

# Reportable Conduct Scheme

## Information sheet

### Frequently Asked Questions

This information sheet provides answers to some of the more common questions about the Reportable Conduct Scheme.

#### **Why does Victoria need a Reportable Conduct Scheme?**

In 2012, the Victorian Government conducted an inquiry into the handling of child abuse by religious and other non government organisations (the Betrayal of Trust Inquiry). The inquiry found that some organisations failed to respond and act on early disclosures about child abuse and this allowed perpetrators to continue to abuse children.

The inquiry report, which was tabled in Parliament in late 2013, contained a number of recommendations designed to ensure organisations take steps to prevent child abuse within their organisations and respond appropriately when it occurs. It also recommended that an independent statutory body oversee and monitor how organisations handle allegations of child abuse.

Consistent with the Betrayal of Trust Inquiry's recommendations, the Victorian Government amended the *Child Wellbeing and Safety Act 2005* to introduce the Reportable Conduct Scheme (the Scheme).

The Scheme requires certain organisations that provide services or conduct activities related to children to notify the Commission for Children and Young People (the Commission) about allegations of child abuse and child related misconduct made against their employees, volunteers or contractors. It also requires organisations to undertake an investigation into any allegations and allows the Commission to oversee those investigations.

#### **What is considered reportable conduct?**

There are five types of reportable conduct:

- a sexual offence committed against, with, or in the presence of a child, whether or not a criminal proceeding in relation to the offence has been commenced or concluded
- sexual misconduct committed against, with, or in the presence of a child
- physical violence committed against, with, or in the presence of a child
- any behaviour that causes significant emotional or psychological harm to a child
- significant neglect of a child.

#### **What is misconduct that may involve reportable conduct?**

This refers to behaviour that breaches a professional code of conduct or workplace expectation, (such as a departure from accepted standards that was deliberate or seriously negligent and where the employee was indifferent to the welfare of those affected), and also involves one or more of the five types of reportable conduct (as described above).

## When do I have to report to the Commission?

All reportable allegations must be reported to the Commission. An allegation will be reportable to the Commission if it meets the following requirements:

- the allegation relates to an employee of an organisation that is required to comply with the Scheme. The definition of employee is broadly defined (see below for the definition of an employee).
- the organisation exercises care, supervision or authority over children.
- the employee to whom the reportable allegation relates is at least 18 years of age when the conduct occurred.
- the alleged conduct is reportable conduct or misconduct that may involve reportable conduct (as described above).
- a reasonable belief has been formed that the alleged conduct occurred.
- the alleged victim is under 18 years of age when the alleged conduct occurred.

## Who is an employee?

An employee is a person over the age of 18 years who is:

- (a) employed by an organisation, whether or not the person is employed in connection with any work or activities of the organisation that relate to children, **or**
- (b) engaged by the organisation to provide services, including as a volunteer (including foster carers and kinship carers), contractor, Minister of religion, officer of a religious body, office holder or officer, whether or not the person provides services to children.

The Commission will use the term 'employee' to describe the circumstances set out in both (a) and (b) above.

The Scheme covers all employees of an organisation—not only those who work with children.

## Who is required to make the report?

The *Child Wellbeing and Safety Act 2005* states that the head of an organisation is required to make the report to the Commission.

To discharge their obligation, the head of an organisation can delegate tasks. This may include creating and developing systems, sending approved notifications to the Commission, and conducting investigations on their behalf.

However, it is ultimately the responsibility of the head of an organisation to ensure the Commission is notified when they form, or become aware that another person has formed, a reasonable belief that reportable conduct has occurred.

## Who is the head of an organisation?

The head of an organisation is the person who is primarily responsible for decision making in the organisation and may be a chief executive officer, a principal officer or someone in a similar position or fulfilling a similar role. Because organisational structures and governance arrangements differ between organisations, it may not always be clear who the head of an organisation is.

The Commission considers that the “head” of an organisation will generally be a person with ultimate power and responsibility for:

- managing, engaging and terminating the engagement of employees
- conducting misconduct investigations
- the strategic direction of the organisation.

If you need assistance in determining who is the head of your organisation, we recommend that you review your structure and governance, which may include seeking legal advice, and contact the Commission for clarification and guidance.

If there is no chief executive officer, principal officer or equivalent, your organisation can nominate a head for the purposes of the scheme. You can find more information on [Nominating a head of organisation](#)

### **What is meant by ‘reasonable belief’?**

A reasonable belief is a belief based on facts that would lead a reasonable person to think that reportable conduct *may* have occurred.<sup>1</sup>

A reasonable belief is more than suspicion. There must be some objective basis for the belief. However, it does not require certainty. For example, a person is likely to have a reasonable belief if they:

- observed the conduct themselves
- heard from a child that the conduct occurred
- received information from another source (including another person who witnessed the reportable conduct or misconduct).

