

Information sheet 14

Commission's Own Motion Investigations under the Reportable Conduct Scheme

Purpose

This Information Sheet will outline some of the Commission for Children and Young People's (**Commission**) powers in relation to investigating reportable allegations under the Victorian Reportable Conduct Scheme (**the scheme**) set out in the *Child Wellbeing and Safety Act 2005* (**the Act**). It will also provide guidance on some of the review rights available to organisations to review certain decisions of the Commission.

The scheme

The Commission has a variety of functions under the scheme, including to:

- oversee the investigation of reportable allegations
- make recommendations to organisations in relation to the findings of investigations
- share information about substantiated findings with the Working with Children Check unit and other regulators
- monitor compliance with the scheme.

Heads of organisations have an obligation to investigate reportable allegations about the conduct of their workers or volunteers.

In limited circumstances, the Commission may investigate allegations of reportable conduct itself.

Own motion investigations

The Commission may, on its own motion, investigate an allegation of reportable conduct by a volunteer or worker who is engaged by an organisation subject to the scheme.

The Commission may commence an own motion investigation if the Commission:

- receives information about a reportable allegation from any person, the Commission reasonably believes the reportable conduct may have been committed and the Commission considers it is in the public interest for the Commission to investigate, or
- is advised by an organisation or regulator that the organisation or regulator will not, or is unable to investigate the reportable allegation or engage an independent investigator, or
- considers it is in the public interest to investigate any inappropriate handling of, or response to, a reportable allegation by an organisation or regulator (whether a complaint has been received or not).

In order to conduct an investigation, the Commission has a number of powers to gather information.

What is in the public interest?

Before making a decision to conduct an Own Motion Investigation, the Commission needs to be satisfied that the investigation is in the public interest. The 'public interest' can relate to the interests of the community as a whole, or at least to a large part of the community, or it can relate to individual interests, a small group or a part of the total population.



Some questions the Commission might ask when considering what is in the public interest include, but are not limited to:

- What are the best interests of the alleged victim likely to involve?
- What are the interests of any other children involved?
- What are the interests of the organisation involved?
- Does the organisation have any particular qualities that make their needs unique?
- If the organisation has indicated it will use an investigator, is the investigator, nominated by the organisation, an 'independent investigator' who is free from any bias or conflict of interest?
- Is there evidence that suggests an investigator appointed by the organisation or a decision-maker could have pre-judged an allegation?
- Is there evidence to suggest the organisation will not conduct a thorough investigation process?
- Has the organisation previously demonstrated an unwillingness to apply a thorough investigative process?
- Is the organisation's decision-maker in charge of making findings at the end of the investigation free from any bias or conflict of interest?

Once the own motion investigation has concluded, the Commission, can:

- make findings and give reasons for the findings
- make recommendations for actions to be taken (if any)
- provide the organisation with the findings, reasons and any recommendations, and
- if required, for example if the individual's employment is regulated by another body such as VIT or AHPRA, provide the relevant regulator with any recommended actions to be taken by the regulator.

If the own motion investigation finds that reportable conduct is substantiated, the Commission may notify the Secretary to the Department of Justice and Regulation for the purposes of a Working with Children Check Assessment or Reassessment.

Reviewing the Commission's decisions following an investigation

Internal Review

A worker or volunteer who is the subject of a reportable allegation may seek an internal review by the Commission of a finding made by the Commission at the conclusion of an own motion investigation.

An internal review is a process for reviewing a decision of the Commission. The review is undertaken by a senior person within the Commission who was not involved in making the original decision. Internal review involves taking a fresh look at the evidence that was available to the original decision maker, considering any new evidence that has become available, and considering any other available information that is relevant. This process aims to test the merits of the original decision. Once the internal review is complete, the internal reviewer will either confirm the original decision or make a different one. The Commission's internal review procedure is designed to be inexpensive, timely and informal.

Review by VCAT

If the Commission has made a finding that a worker or volunteer has committed reportable conduct, the worker or volunteer may seek a review by the Victorian Civil and Administrative Tribunal (**VCAT**), but **only** if that worker or volunteer has exhausted all internal review avenues first.

The application for review must be made to VCAT within 28 days after the following, whichever is the later:

- the day the decision is made by the Commission; or
- the day on which a worker or volunteer is given a statement of reasons requested under VCAT's legislation or they are informed that a statement of reasons will not be given.

Further information on VCAT's processes can be found on the VCAT website: www.vcat.vic.gov.au

Where to get help

The Commission encourages organisations covered by the 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

You can also find more information on the Commission's website: 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.