

New types of workers and volunteers covered by the Reportable Conduct Scheme

Information sheet 19

What are the changes?

Changes to the definition of 'employee' bring new workers and volunteers¹ into the Reportable Conduct Scheme (the Scheme).

From 1 July 2024, organisations will need to notify the Commission about reportable allegations for labour hire workers, secondees, directors of companies and individual business owners and investigate under the Scheme.

You can read more about the changes to the *Child Wellbeing and Safety Act 2005*² on the [Victorian Legislation website](#).

What this means for heads of organisations

Heads of organisations are already responsible for notifications and investigations about allegations of reportable conduct about workers, volunteers and contractors they directly employ or engage.³ This responsibility still applies.

The changes mean notifications to the Commission and investigations will be required for workers and volunteers in your organisation when they are supplied by an external provider.

Heads of organisations should consider their contractual arrangements with external providers for the supply of workers or volunteers, and with secondees covered by the changes to ensure they best support the organisation to identify reportable allegations and fulfil their responsibilities to notify the Commission and investigate under the Scheme.

Changes also mean notifications and investigations under the Scheme are required for directors of organisations and business owners.

See [Information sheet 3: Responsibilities of the head of an organisation](#) for more details about reporting responsibilities for the head of an organisation under the Scheme. Changes in this information sheet will be incorporated from 1 July 2024.

Reportable conduct includes conduct inside and outside of the workplace.

¹ The Commission uses the term 'workers and volunteers' to refer to *employee* as defined in section 3(1) of the *Child Wellbeing and Safety Act 2005*, and from 1 July 2024 this will include the new employees.

² Amendments made by the *Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Act 2023*.

³ Other legislation relevant to workplace matters may define an 'employee' differently to the *Child Wellbeing and Safety Act 2005*.

New types of workers and volunteers covered by the Scheme

The new workers and volunteers⁴ whose conduct is covered under the Scheme are:

Workers or volunteers provided by labour hire agencies, companies or other providers, and secondees where they are:

- performing work in and as a part of an organisation subject to the Scheme, and
- under the direction, supervision or control of that organisation.

This could include, for example:

- casual relief teachers or agency nurses provided by a labour hire agency
- childcare workers employed by one company, but who work for a related company who is the approved provider of the childcare service in the corporate group
- administrative staff, gardening, maintenance, IT or other staff performing supporting work at an organisation who are engaged through a labour hire agency
- a secondee religious leader from New South Wales who works in Victoria for several months as a religious leader of a rural church.

It is important for your organisation to consider the circumstances, contracts and other agreements for each individual worker or volunteer to know if they are covered by the Scheme as individual arrangements will differ.

You can find more examples and scenarios in Appendix 2.

Some labour hire agencies, companies or other providers of workers or volunteers may be subject to the Scheme as well as the organisation to whom they have provided a worker or volunteer. If this is the case, both the provider and the organisation have an obligation to notify the Commission about allegations in respect of that worker or volunteer and conduct an investigation. It is important that the provider and the organisation communicate with each other about the allegations. In these circumstances the Commission works with organisations to confirm who will lead the investigation to reduce duplication and to ensure risks to children and young people are being managed.

Directors or other office holders of other bodies

The expanded definition of employee now applies to individuals who are directors or office holders of other bodies where that individual is performing work for an organisation that is subject to the Scheme.

This means that if an organisation subject to the Scheme engages a company to work for them, and the director of that company performs the work, then that director is considered an employee of the organisation for the purposes of the Scheme. If allegations are raised about their conduct, they must be notified to the Commission and investigated.

This applies regardless of whether the individual provides services to children or young people.

Individual business owners

The expanded definition of employee now applies to individuals who own organisations that are subject to the Scheme and employ others⁵. Some businesses are owned by individuals rather than a company or other incorporated body. They can be known as sole traders.

⁴ Only workers or volunteers aged 18 years or older are covered by the Scheme.

⁵ See definition of *applicable entity* in s 3(1)(c) of the *Child Wellbeing and Safety Act 2005*.