The head of the organisation does not need to share the person’s reasonable belief regarding the allegation.

However, they do not need to notify the Commission about the allegation if it is plainly wrong or had no basis at all in reality.

If organisations are not sure about whether a particular allegation should be reported, the Commission encourages organisations to contact the Commission for advice.

### **What if an employee resigns or the reportable allegation is about conduct outside work?**

If your employee resigns you are still responsible for notifying the Commission of the reportable allegation and conducting an investigation.

Similarly, if there is a reportable allegation about your employee that relates to their conduct outside of the workplace, you must report this allegation and investigate.

Investigations undertaken in these circumstances may have some challenges. However, your organisations must still do its best to conduct an investigation. If you are unsure how to proceed, the Commission can provide advice and guidance.

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<sup>1</sup> This is from the case *George v Rockett* (1990) 170 CLR 104, which determined that ‘a reasonable belief requires the existence of facts that are sufficient to induce the belief in a reasonable person. Belief requires something more than suspicion’.

## **What about if the reportable allegation is made against a Victorian employee working for a national organisation and the conduct occurred interstate?**

The head of an organisation still has a responsibility to notify the Commission and investigate reportable allegations, even if the allegations relate to conduct that occurred in another state or territory.

## **What are the timeframes for making a report to the Commission and what information needs to be provided?**

If the head of an organisation becomes aware of a reportable allegation against an employee they must notify the Commission **within three business days**:

- that a reportable allegation has been made against an employee
- the name of the employee, including any former names and aliases, if known
- the date of birth of the employee
- whether Victoria Police has been contacted
- the name, address and telephone number for the organisation
- the name of the head of the organisation

It is a criminal offence not to notify the Commission of a reportable allegation.

**As soon as possible and within 30 calendar days** after becoming aware of the reportable allegation the organisation must provide the Commission:

- detailed information about the reportable allegation
- whether or not disciplinary or other action has been taken against the employee
- reasons as to why disciplinary or other action is to be taken or not be taken
- any written submissions the employee wishes to be considered in determining disciplinary or other action to be taken against them.

It is also criminal offence not to provide the Commission the information referred to above within 30 calendar days.

As soon as practical following your investigation, the head of the organisation must provide a copy of the investigation findings and information about actions taken to the Commission.

## **How is a report made?**

The Commission has an online report form designed to enable you to provide us with the necessary information. The form will guide you through the process of reporting and the information that must be included in the report. You can include as much information as you have at the time, in addition to the minimum requirements outlined below.

## **What happens when we notify the Commission of a reportable allegation?**

After the Commission is notified of a reportable allegation, we can provide support and guide organisations to conduct a robust and fair investigation.

When the Commission receives your report we will acknowledge we have received it, allocate a reference number and a contact person. The Commission may:

- contact you for more information to help us assess the allegations and inform our decision making
- refer your report to the relevant regulator to investigate
- initiate our own investigation.

The Commission may also notify the Victorian Institute of Teaching if the allegation involves a registered teacher.

Following the completion of an investigation, the Commission may report substantiated allegations to the Working With Children Check Unit as part of ensuring individuals who pose a risk to children are not permitted to work with children, even if they do not have a criminal record.

### **Should we notify the Commission of a reportable allegation if we have already reported it to a regulator, another body or Victoria Police?**

Yes, reporting to other bodies, regulators or Victoria Police does not replace the need to notify the Commission.

### **Should we conduct an investigation if Victoria Police is investigating the matter?**

An investigation by Victoria Police into criminal or potentially criminal conduct takes priority.

If Victoria Police are investigating the allegation, organisations must not commence an investigation until they have received permission from Victoria Police.

Further information on Victoria Police investigations can be found in the Victoria Police Guidelines – Criminal Abuse of Children and Vulnerable People in Organisations: Reporting to Victoria Police (available via [www.police.vic.gov.au](http://www.police.vic.gov.au)).

### **When do I inform the subject of the reportable allegation that an allegation has been received?**

There is no specific time at which the subject of an allegation should be informed that a reportable allegation has been made about them. The appropriate time will depend on the circumstances of the case.

In deciding when to inform the subject of an allegation, you should consider matters such as:

- whether there might be an opportunity for a person to destroy evidence, such as documents, texts or emails
- what information you have been able to gather about the allegation
- whether the subject will have enough time to respond to the allegation before a finding is made or any action taken.

It is also important to avoid compromising the integrity of a Victoria Police or another investigation.

If you are unsure about when the subject of a reportable allegation should be informed, contact the Commission for further advice.

### **Can the Commission recommend an independent investigator to conduct an investigation into an allegation of reportable conduct?**

No, the Commission does not operate a panel of investigators and we do not recommend individuals or organisations.

You should assess a potential investigator's skills and capabilities before deciding to engage them. It is recommended that you assess a potential investigator's experience:

- investigating allegations concerning the abuse of children
- interviewing children, in particular children who may have been traumatised
- engaging with children with a disability

- if the investigation relates to children from diverse backgrounds and Aboriginal children, engaging in a culturally sensitive manner.

