

Information for employees

The NSW Reportable Conduct Scheme – Fact sheet 9

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(02) 8219 3800
reportableconduct@ocg.nsw.gov.au

The Reportable Conduct Scheme has been in operation since May 1999 and run by the Office of the NSW Ombudsman until transferred to the Office of the Children's Guardian on 1 March 2020. The transfer has enabled improvements to the Scheme, based on recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse. These improvements will help the Scheme to better protect children and provide greater protections for employees who are the subject of reportable conduct allegations.

Under section 54 of the *Children's Guardian Act 2019*, relevant entities are required to have systems in place, including for receiving, handling and disclosing information about reportable allegations and information relating to investigations of reportable allegations. The Children's Guardian can require information about those systems and can publicly name non-compliant entities.

Under the Scheme, heads of relevant entities (HRE) must also make sure their agency has systems and practices in place that aim to keep children safe when they are under the care of that agency. It requires the HRE to notify the Office of the Children's Guardian about certain types of allegations made against people who work in their organisation. Depending on the nature of your work and who you work for, an allegation will be a reportable allegation *whether or not* it relates to conduct in the course of the employment or engagement.

Does the Scheme apply to me?

Under the Act, an ‘employee’ captures a range of individuals who work with children in all government and certain non-government organisations (known as relevant entities) including:

- An individual employed by or in a relevant entity (organisation under the Act);
- An individual engaged by the relevant entity – whether directly or indirectly – to provide services to children:
 - As a volunteer, whether or not the individual requires a Working with Children Check clearance to do so (so includes parent volunteers),
 - as a contractor, if the contractor requires a Working With Children Check clearance for the purposes of the engagement;
- an authorised carer;
- an adult who resides on the same property as an authorised carer in circumstances requiring the adult to hold a Working with Children Check clearance;
- and others listed in the *Children’s Guardian Act 2019 in s 16*.

As a worker to whom the Scheme applies, it is important for you to understand your obligations under the Scheme and how the Scheme may affect your employment.

What if I wasn’t an ‘employee’ at the time of the alleged conduct?

The Scheme applies even if the alleged conduct occurred at a time when the person was not an employee, as long as they are employed when the allegation becomes known to the HRE. This is because the Scheme is designed to address any current risks a person may pose to children being cared for by your agency and any other agency that employs them in a relevant role.

What are my obligations under the Scheme?

The Children’s Guardian Act requires all workers who are captured by the Scheme to ‘give a report’ about any ‘reportable allegation’ they become aware of, and this report must be made as soon as practicable.

‘Giving a report’ means telling the head of your organisation (the HRE) about a reportable allegation or conviction against another employee of the organisation (or yourself). Your organisation’s internal reporting policy should give you guidance on how to do this. However, the simplest way of complying with this requirement is to ensure you report any allegation, disclosure, complaint, concern, incident or observation that may be reportable conduct [see *Factsheet 1 Identifying reportable allegations*]

What if the allegation is against the HRE?

If the conduct you need to report is against the HRE, the Act says you must instead report that

directly to the Children’s Guardian, which you can do by sending all the relevant details to reportableconduct@ocg.nsw.gov.au.

What protections do I have against retribution for giving a report?

A work culture that encourages and supports the appropriate reporting of child protection concerns is a critical component of a child safe organisation. Protections apply for people who make reports so if you have concerns about the reporting culture in your organisation, or the systems in place to ensure and enable reporting, you can speak with the Office of the Children’s Guardian. Refer to s63 and s64 of the *Children’s Guardian Act 2019* in relation to information about protections against retribution related to reportable allegations.

What happens if I don’t make a report about reportable allegations?

The HRE is required to have certain systems in place, including systems to ensure all employees make reports of reportable allegations they become aware of.

A failure to make a report may constitute misconduct, which your employer would respond to in accordance with the organisation’s disciplinary processes.

However, in some circumstances, a failure to make a report could also constitute:

- a reportable allegation against you (of neglect), and/or
- a criminal offence (under [s43B of the Crimes Act](#)).

If in doubt, it is best to make a report. If you realise you have inadvertently overlooked the need to make a timely report and you rectify this at the earliest opportunity, you will ordinarily be considered to have fulfilled your obligations. It is advisable to make your report in writing and keep a record of the report and the date and how it was made.

What if I report to my HRE but the HRE doesn’t notify the Guardian?