An individual who carries on a business and engages contractors, employees or volunteers to assist the business in providing services or facilities or in producing or providing goods, may be covered by the Scheme. An example is a person who provides disability services and employs several staff as part of the business. Under these changes, the individual business owner themselves will now be considered an employee for the purposes of the Scheme, meaning if allegations are raised about their conduct, these must be notified to the Commission and investigated.

This applies only to individuals who own organisations that exercise care, supervision or authority over children.

Which workers or volunteers engaged through a provider and secondees will be covered by the Scheme from 1 July 2024?

Under the changes, all three of the following requirements in the legislation **must** be met for the conduct of workers or volunteers engaged through a provider, or secondees, to require notification to the Commission and investigation under the Scheme:

1. Is the worker or volunteer engaged through a provider, or are they a secondee to the organisation?

Providers supply workers or volunteers to organisations subject to the Scheme to perform work in and as part of the organisation.

A person will be considered a worker for a provider if:

- under an arrangement between the worker and the provider, the provider supplies or may supply the worker to another organisation or person to perform work, and
- the provider is obliged to pay the worker (in whole or in part) for the performance of that work, whether payment is provided directly or indirectly, or through others.

Some situations where a person may be considered a worker for a provider include:

- the worker is employed by the provider, or
- a contract has been entered into between the worker and the provider, or
- the worker is an apprentice or is under a training contract, within the meaning of the *Education and Training Reform Act 2006*.

A person will be considered a volunteer for a provider if under an arrangement between the volunteer and the provider, the provider supplies or may supply the volunteer to another organisation or person to perform work on a voluntary basis.

Definitions above related to a worker or volunteer for a provider are specific to this new group of people covered by the Scheme. There are no changes to definitions related to the group of workers or volunteers who were already covered by the Scheme prior to this legislative change.

These three requirements apply even if the work does not relate directly to children.

A person will be a secondee to an organisation subject to the Scheme if they have been provided to that organisation by the secondee's employer to perform work at the organisation on a temporary basis for a secondment period.

2. Is the worker or volunteer performing work in and as part of the organisation?

Performing work 'in and as part of the organisation' covers all those who carry out work in any part of the organisation. This is broader than the main business activities and includes support functions.

Where an individual is performing work that is part of the organisation's operations, even if it's not directly related to its main business activities, they are likely to meet this requirement. The location

or focus of the work should be directed towards some part of the organisation, however there is no requirement that it relate to children.

You should consider how integrated and close to the organisation the work is that the worker or volunteer is undertaking. If the work is integrated and close to the organisation, it is likely to mean the work can be considered as being 'in and as part of the organisation'. If the work is more remote and there is greater separation from the organisation, then it is more likely the work can't be considered as being performed 'in and as part of the organisation'.

For some organisations, examples of support functions that could be considered 'in or as part of the organisation' might include those who maintain databases or files where children's records are stored, manage online platforms or social media channels, maintain the organisation's fleet vehicles or human resources staff.

An example of work that may not be considered 'in and as part of the organisation' is where a specialist arborist has been engaged for the sole purpose of trimming a damaged tree on a school oval after a storm.

3. Is the worker or volunteer under the direction, supervision or control of the organisation?

The worker or volunteer must also be under the direction, supervision or control of the organisation. This requirement may be met when the arrangement with the organisation means the organisation can direct, guide, manage, restrain, command, oversee or otherwise take charge of the worker or volunteer. This could include the organisation supervising the tasks performed by the worker or volunteer, or setting their work location or hours.

Organisations should be aware that arrangements can change over time. For example, a worker engaged for a short-term task, such as an administrative assistant attending for a few hours to remove a pile of junk out a storeroom in a childcare centre. This person may initially work quite independently and not come under the direction, supervision or control of the organisation as theirs was a discrete, one-off task. However, if they end up staying at the organisation for a longer period, for example every day for several weeks, to conduct a more extensive review of storage options and procedures, it becomes more likely that they will come under the direction, supervision or control of the organisation. With a longer engagement, the organisation may need to provide direction on when certain parts of the site can be accessed, and control potential engagement with children.

The direction, supervision or control of the worker or volunteer solely for occupational health and safety of the worker or volunteer (OHS), or for site access purposes, is unlikely to meet the threshold of being under the direction, supervision, or control of the organisation for the purpose of applying the expanded definition of employee.