It is critical that you also check the potential investigator's referees, as part of evaluating their suitability. A referee should be an individual with a good knowledge of conducting interviews with children and in a position to answer questions about the outcomes of previous investigations that the investigator has conducted.

Organisations may also wish to confirm whether investigators hold relevant licences to conduct investigations, such as those required under the *Private Security Act 2004* (Vic).

### **Will the Commission offer education about investigating an allegation of reportable conduct?**

The Commission has developed information sheets to assist organisations when undertaking investigations and is also conducting information workshops. Details of these are on the Commission's website [www.ccyp.vic.gov.au](http://www.ccyp.vic.gov.au)

The Commission is also developing training materials to support organisations investigating reportable allegations. We will provide further information about these training materials when they are available.

### **Does the Scheme apply to all organisations?**

The Scheme applies to organisations that exercise care, supervision or authority over children, whether as part of their primary functions or otherwise.

Schedules 3, 4 and 5 of the *Child Wellbeing and Safety Act 2005* lists the types of organisations and services that must comply with the requirements of the Scheme.

### **When will the Scheme apply to my organisation?**

The Scheme is being introduced in three phases. Phase 1 commenced on 1 July 2017, phase 2 will commence on 1 January 2018 and phase 3 will commence on 1 January 2019. The types of organisations covered by each phase are listed in schedules 3, 4 and 5 of the *Child Wellbeing and Safety Act 2005*.

Each of the phases relates to organisations that provide certain services or activities. For example, Phase 1 covers a range of organisations, including those that operate registered schools, in-patient mental health services and out of home care services. Phase 2 will include certain hospitals, boarding school facilities and religious organisations, if they provide certain services to children.

If you are unsure about whether or when your organisation is covered by the Scheme, contact the Commission for further advice.

### **What does it mean for an organisations where only some of the services it provides are covered by Phase 1?**

An organisation may provide a variety of services or activities, which means it is covered by more than one phase. This means that the entire organisation is covered by the Scheme from the earliest phase relevant to the organisation. From that time, the head of the organisation must notify the Commission and investigate reportable allegations related to employees from across the whole organisation.

## Does the Scheme apply to religious organisations?

From 1 July 2017, the Scheme applies to religious organisations that operate a school or deliver a service that is covered in Phase 1.

Phase 2 starts on 1 January 2018. From this date, all religious organisations will be subject to the Scheme, regardless of the nature of their work with children.

## With whom does the Commission share information?

As part of administering the Scheme, the Commission may share information with other organisations, including:

- Victoria Police
- Department of Justice and Regulation (Working with Children Check Unit)
- the regulator of your organisation
- the regulator of the employee who is the subject of the reportable allegation or has engaged in reportable conduct
- an independent investigator engaged by a regulator or the Commission.

We may also disclose your personal information in other circumstances when it is permitted by law. This may include disclosure to:

- prevent a serious and imminent threat to any person's health, safety or wellbeing
- report concerns about alleged criminal conduct to Victoria Police.

When sharing information, we will have regard to our obligations under the *Privacy and Data Protection Act 2014*, *Health Records Act 2001* and the *Privacy Act 1988 (Cth)*.

If you have questions or concerns about the collection, use or disclosure of your information, please contact the Commission.

## What is the link between the Reportable Conduct Scheme and Child Safe Standards?

Child Safe Standards are minimum standards that must be met by a broad range of organisations that provide services to children and young people. The standards support organisations to reduce the risk of child abuse, to respond appropriately if and when it occurs and to embed child safety into everyday thinking and practice.

The Child Safe Standards require organisations to have:

1. strategies to embed an organisational culture of child safety, including through effective leadership arrangements
2. a child safe policy or statement of commitment to child safety
3. a code of conduct that establishes clear expectations for appropriate behaviour with children
4. screening, supervision, training and other human resources practices that reduce the risk of child abuse by new and existing personnel
5. processes for responding to and reporting suspected child abuse
6. strategies to identify and reduce or remove risks of child abuse
7. strategies to promote the participation and empowerment of children.

The Commission oversees organisations' compliance with the Child Safe Standards. Our role includes providing education, advice and support to organisations about meeting the standards, making inquiries with organisations about whether they are child safe, and where necessary, taking enforcement action.

Organisations that meet the standards are likely to have the systems in place to meet the requirements of the Scheme.

### **How does the Reportable Conduct Scheme interact with the Working With Children Check Unit?**

The Commission may report a substantiated allegation to the Working With Children Check Unit where it considers it is appropriate to do so. The Working With Children Check Unit may ultimately decide to suspend a person's Working With Children Check, having regard to that finding.

Further information about the Working With Children Check card is available at <http://www.workingwithchildren.vic.gov.au>

