


Information sheet 2

What is reportable conduct?

What types of conduct are reportable?

There are five types of 'reportable conduct' listed in the *Child Wellbeing and Safety Act 2005*:

- sexual offences (against, with or in the presence of, a child)
- sexual misconduct (against, with or in the presence of, a child)
- physical violence (against, with or in the presence of, a child)
- behaviour that is likely to cause significant emotional or psychological harm
- significant neglect.

 **A child is anyone who is under 18 years of age.**

A short description of the types of reportable conduct is provided below.

What are sexual offences?

In Victoria, it is an offence to engage in certain sexual behaviours against, with or in front of, a child. Many of these behaviours are reportable conduct under the Reportable Conduct Scheme. This includes:

- sexual assault
- indecent acts
- possession of child abuse material
- 'grooming' a child in order to commit a sexual offence.

A full list of the relevant sexual offences is set out in clause 1 of Schedule 1 to the *Sentencing Act 1991*.

A person does not need to be charged with, or found guilty of, a sexual offence for their behaviour to be reportable conduct.

What is sexual misconduct?

'Sexual misconduct' captures a broader range of inappropriate behaviours of a sexual nature that are not necessarily criminal.

Examples of sexual misconduct include:

- developing an intimate relationship with a child, for example, through regular contact with the child without the knowledge or approval of the organisation's management
- inappropriately discussing sex and sexuality with a child
- other overtly sexual acts that could lead an organisation to take disciplinary or other action.

What is physical violence?

Physical violence includes an act that causes physical injury or pain. Examples of physical violence can include:

- hitting/kicking/punching
- pushing/shoving/grabbing/throwing/shaking
- using an object to hit or strike
- using inappropriate restraint/excessive force.

Physical violence does not include lawful behaviour. For example:

- reasonable steps taken to protect a child from immediate harm, such as taking a child's arm to stop them from going into oncoming traffic
- medical treatment given in good faith by an appropriately qualified person, such as a senior first aid officer administering first aid.

Threats of physical violence that do not cause physical injury or pain may be covered by the Reportable Conduct Scheme as behaviour that causes significant emotional or psychological harm (see below).

What is behaviour that causes emotional or psychological harm to a child?

For behaviour to be reportable under this category:

- a child must have suffered significant emotional or psychological harm
- there must be a clear link between the alleged conduct and the harm suffered.

The behaviour must cause emotional or psychological harm that is 'significant'. This is discussed below. Signs that a child may have been emotionally or psychologically harmed may include:

- patterns of out-of-character behaviour
- regression in behaviour
- distress and anxious behaviours
- other physical symptoms, such as self-harm.

Emotional or psychological harm may also occur where an existing mental health disorder has been exacerbated or aggravated.

A professional psychological or medical assessment of the child may assist to determine whether a child has suffered emotional or psychological harm. However, a clinical diagnosis will not be required in every case. For example:

- the alleged conduct is so serious and/or occurred over such a sustained period, that it can be reasonably inferred that the child has been harmed
- requiring a child to be assessed may unreasonably re-traumatise or otherwise further harm the child.

It is also important to stress that there must be a clear link between the emotional or psychological harm and the alleged conduct. In deciding if there is a clear link, organisations should consider the likelihood that the child would have been harmed, if the alleged conduct had not occurred.

Examples of emotional or psychological harm may include:

- exposure to violence or threats of violence
- self-destructive behaviour
- antisocial behaviour
- persistent hostility/rejection

- humiliation/belittling
- scapegoating.

It will not be reportable conduct if:

- a person takes reasonable steps to protect a child from immediate harm
- a person with responsibility for discipline takes lawful and reasonable disciplinary action, such as sending a child to sit in 'time out' for a period of time, in line with organisational policy
- an appropriately qualified person gives medical treatment in good faith, such as a senior first aid officer administering first aid.

What is neglect?

Neglect occurs when a person does not meet their obligations and responsibilities to keep a child safe and well.

The neglect:

- must be more than minor and insignificant
- does not need to have a lasting or permanent effect
- may be an ongoing situation or a one off incident, as long as it is not minor in nature.

Examples of different types of neglect include:

- supervisory neglect, which is the absence or inattention of a person which places the child at risk of physical harm or injury, sexual abuse or allows other criminal behaviour towards the child
- physical neglect, which is the failure to provide basic physical necessities for a child, such as adequate food, clothing and housing
- medical neglect, which is the failure to provide for appropriate medical care for a child, including a failure to acknowledge the seriousness of an illness or condition, or deliberately withholding appropriate care.

What does 'significant' mean?

The Reportable Conduct Scheme is concerned with significant allegations about worker behaviour or actions towards a child. Accordingly, allegations can only be made about emotional or psychological harm or neglect that is significant.

Allegations may be made about serious forms of harm or behaviours that have a lasting or permanent effect, however, this does not always need to be the case. It is enough that the alleged conduct is more than *trivial* or *insignificant* to fall within the definition of *significant* under the Reportable Conduct Scheme.

We encourage organisations to consult with the Commission for Children and Young People if they need assistance to determine if the alleged conduct meets the level required to make a reportable allegation report.

What is a reasonable belief?

A reportable allegation is made where a person makes an allegation, based on a reasonable belief, that a worker or volunteer has committed reportable conduct or misconduct that **may** involve reportable conduct. This includes where a reportable allegation is made against the head of the organisation.

A reasonable belief is more than suspicion. There must be some objective basis for the belief. However, it is not the same as having proof and does not require certainty.

For example, a person is likely to have a reasonable belief if they:

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

Heads of organisations do not need to agree with or share the belief that the alleged conduct has occurred. 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.

Where to get help

Organisations covered by the Reportable Conduct Scheme should contact the Commission for clarification and guidance, and to talk through any issues of concern.

- Telephone: 8601 5281
- Email: childsafestandards@ccyp.vic.gov.au

Further information is also available on the Commission for Children and Young People's website at www.ccyp.vic.gov.au