Appendix 1 has indicators to help you decide if a worker or volunteer is covered by the expanded definition of an employee under the Scheme from 1 July 2024.

Historical allegations

Information on historical allegations that relate to a worker or volunteer under the expanded definition where the alleged reportable conduct occurred prior to 1 July 2024 can be found in [Information Sheet 12: Reportable Conduct Scheme - Historical allegations](#)

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 78 29 78



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



Appendix 1 – Indicators to help decide if a worker or volunteer engaged through a provider, or secondee, is covered by the expanded definition of employee under the Scheme

Where a person performs similar work at the organisation to others who are directly engaged or employed by the organisation, they will likely meet the requirements of the expanded definition of employee. An example is a labour hire residential care worker who performs work very similar to staff who are directly employed by the out-of-home care provider.

The indicators below provide other key questions that may help you assess if a person is likely to be covered by the expanded definition of employee. The indicators are not definitive or exhaustive and are designed to provide guidance.

1.	<p>Is the person:</p> <ul style="list-style-type: none"> a worker or volunteer supplied to your organisation by a provider, for example, a labour hire agency? a secondee who is supplied by a person or another organisation to your organisation to work for a temporary secondment period? The secondee must be employed by that person or other organisation.
<p>If you answered yes, proceed to the next question.</p>	
<p>If you answered no to question 1 then the person is unlikely to be covered by the expanded definition of employee.</p>	
2.	<p>Does the person perform work in or as part of the organisation?</p> <p>Consider how integrated and close to the organisation the work is that the worker or volunteer is undertaking. If the work is integrated and close to the organisation, it is likely to mean the work can be considered as being 'in and as part of the organisation'. If the work is more remote and there is greater separation from the organisation, then it is more likely the work can't be considered as being performed 'in and as part of the organisation'.</p> <p>Some indicators to consider include, but are not limited to:</p> <ul style="list-style-type: none"> Does the person perform work as part of the operations of the organisation? For example: <ul style="list-style-type: none"> Are they integral in the organisation's operations, including activities that are not core business functions, such as rostering and payroll, building maintenance services, gardening etc? Does the person have the opportunity to interact or contact children either physically or through access to online systems, databases, social media etc.?
<p>If you answered yes to any of the above questions in this section, the person may be covered by the expanded definition of employee of the Scheme.</p>	
<p>If you answered no to all of the above questions, refer back to the full explanation of 'in or as part of the organisation' in this information sheet. It is possible the person may not be covered by the expanded definition.</p>	



3.	<p>Is the person performing work under the direction, supervision, or control of the organisation?</p> <p>Some indicators to be considered include, but are not limited to:</p> <ul style="list-style-type: none">• Does the organisation:<ul style="list-style-type: none">○ provide specific instructions on how the person is to perform their tasks?○ set the person's start and finish times?○ have the ability to delegate specific tasks to the person?○ monitor the performance of the person?○ provide the person with training or skill development?○ monitor the individual's risk to children?	<p>This may not be static. Circumstances regarding whether the person is under direction, supervision or control may change over time.</p>
<p>If you answered yes to <u>any</u> of the indicators above, the person may be covered by the expanded definition of an employee.</p>		<p>If you have answered no to all the indicators above, refer back to the full explanation of 'direction, supervision, or control' in this information sheet. It is possible the person may not be covered by the expanded definition.</p>
<p>If you remain unclear if a worker or volunteer comes under the expanded definition, please contact the Commission for guidance and advice.</p>		

Appendix 2 – Example scenarios

Examples provided in this appendix are general in nature and focus on the changes to the definition of employee. They should not be taken as definitive guidance. It is important for your organisation to consider the circumstances, contracts and other agreements of each individual worker or volunteer to know if they are covered by the Scheme as individual arrangements will differ.

Heads of organisations are already responsible for notifications and investigations about allegations of reportable conduct about workers, volunteers and contractors they directly employ or engage. This responsibility still applies and is outlined in [Information sheet 3: Responsibilities of the head of the organisation](#).