If you give a report to the HRE and the HRE is required to, but does not, notify the Guardian, you are not responsible. However, if you are aware that your HRE has not fulfilled their reporting obligations, you should (and in some circumstances must) alert the Children’s Guardian to this. Also, if you are concerned about any aspect of the HRE’s response to your report, you may make a complaint to the Office of the Children’s Guardian.

Can I talk to my colleague about changing their behaviour, to give them a second chance before reporting?

Immediate reports protect both children and employees. If reportable allegations are reported early on, it can often be addressed through training and support. Left unreported, reportable allegations generally escalate and the potential consequences for the employee can be more severe.

What if someone makes a report about me?

If a reportable allegation is made against you, the HRE is required to take certain action. If the allegation makes it mandatory for the HRE to make a report to Police or to the Department of Communities and Justice, the HRE must do that. The HRE must also tell the Children's Guardian about the allegation, within 7 days of becoming aware of it.

While the Act places other obligations on the HRE (and in some cases they may be exempt from these requirements) they generally must:

- assess and manage risks (including any risks to you);
- conduct an investigation;
- make a finding for all reportable allegations; and
- provide a report to the Guardian about the finding and action taken.

The Act also requires the HRE to have regard to certain mandatory considerations and to the principles of procedural fairness when responding to any reportable allegation against you. While a procedurally fair investigation will generally involve certain steps, when and how these steps are followed will be different in every case. Several factors must be considered when the HRE decides how to investigate a reportable allegation, including:

- any requirement by Police, DCJ or the Children's Guardian to defer the investigation;
- the safety, welfare and wellbeing of a child or children impacted by the investigation;
- the rights of other parties involved in the investigation.

For example, if a reportable allegation is made against you, it is natural to want to know who made the allegation. Sometimes it will be appropriate for the HRE to inform you of the source of the allegation, but at other times it wouldn't be or may be precluded by law.

Can I avoid having allegations raised against me?

Most people who work with children have never and will never harm a child. The Reportable Conduct Scheme responds to a minority of matters where a child has or may have been harmed by a person who works with them or works with children. The role of 'prevention' is the most important function of the Reportable Conduct Scheme.

A lot of reportable conduct is situational and can be prevented, especially in organisations that have established child safe systems, policies and practices. The following tips may help:

- ensure you are familiar with your organisation's Code of Conduct and their expectations of the ways you interact with children in your role;
- keep your interactions with children professional, even in less formal environments including extracurricular activities such as musical or dramatic productions;
- ensure you receive adequate induction into your role, and if not raise this with your supervisor– even if you are engaged for a short period of time and/or you are a volunteer;
- if you don't have the required experience or training to perform your role safely, discuss this with your supervisor so steps can be taken to ensure you are ready for the role;

- if you are an authorised carer, casual, agency or shift worker, it is necessary that you receive adequate handovers when you begin a shift or are caring for a child for the first time, so you have the information you need to perform your role and keep children safe;
- where possible, avoid interacting with children one-on-one in an area not visible to others;
- if you adopt a mentor role with a child, be sure it is a recognised and approved role by your employer, and you have a clear understanding of appropriate boundaries in that role;
- don't engage with children outside of family or legitimate social circles via social media;
- if you have a reason to engage with children via other electronic media (such as email) as part of your role, follow your employer's guidance on appropriate communication;
- if you are having personal, health or other issues that may affect your performance at work, access any support available to you.

It's also important to know that 'special care' criminal offences may apply to you. Ordinarily, a young person aged over the age of 16 can consent to sexual touching and sexual intercourse.

However, a child aged 16 or 17 years cannot, at law, consent to sexual touching by, or sexual intercourse with, a person who has a 'special care' relationship with them.

These provisions apply to authorised carers; members of school teaching staff; health professionals; custodial officers; and persons providing religious, sporting, musical or other instruction.

Who can I contact for guidance about reportable conduct?

Your organisation is obliged to provide guidance to you about reportable conduct. If you are a member of an employee union, your union representative may be able to give you advice if an allegation is made against you.

Staff from the Reportable Conduct Directorate are available on (02) 8219 3800 or email reportableconduct@ocg.nsw.gov.au.

For information, resources and training about child safe organisations go to <https://ocg.nsw.gov.au/child-safe-scheme>.

Office of the Children's Guardian

www.ocg.nsw.gov.au

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