a reportable allegation against one of their workers or volunteers, they must:

1. notify the Commission (and Victoria Police if they suspect criminal behaviour) and Child Protection in some cases
2. ensure the allegation is investigated (after obtaining clearance from Victoria Police, if necessary)
3. make findings and take actions, based on the outcome of that investigation
4. provide the findings to the Commission.

Reportable allegation process

An investigation of a reportable allegation should have these steps:

- receive and assess the allegation
- establish and conduct an investigation
- assess the evidence

- finalise the investigation and prepare a report
- make findings
- take actions in response to the findings.

Conducting an investigation

A reportable allegation may be investigated by:

- an internal staff member (for example, by Human Resources)
- an external independent investigator
- a regulator
- the Commission.

An investigation into a reportable allegation will usually involve:

- the collection of relevant physical evidence
- interviews with relevant witnesses, which may include children
- an interview with the subject of the allegation.

Are you the subject of an allegation?

The following sections provide guidance if you become the subject of a reportable allegation.

Procedural fairness

One of the fundamental principles of the scheme is that if you are the subject of a reportable allegation, you are entitled to receive natural justice in investigations into your behaviour. Natural justice is often called procedural fairness.

It is important that the reportable allegation process is conducted in a *fair* and *reasonable* manner and without undue delay.

Procedural fairness does not require that you be notified, straight away, that a reportable allegation has been made about you.

The investigator will need to consider the most appropriate and earliest opportunity to notify you, while ensuring the integrity of that investigation and the wellbeing of everyone involved.

There should not be an unreasonable delay in giving you notice about a reportable allegation.



In limited cases, for example, when an allegation is plainly false and can be dealt with and resolved in your favour without your involvement, it may be that you are not told about that allegation.

You may be notified of the allegation via a letter of allegation. A letter of allegation is a written document that clearly tells you the details of the reportable allegations made against you.

If a letter of allegation is provided, the letter should clearly set out each allegation and should contain enough information for you to understand exactly what the allegation(s) are so that you can respond to them.

A letter of allegation may include:

- what conduct allegedly occurred
- when and where the alleged conduct occurred
- who was involved in the alleged conduct.

What happens once a reportable allegation is made against me?

Regardless of whether you received a letter of allegation or if you are notified of a reportable allegation in some other way, you should generally expect to:

- be told about the details of the allegation
- have an appropriate amount of time to consider the allegation, including so that you may suggest persons you believe should be interviewed as part of the allegation
- be able to ask that an appropriate support person is present if you are interviewed
- be invited to respond, either verbally or in writing, to the reportable allegation and any adverse information that is credible, relevant and significant
- have an investigator who is impartial.

You may also have rights to seek advice and/or representation from a lawyer, union or other representative body as part of the investigation.

 Putting your version in writing and/or attending an interview enables you to respond to the allegation. You may choose to seek advice before putting forward your version as there can be some serious

consequences if the allegation is substantiated.

Stand down, suspension and other actions

Some organisations may consider if they should stand you down or suspend you while they investigate. The head of your organisation considers different issues, such as the risks to children and other people in their organisation, when making this decision.

Organisations might also:

- prevent you from having contact with children
- transfer you to other duties
- ensure that you have additional support and supervision at work
- direct you not to discuss the matter with other workers or volunteers
- request that you hand over equipment or remove document access.

Each organisation will have to apply different laws and policies about these actions. Ask your organisation for more information if you need it.

Assessing the evidence

Balance of probabilities – Measure of proof

The level of certainty and degree of evidence required to establish proof for reportable allegations is called the 'balance of probabilities'. This is a lower standard than is required for criminal cases in which an allegation must be proved beyond reasonable doubt. Therefore, when conducting an investigation, the investigator thinks about whether it is **more likely than not** that the reportable conduct occurred.

Finalising the investigation

Opportunity for you to respond

Before any adverse findings are made or disciplinary action is taken against you, the organisation should ensure that you are given an opportunity to comment on and respond to the allegation. That response should be carefully considered before the investigation is finalised.



Notification to the Commission

After considering your response, the organisation will prepare its investigation findings (and reasons for the findings). These are given to the Commission.

You should also be told about the outcome, particularly if that outcome is unfavourable. However, you may not always receive the full detailed investigation findings, report and reasons. This could be because these include sensitive information about children or private information.

Potential findings and action

There are different potential findings that can be made at the end of an investigation. Refer to the Commission's Information Sheet 8 – [Investigation Findings](#) for detailed information on this.

In summary, if:

- the evidence suggests it was more likely than not that the reportable conduct happened, then a **substantiated** finding may be made
- there is not enough evidence to suggest that it was more likely than not that the reportable conduct happened, then an **unsubstantiated – insufficient evidence** finding may be made
- there is not enough evidence to establish whether the reportable conduct did or did not happen, then an **unsubstantiated – lack of evidence of weight** finding may be made
- there is strong evidence that reportable conduct did not happen, then an **unfounded** finding may be made
- if the conduct occurred but it does not fit any of the types of reportable conduct listed above, then a finding **conduct outside scheme** may be made.

Organisations may take a range of actions on the basis of these findings.

Disagreeing with a finding and action

If you disagree with a finding or action taken by an organisation in response to a finding, you should refer to your internal organisational dispute resolution procedures.

You should also consider obtaining advice, support or guidance from:

- your trade union by calling [Australian Unions](#) on 1300 486 466 or the [Victorian Trades Hall Council](#) on (03) 9659 3511
- a lawyer via:
 - the [Law Institute of Victoria](#), who can refer you to a lawyer
 - [JobWatch Employment Rights Legal Centre](#) on 1800 331 617 (Country Victoria) or (03) 9662 1933 (Melbourne Metro), who provide a free and confidential telephone information and referral service for workers
 - the [Federation of Community Legal Centres](#), who can help you find a Community Legal Centre near you
- the [Fair Work Ombudsman](#), who can give you information and advice about your workplace rights and obligations
- the [Fair Work Commission](#), who can provide assistance for employees that have been dismissed from their employment and who are considering making an unfair dismissal, general protections dismissal or unlawful termination application.

Working with Children Check and Victorian Institute of Teaching referrals

In addition to any action that your organisation may take, if you are found to have committed reportable conduct, the Commission may, in certain circumstances, refer the conduct to the Working with Children Check Unit for reassessment of your Working with Children Check. The referral can occur even if you do not hold a Working with Children Check card. If you are a registered teacher, VIT will be notified of the findings of all reportable conduct allegations.

 The Commission is required to advise VIT when they receive a reportable allegation about a registered teacher.



Reports by workers or volunteers

If you form a reasonable belief that someone in an organisation has committed reportable conduct or misconduct that may involve reportable conduct, you may notify your head of organisation or the Commission. Reporting to the Commission does not replace your existing reporting obligations.

For example, you may still be required to:

- report to Child Protection if you form a reasonable belief that a child is in need

of protection from physical injury or sexual abuse.

- report to Victoria Police if a criminal offence may have occurred
- take all reasonable steps to remove or reduce risks of sexual abuse, especially if you are in a position of authority.

Note: The scheme provides certain legal protections to any person who makes a reportable allegation to the Commission in good faith.

Further information

Commission for Children and Young People

For further information about the scheme, Child Safe Standards, to make contact or to make a notification you can access the website, email or telephone. The details are as follows:

w: ccyp.vic.gov.au

e: contact@ccyp.vic.gov.au

p: (03) 8601 5281

If you need an interpreter, please call the Translating and Interpreting Service on 13 14 50 and ask them to contact the Commission for Children and Young People on (03) 8601 5281.