Example scenarios of workers or volunteers engaged through a provider, or secondees, likely to be covered by the Scheme under the expanded definition of employee

Labour hire worker

Examples include:

- a relief teacher attending the school via a labour hire arrangement
- an agency nurse working at a hospital
- a casual educator engaged through a labour hire provider to work at a childcare centre
- a youth worker engaged through a labour hire provider to work weekend shifts at a residential care home
- a cook engaged through a labour hire provider to work at a childcare centre on a casual relief basis
- a gardener engaged through a labour hire agency to maintain the school grounds on a regular basis.

Each of the above scenarios provides indicators that the worker is likely to be covered by the expanded definition of employee because:

- they are working at an organisation covered by the Scheme
- they are integrated into the operations of the organisation
- they are likely to be provided with instructions and guidelines from the organisation about how the work is to be performed
- they may be provided training by the organisation
- their performance is likely to be monitored and feedback may be provided to the worker or provider
- they are unlikely to have a high level of autonomy regarding how the work is to be performed
- the organisation would be able to allocate additional tasks to the individual
- the organisation monitors the individual's risk to children.

Note: It does not matter whether the labour hire provider is itself covered by the Scheme.

Volunteer

Example:

- an environmental organisation has an agreement with a childcare centre to provide volunteers to run a regular program teaching children about conservation and tree planting.

In this scenario the volunteer is likely to be covered by the expanded definition of employee because:

- there is an arrangement between the volunteer and the environmental organisation (the provider) under which the environmental organisation supplies the volunteer to the childcare centre to deliver a program
- the environmental organisation (the provider) has an agreement with the childcare centre to provide volunteers to deliver programs at the childcare centre and has facilitated the placement
- they are working at a childcare centre which is an organisation covered by the Scheme
- they are integrated in the operations of the childcare centre through the regular program
- they will be required to follow instruction from the childcare centre about the delivery of the program
- the childcare centre is likely to manage the person's work so they don't present a risk to children.
- their work will be monitored by the childcare centre and feedback provided.

Note: It does not matter whether the environmental organisation is itself covered by the Scheme.

Secondees

Examples include:

- a disability worker seconded by their employer to work at a disability residential home to fill in for a staff member who is on leave
- a worker from an organisation that runs camps for children seconded by their employer to a similar organisation to run camp activities
- an administrative assistant from one school seconded by their employer three days a week to provide administrative support to another school
- a religious leader from New South Wales seconded by their employer to work in Victoria for three months as a religious leader of a rural church.

In each of the above scenarios the secondees are likely to be covered by the expanded definition of employee because:

- they are working at an organisation covered by the Scheme
- they are integrated into the operations of the organisation
- they are likely to be provided with instructions and guidelines by the organisation regarding how the work is performed
- they may be provided training by the organisation
- their performance is likely to be monitored and feedback may be provided to the worker and/or their employer
- they are unlikely to have a high level of autonomy regarding how the work is to be performed
- the organisation would be able to allocate additional tasks to the individuals

- the organisation monitors the individual's risk to children.

Note: It does not matter whether the secondee's employer is itself covered by the Scheme.

Example scenarios of labour hire workers not likely to be covered by the Scheme under the expanded definition of employee

Example 1:

A worker has been hired through a labour hire agency to relocate tables and chairs to a new classroom, on a one-off basis during school holidays.

This worker is unlikely to be covered by the expanded definition of employee because:

- the work is not integrated into the operations of the organisation and therefore the worker is not performing work in or as part of the organisation, business or undertaking
- the organisation that has engaged the worker is not providing supervision or control for this activity
- training and skill development is unlikely to be provided
- the organisation does not monitor the individual's risk to children as the work occurs during the school holidays

Example 2:

A synagogue is conducting capital construction works with labour hire workers engaged by the synagogue on the site. The site is sealed off from the synagogue grounds with fencing and is self-contained with toilets and other required facilities. This means it will not be necessary for workers to access the remainder of the synagogue grounds.

