

Information Sheet 18

Behaviour that causes significant emotional and psychological harm under the Reportable Conduct Scheme

Behaviour that causes significant emotional or psychological harm to a child

The *Child Wellbeing and Safety Act 2005* (the Act) states that ‘any behaviour that causes significant emotional or psychological harm to a child’ is a type of reportable conduct.

This information sheet provides guidance to assist organisations in deciding whether behaviour has caused significant emotional or psychological harm to a child for the purposes of the Reportable Conduct Scheme (the Scheme).

As this guidance is of a general nature, it may not cover all possible situations. Each allegation of this type of reportable conduct should be considered carefully, keeping in mind the context in which the behaviour occurred and the child’s circumstances.

In determining whether behaviour has caused significant emotional or psychological harm, you should consider the following:

1. What were the worker’s or volunteer’s behaviours?
2. Was the child significantly emotionally or psychologically harmed and did the worker’s behaviour cause the harm?
3. Is the behaviour subject to an exception?

Step 1: What were the worker’s or volunteer’s behaviours?

Identifying the behaviour

When responding to this type of allegation, it is important to clearly identify the worker or volunteer’s behaviour.

There are a broad range of behaviours that can cause significant harm. This includes (without limitation):

- *doing* certain things (e.g. acts, gestures or communication)
- a *one-off* or a *series of behaviours* (i.e. children can experience harm from behaviour that happens once, or cumulative harm from behaviours that might not be harmful in isolation)
- behaviour that *is linked* to another type of reportable conduct (i.e. a sexual offence, sexual misconduct, physical violence or significant neglect), or behaviour that *is not linked* to another type of reportable conduct (e.g. persistent verbal abuse, coercive or manipulative behaviour, hostility towards, or rejection of, a child, humiliation, belittling or scapegoating).



If an allegation relates to behaviour that could amount to more than one type of reportable conduct (e.g. an act of physical violence against a child that also caused significant emotional or psychological harm), organisations should ensure that they notify the Commission, investigate, and make findings about each relevant type of reportable conduct.

Intention and Recklessness

It would be necessary for an investigation to find that the behaviour of the worker or volunteer was either **intentional** or **reckless**

Intentional means that the worker or volunteer engaged in the behaviour deliberately.

Reckless means the worker or volunteer might not have intended to cause harm but was reckless about the impact their behaviour could have on the child. In cases of recklessness, the worker or volunteer will often know it was likely their behaviour could lead to harm but engages in the conduct or behaviour anyway. Recklessness can occur when the worker or volunteer:

- does not stop to think about the potential consequences of their behaviour, but if they had, they would have realised the impact their actions were likely to have, or
- has some understanding of the possible impact their behaviour was likely to have but goes ahead with the behaviour anyway.

Step 2: Did the behaviour cause emotional or psychological harm that is significant?

After identifying the worker or volunteer's behaviour, organisations should consider whether the child was harmed. If a child was harmed, consideration should be given to:

- whether that harm amounts to emotional or psychological harm that is significant, and
- whether the behaviour caused the harm.

If there is nothing to indicate that the child was harmed it will not be necessary to consider the two dot points above.

Is the harm significant?

Emotional harm is expressed in a tangible or visibly expressive manner. For example, a child may show signs of distress, withdrawal, fear, anxiety, anger or despair. Significant emotional harm may have an impact on emotional health and development, the capacity to express emotions and the ability to sustain and develop healthy relationships.

Psychological harm has a longer-term cognitive impact which may affect a child's conscious and unconscious mind. Psychological harm may not become evident for days, weeks or years after an event. Psychological harm may negatively affect and delay a child's cognitive development. Psychological harm often takes the form of a diagnosable psychological disorder.

As set out below, because emotional harm can be more apparent than psychological harm, a professional assessment is more likely to be required for a finding of psychological harm.

	Features	Examples
Emotional harm	<ul style="list-style-type: none">• Readily observable through behaviour• Involves the expression of emotions• Harm generally manifests at the time of the behaviour• May be more readily identified or articulated by the affected child• The harm is more likely to exist in the shorter term.	<p>Behaviour: A teacher repeatedly uses racial slurs against a primary school student from an ethnic minority.</p> <p>Indicator of harm: The student comes home after school every day for a week and hides in their bedroom. The student reveals to their counsellor that they cry every night after school and sometimes engage in self-harming behaviour.</p>



Features	Examples
Psychological harm	<ul style="list-style-type: none"> Harm may be less observable Does not necessarily require the outward expression of emotions Harm may manifest at the time or days, weeks, even years after the behaviour More aligned with long term impacts on a child's psychological wellbeing or cognitive development Less likely to be readily identified or articulated by a child More likely to require an expert diagnosis or opinion.
	<p>Behaviour: A worker repeatedly locks a child in their room for long periods and tells them they will 'end up in jail like their mother' whenever the child misbehaves.</p> <p>Indicator of harm: Over time, the child becomes extremely socially withdrawn and is diagnosed with generalised anxiety disorder.</p>

Significant harm: 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' 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. To guide organisations in making decisions about whether harm is significant, the Commission encourages organisations to consider the actual reaction of the child in question.

