

# Information Sheet 11

## Significant neglect under the Reportable Conduct Scheme

### What is significant neglect?

The *Child Wellbeing and Safety Act 2005* (the Act) states that a form of reportable conduct is significant neglect. This information sheet provides guidance to assist organisations in deciding whether conduct or behaviour is significant neglect under the Reportable Conduct Scheme. As this guidance is general in nature, it may not cover all situations. If further guidance is required, please contact the Commission to discuss the specific situation.

Neglect is a failure to meet the basic needs of a child (such as their wellbeing or safety). In deciding whether alleged conduct is significant neglect, it may be helpful to consider whether:

- there was a failure to meet the basic needs of a child
- the failure was deliberate or reckless
- the worker or volunteer could have met the child's needs but failed to do so
- the neglect was significant
- there was a sufficient connection between the child and the worker or volunteer who failed to meet the basic needs of a child.

### A failure to meet a child's basic needs

There are a number of different types of neglectful behaviour that may result in a failure to meet a child's basic needs. The examples of different types of neglect set out below are provided for guidance and to help organisations identify significant neglect. The types of neglect can be summarised as follows:

Type	Description and examples
Supervisory neglect	<p>A failure to appropriately exercise adequate supervision or control of a child or young person. Examples include:</p> <ul style="list-style-type: none"><li>• leaving a child alone or unsupervised for an extended period of time</li><li>• exposing a child to inappropriate material or environments such as drug use or pornography</li><li>• leaving a child in the care of an inappropriate person such as a young child or someone who has a history of child abuse</li><li>• exposure to hazards such as allowing a young child to walk the streets at night alone</li><li>• a failure to acknowledge the seriousness of a medical condition or illness and therefore not seeking or complying with appropriate treatment.</li></ul>
Physical neglect	<p>A failure to meet a child's physical needs including the provision of adequate and appropriate food, clothing, shelter or physical hygiene needs. Examples include:</p> <ul style="list-style-type: none"><li>• inadequate food or food that is not of appropriate nutritional value such that the child is hungry, malnourished or fails to thrive</li><li>• clothing that is in a poor state of repair, such as shoes with holes in the soles, or</li></ul>

Type	Description and examples
	<p>clothing that is inappropriate to the season</p> <ul style="list-style-type: none"> <li>a child being extremely dirty or suffering from a skin condition due to poor hygiene</li> <li>not being provided with a toothbrush and toothpaste resulting in dental decay.</li> </ul>
Educational neglect	<p>A failure to ensure that a child's formal educational needs are being met. Examples include:</p> <ul style="list-style-type: none"> <li>failing to register a child in school</li> <li>condoning truancy.</li> </ul>
Emotional neglect	<p>A failure to provide adequate nurturing, affection, encouragement and support to a child. This could include situations where a worker or volunteer:</p> <ul style="list-style-type: none"> <li>rejects a child, abandons, belittles, or calls a child names</li> <li>shames a child, isolates them or demeans them</li> <li>permits or encourages a child to engage in criminal behaviour, inappropriate sexual behaviour or other maladaptive behaviours.</li> </ul>

It is possible that there might be some overlap between significant neglect and another type of reportable conduct, that is, behaviour that causes significant psychological or emotional harm. Neglect can often arise from a series or range of behaviours. This can sometimes make it difficult to prove a link between one or more of those behaviours and the significant psychological or emotional harm the child has suffered to be able to substantiate this type of reportable conduct. It is important to remember that, for the Reportable Conduct Scheme, significant neglect does not require that the neglect caused any specific kind of harm to the child.

### Cumulative neglect

Significant neglect can arise as a result of a single recurring adverse circumstance or event, such as a child never being given enough food.

Cumulative neglect can also occur through a combination of different adverse circumstances or events such as a child who is not regularly attending school, who is not consistently supervised appropriately and is not given sufficient care or attention by parents or carers.

Cumulative neglect recognises the compounding or combined impact that numerous less significant failures can have on a child.

### Intentional or reckless

In deciding whether significant neglect has been committed for the purpose of the Reportable Conduct Scheme, it may be useful to consider whether there has been either an intentional (deliberate) or reckless failure to meet a child's basic needs in circumstances where the worker or volunteer could have chosen to meet the needs of the child but didn't.

A reckless failure to meet a child's needs could occur when a worker or volunteer:

- engaged in their behaviour even though he or she was aware that the behaviour could result in a failure to meet the needs of the child, or

- engaged in their behaviour without caring whether the child's needs would not be met as a consequence.

