

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

The terms *worker* and *volunteer* are used to cover a range of people subject to the scheme. Further details are provided in Information Sheet 1 – About the Victorian Reportable Conduct Scheme, under the heading Who can a reportable allegation be made about under the scheme?

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 worker or volunteer, 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?

You should consider each allegation carefully, keeping in mind the context in which the behaviour occurred and the child's circumstances.

To be reportable under this category:

- the allegation must concern the worker's or volunteer's behaviour
- there must be a clear link between the worker's or volunteer's alleged behaviour and the harm suffered by the child
- the harm must be significant.

Identifying the behaviour

A child can be significantly emotionally or psychologically harmed by behaviour, such as sexual offences, sexual misconduct, physical violence and significant neglect. However, other types of behaviours can also cause significant emotional and psychological harm to a child, for example, severe or sustained instances of:

- verbal abuse
- coercive or manipulative behaviour
- hostility towards, or rejection of, a child
- humiliation, belittling or scapegoating.

There must be a clear link between the behaviour and the harm

There must be a clear link between the alleged behaviour and the emotional or psychological harm. In deciding whether there is a clear link, it may be helpful to consider the likelihood that the child would have been harmed if the alleged behaviour had not occurred.

Emotional or psychological harm may also be caused where an existing mental health disorder, such as anxiety or depression, has been exacerbated.

A child may display physical or behavioural signs that suggest they may have experienced behaviour which has caused them significant emotional or psychological harm. These signs may include:

- suicidal action, suicidal ideation or self-harm
- patterns of out-of-character, self-destructive, antisocial, or anxious behaviour

- ongoing sleep disturbance, nightmares or bedwetting
- regression in behaviour.

The harm must be ‘significant’

Allegations that are reportable under this category must concern *significant* emotional or psychological harm. To be considered significant under the scheme, the alleged harm must be more than *trivial* or *temporary*.

We encourage organisations to consult with us if you need assistance to determine if the allegation involves significant emotional or psychological harm.

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

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

Exceptions

An allegation will not be reportable if:

- the worker or volunteer has taken reasonable steps to protect a child from immediate harm
- the worker or volunteer has responsibility for discipline and has taken lawful and reasonable disciplinary action, such sending a child to sit in ‘time out’ for a period of time, in line with organisational policy
- the worker or volunteer is an appropriately qualified worker or volunteer who has given medical treatment in good faith, such as a senior first aid officer administering first aid.

What is neglect?

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

Examples of different types of neglect include:

- supervisory neglect, which is the absence or inattention of a worker or volunteer 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.

‘Significant’ neglect

Allegations that are reportable under this category must concern *significant* neglect. To be considered significant under the scheme, the allegation must be about harm that is more than *trivial* or *temporary*.

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 witness).

Heads of entity 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