Examples of reactions that can be consistent with significant emotional or psychological harm could include:

- suicidal action, suicidal ideation, or self-harm
- self-destructive, antisocial, or anxious behaviour
- ongoing sleep disturbance, nightmares, or bedwetting
- intense visible distress, withdrawal, fear, anxiety, anger, or despair, particularly over an extended period
- other dramatic changes that are out-of-character for the child (e.g. a usually shy child becoming defiant or a usually outgoing child becoming withdrawn)
- the child is assessed as having experienced a significant delay in their emotional or intellectual development or that their functioning has been impaired.

Both the child's immediate and any delayed reactions to behaviour should be considered. Evidence of the child's reaction might be obtained by speaking to the child, people who have known the child for an extended period and are believed to be acting in the child's best interests, professionals who have experience working with children of that age group, or other people who know the child's history.

Did the behaviour cause the significant harm?

If it is found that a child experienced significant emotional or psychological harm, the investigation should then consider whether the worker or volunteer's behaviour caused that harm. That is, whether there was a 'clear link' between the worker's or volunteer's behaviour and the child's significant harm.

It is not necessary for the subject of allegation's behaviour to be the sole cause of the child's significant harm but it must be the main cause.

When considering whether there is a 'clear link' between the behaviour and the significant harm to a child, it can be helpful to consider:



- where there is one source of harm, the likelihood that the child would still have been harmed if the alleged behaviour had not occurred (i.e. if the behaviour did not happen, would the child have been harmed?)
- where there are potentially multiple sources of harm, whether the subject of the allegation's behaviour was the main cause of the harm.

If an investigation finds that a child was significantly harmed and the behaviour caused that significant harm then the investigation should proceed to consider whether there are any exceptions (see below).

Step 3: Are there exceptions?

The Scheme is particularly concerned with allegations about a person's conduct that may affect decisions about whether a worker or volunteer is suitable to work with children. Not every allegation will be covered by the Scheme.

Importantly, conduct will not be reportable conduct under this category if:

- the worker or volunteer has responsibility for discipline and has taken lawful and reasonable disciplinary action, such as sending a child to sit in 'time out' for a short period of time or briefly raising their voice to attract a child's attention and to restore order in a classroom, in line with organisational policy. The reasonableness of the disciplinary action should be considered in the context of the specific circumstances of the child. For example, this might include whether the person who engaged in the behaviour knew (or ought to have known) about the child and their particular vulnerabilities, attributes or characteristics.
- the worker or volunteer is an appropriately qualified worker or volunteer who has given medical treatment in good faith, such as a doctor or first aid officer authorised to administer first aid.
- the worker or volunteer has taken reasonable steps to protect a child from immediate harm.

When should a professional assessment be obtained?

Any organisation that has concerns about the mental health and wellbeing of a child should consider whether the child should be offered access to, and supported to attend, an appropriate professional (for example, a health worker, psychologist, counsellor or general practitioner).

An organisation may decide to engage a professional to give their opinion to the organisation as to whether a child has experienced significant emotional or psychological harm for the purposes of the Scheme.

Before engaging a professional for these purposes, organisations are encouraged to consider:

- the child's views about seeing a professional and the particular proposed professional
- obtaining the consent of a person with parental responsibility unless not safe or appropriate
- whether the child has an established relationship with a professional who could give their assessment
- whether the proposed professional can give an objective and independent assessment
- the cultural background and/or religion of the child. (Ideally, any proposed professional is from, or recognised by, the child's community. Alternatively, consideration could be given to whether the health professional should be supported by a social worker that is from, or recognised by, the child's community)
- whether the proposed professional has significant experience working with children of that age group
- whether the proposed professional can meet with the child in person. (Ideally, the proposed professional would meet directly with the child where safe and appropriate to do so).



The Commission does not expect that a professional assessment will be obtained in every case to establish a finding that behaviour has caused significant emotional or psychological harm to a child. For example, it may not be necessary or appropriate to engage a health professional where:

- assessment may unreasonably re-traumatise or otherwise further harm the child
- appropriate records of a previous professional assessment already exist, or
- it is evident from the child's behaviour that they have experienced significant harm.




The Commission encourages organisations to give a copy of this information sheet to any health professional that is engaged for the purposes of the Scheme.

Acknowledgment

The Commission wishes to acknowledge the expert assistance and contributions of Associate Professor Erica Frydenberg PHD, MA, BA, DipCPsych and Associate Professor Alasdair Vance MD, MMed, MBBS in relation to this information sheet.

Where to get help

For further information about the Reportable Conduct Scheme, the Child Safe Standards, to talk through issues of concern, or to make a notification:

-  Telephone us on: 1300 782 978
-  Email us at: contact@ccyp.vic.gov.au
-  Visit 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 1300 782 978.

If you are deaf, or have a hearing or speech impairment, contact us through the National Relay Service. For more information, visit: www.relayservice.gov.au