Recklessness may also arise when the worker or volunteer did not consider the question of the child's needs in circumstances where those needs would have been obvious if the worker or volunteer had thought about it.

### **The worker or volunteer could have met the child's needs**

An important consideration in determining whether alleged behaviour could be neglect is whether or not a worker or volunteer responsible for the care of a child lacked the means to meet the child's needs such that their actions were not a matter of choice. To decide whether a substantiated finding of significant neglect should be made, it is helpful to consider whether it is possible to be satisfied on the balance of probabilities that there was a deliberate or reckless failure to meet a child's basic needs in circumstances where the worker or volunteer understood the needs of the child, or could have understood those needs if they had thought about the question, had the opportunity to meet them but failed to do so.

### **When is neglect 'significant'?**

Significant is an ordinary word that is used according to its common meaning. Its meaning includes 'important', 'notable', and 'of consequence'. The Act defines 'significant' neglect to be something that is more than trivial or insignificant, but need not be as high as serious, and need not have a lasting or permanent effect.

The use of the word 'significant' refers to the quality of the failure to act, not to the duration, severity or gravity of the outcome of the neglect. It is not necessary to establish whether any harm was actually suffered or whether any harm that did result could be treated and/or resolved or cured. It is the failure (or failures) itself which will generally be assessed for significance when considering reportable conduct. The Commission defines 'significant' as a deliberate or reckless failure or failures that separately or together have had, or could have, considerable detrimental force or effect on the safety or wellbeing of the child who is the victim of the neglect.

While actual harm is not required, there will be times where it will be helpful to give some thought to the possible harm or damage a child might suffer because of the neglect in order to assess how significant the neglect is. The possible harm in question will be a consequence that a reasonable person could imagine being a likely result of the neglect. For example, if a young child is locked in a hot car in summer, a reasonable person could imagine that this neglect could lead to the child suffering serious harm or possibly even death. Neglect that could lead to such serious harm is likely to be significant neglect.

### **Sufficient connection**

A sufficient connection between the worker or volunteer who is the subject of the allegation and the child or children who have been significantly neglected is necessary for reportable conduct to be substantiated. A worker or volunteer will likely have sufficient connection to a child where that person has some degree of direct care, supervision or responsibility for the child.

There will sometimes be situations in which a worker or volunteer who does not have a degree of direct responsibility for the day to day care, supervision or responsibility for a child has taken action, or failed to take action, that has resulted in a child's basic needs not being met (including being kept safe from some harm or abuse). Deciding whether such a worker or volunteer, who is often a more senior worker or volunteer, can be said to have a sufficient connection to that child to have committed reportable conduct can be assisted by giving consideration of the following factors:

Factors relevant to a sufficient connection	Considerations
Knowledge of the risk	<ul style="list-style-type: none"> <li>• Does the worker or volunteer have information about a specific risk that a child's (or group of children's) basic needs have not been, or may not be, met?</li> <li>• Is the worker or volunteer aware, or should reasonably have been aware, of the risk?</li> </ul>
Vulnerability of the child	<ul style="list-style-type: none"> <li>• Is there a degree of vulnerability in the child or children so that they depend on the worker or volunteer using their power to make sure their basic needs are met?</li> </ul>
Consistency with role	<ul style="list-style-type: none"> <li>• Is a responsibility to take action to meet the needs of the child or children consistent with the worker or volunteer's role and function within the organisation?</li> </ul>
Power and/or authority to act	<ul style="list-style-type: none"> <li>• Is the degree and nature of control or authority exercised by the worker or volunteer over the risk that the child's needs will not be met such that they are able to remove the risk or otherwise place the child out of harm's way?</li> </ul>
Assigning responsibility	<ul style="list-style-type: none"> <li>• Is it fair to make the worker or volunteer responsible for taking action given that they have the power to take action, added to the fact that if action is not taken, it is imaginable that the child's needs will not be met?</li> </ul>

The above factors point to circumstances where it might be fair and reasonable to decide that a worker or volunteer who does not have the day to day care, supervision or authority over a child is responsible for a failure to meet that child's needs. As this guidance is general in nature, it may not cover all situations. If further assistance is required, please contact the Commission to discuss the individual situation.

### 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: (03) 8601 5281
- Email: [contact@ccyp.vic.gov.au](mailto:contact@ccyp.vic.gov.au)

You can also find more information on the Commission's website: [www.ccyp.vic.gov.au](http://www.ccyp.vic.gov.au)

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.