These workers are unlikely to be covered by the expanded definition of employee because:

- they are unlikely to be integrated into the operations of the organisation and would therefore be unlikely to be considered to be performing work in and as a part of the organisation
- they are unlikely to be issued instructions and guidelines by the organisation regarding how to conduct their role onsite
- the organisation that has engaged the worker is not providing supervision or control of this activity
- the organisation would not be providing training and skill development to assist them in performing their role
- their performance is unlikely to be monitored directly by the organisation
- the worker's daily work arrangements are unlikely to be negotiated directly with the organisation
- the organisation is unlikely to be able to directly allocate tasks to the worker
- they have been physically excluded from engagement with children at the site, so there is no need to manage the person's work so they don't present a risk to children
- while the organisation still has occupational health and safety responsibilities for the worker, these do not necessarily bring the workers within the definition of employee for the purposes of the Scheme.



Example scenarios for student placements

Student placements have different kinds of arrangements and the circumstances of each one need to be considered on a case-by-case basis. Some may be covered by the expanded definition of employee and others will not. It is important when considering whether a student placement is covered by the Scheme to first determine if that student is a worker or volunteer worker of the provider (ie: the university, TAFE or other educational institution).

Example of student placement likely to be covered by the Scheme:

- As part of their teaching course, a student teacher is required to undertake a placement at a school. Although the university itself is not subject to the Scheme, it is considered a 'provider' because as part of the teaching course it facilitates student placements at schools. There is an agreement between the university and the host school to provide student teachers to the school. The student teacher and the university enter into an arrangement where it is agreed that the student is supplied to a local school to complete an unpaid placement.⁶

In the above scenario the student teacher is likely to be covered by the expanded definition of employee because:

- there is an arrangement between the student teacher and the university (the provider) under which the university supplies the student teacher to the school to perform work on a voluntary basis
- the university (the provider) has an agreement with the school to provide student teachers to perform work at the school and has facilitated the placement
- the placement organisation, the school, is subject to the Scheme
- the student teacher is integrated into the day-to-day operations of the school, because they are actually taking classes and performing the work of a teacher
- the student teacher will be required to follow directions or instructions and guidelines regarding what and how the work is performed
- their performance is likely to be monitored and feedback may be provided to the student teacher and/or the university
- the school monitors the student teacher's risk to children.

Example of a student placement not likely to be covered by the Scheme

- As part of their teaching course, a student teacher is required to undertake a placement at a school. The placement is for three days a week, for eight weeks of the school term. The student is required to organise the placement directly with the school and does not receive assistance from the university, meaning the university does not supply the student to the school and there is no arrangement between the university and the student teacher setting out the terms of the placement. The university is therefore not a provider under the definition and the student teacher is **not** a worker or volunteer of the university.

In the above scenario the student placement is not likely to be covered by the expanded definition of employee because:

- the university is not a provider for the purposes of the Scheme because it does not supply student teachers to organisations to perform work as part of their course requirements, students are to organise the placement themselves

⁶ The placement could be a paid placement if under the arrangement between the university (the provider) and the student teacher (the worker) the university is obliged to pay the student teacher (in whole or in part) for the performance of the work by the student teacher, whether payment is made directly or indirectly, or through one or more intermediaries.

- the student teacher is not a worker or volunteer of the university because there is no arrangement between the university and the student, or between the university and the school, under which they are supplied to perform work at a school or other organisation subject to the Scheme
- as the student is not a worker or volunteer of the university, they are not an employee of the school and are therefore not covered by the Scheme.

Example scenarios for directors or business owners covered by the Scheme under the expanded definition of employee

A director of a company

Example:

- an IT company engaged by registered school to upgrade their computer systems. The director of the IT company is the person who completes the work at the school.

In the above scenario the director is covered by the expanded definition of employee as they are performing work for an organisation required to comply with the Scheme. It does not matter that the IT company itself is not covered by the Scheme, or that the director is not providing services to children.

Individual business owner

Examples include:

- a business owner of a children's overnight camp that engages staff to run the camps
- a physiotherapist business owner providing disability support services to children, in which the business owner engages staff to provide specialist physiotherapy services to children with disability.

In the above scenarios these businesses are covered by the Scheme. Just like their staff, these business owners will be considered an employee of their organisations for the purposes of the Scheme.

