

Information for employers

The NSW Reportable Conduct Scheme – Fact sheet 10

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The Reportable Conduct Scheme has been in operation since May 1999 and operated by the Office of the NSW Ombudsman. The Scheme will be 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 keep children safe and help ensure agencies in the Scheme have clear systems and practices in place which aim to keep children and young people safe when they are under the care of that agency. Under the Scheme, relevant employers are required to notify the Children's Guardian of reportable allegations or convictions against their employees.

What is a reportable allegation or conviction?

A reportable allegation is an allegation that an employee has engaged in conduct that may be reportable conduct.

A reportable conviction means a conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.

What is reportable conduct?

The Children's Guardian Act 2019 defines reportable conduct as being:

- a sexual offence committed against, with or in the presence of a child,
- sexual misconduct with, towards or in the presence of a child,
- ill-treatment of a child,
- neglect of a child,
- an assault against a child,
- behaviour that causes significant emotional or psychological harm to a child,
- any offence under section 43B or 316A of the Crimes Act 1900, whether or not, with the consent of the child.

Does the Scheme apply to my organisation?

Under the Children's Guardian Act 2019, an organisation covered by the Reportable Conduct Scheme is a 'relevant entity'. A relevant entity is one that is listed in Schedule 1 of the Act, a public authority or a religious body [see Factsheet 2 Heads of Entities and reportable conduct responsibilities].

Who is the head of a relevant entity?

The head of an entity is usually its most senior officer and the person who is primarily responsible for executive decision making in the organisation. This person may be a chief executive officer, a principal officer or someone in a similar position or fulfilling a similar role.

Does the Scheme apply to all my workers?

Under the Act, an '**employee**' captures a range of individuals who work with children 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 (this includes parent volunteers engaged with relevant entities);
 - as a contractor, if the contractor requires a Working With Children Check clearance for the purposes of the engagement;

- an authorised carer and any 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.

What if the allegation has nothing to do with the person's employment in my organisation?

Depending on the nature of your organisation, you may need to notify allegations about your employee even when the allegation relates to their conduct outside of the workplace. That is because, if a person is abusive to a child in one environment, this may give rise to a risk in their employment environment if they work with children.

All relevant entities must notify reportable allegations that are work-related. In addition, the following entities must notify reportable allegations that are not connected to the employee's conduct at work:

- 'Schedule 1 entities' (see Schedule 1 of the Act), for all employees (including volunteers and contractors working with children),
- Religious bodies, for all persons engaged in circumstances where they require a Working With Children Check clearance, and
- Other public authorities (that is, public authorities that are not Schedule 1 entities) to the extent the employee holds, or are required to hold, a Working With Children Check clearance for the purposes of their work.

What are my responsibilities as the head of a relevant entity?

If a reportable allegation is made against one of their employees, contractors or volunteers (including if it took place outside of the workplace and/or unrelated to work) the Head of that entity must properly respond to the allegation, including notifying the Office of the Children's Guardian.

Under the *Children's Guardian Act 2019*, the head of the entity must advise the Office of the Children's Guardian within **7 business days** of becoming aware of a reportable allegation.

Following the notification, the Office of the Children's Guardian may require further information about the matter and/or monitor the entity's investigation to ensure its response to the reportable allegation or conviction is appropriate.

While the Act places other obligations on the entity head, in general they must:

- assess and manage any risks (to children, other staff and the worker who is the subject of an allegation);
- plan and conduct an appropriate investigation, having regard to the principles of procedural fairness;
- provide an update to the Office of the Children's Guardian **within 30 days** (either as an interim report or final report);
- make a finding for all allegations; and
- provide an Entity report to the Children's Guardian about the finding and action taken.

Several other factors must be considered when the Head of a Relevant Entity decides how to investigate a reportable allegation, including:

- any requirement by Police, Department of Communities and Justice 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.

The Office of the Children's Guardian also has authority to conduct preliminary inquiries and investigations.

What if the allegation involves a criminal offence?

If a reportable allegation involves an allegation of a criminal offence, it will generally require a report to Police and any police investigation will usually have priority over other investigations.

Where police are involved, any investigation by the entity or the Children's Guardian, may need to be suspended until the police advise it may proceed.

However, the Head of the relevant entity still needs to notify the Office of the Children's Guardian about the allegation and take action (in consultation with police) to manage any risks to children.

Is there a time limit on submitting the final report to the Children's Guardian?

While many factors will impact on the time it takes to complete an investigation, it is expected to be as timely as possible and the entity Head is required to provide the Children's Guardian with reasons as to why an investigation has not been completed within a certain timeframe. The Children's Guardian also has an obligation to report to Parliament if an investigation report has not been completed within six months of commencing an investigation (s138 of *the Children's Guardian Act 2019*).

A critical component of a good investigation is planning and documentation, which should include an assessment of any risks to the investigation. The investigation plan and risk assessment should be revised as needed if circumstances change or more information becomes available. A sound investigation plan will assist heads of relevant entities to comply with the requirements to provide the Children's Guardian with interim and/or entity reports and will help the relevant entity to demonstrate transparency and accountability.

What if the person wasn't an 'employee' at the time of the alleged conduct?

The Scheme still applies 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 head of the entity. 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 if the reportable allegation is against the entity Head?

A work culture that encourages and supports the appropriate reporting of child protection concerns is a critical component of a child safe organisation.

The Head of a relevant entity must have systems in place for preventing and responding to child protection concerns, including ensuring their workers understand their roles and obligations under the Reportable Conduct Scheme.

If a person becomes aware of a reportable allegation or a reportable conviction (conviction for an offence that may have involved reportable conduct) against the Head of the relevant entity, the Act

says they must report the allegation directly to the Children’s Guardian.

In addition, if a person provides information about a reportable allegation and is concerned the agency’s reporting obligations have not been fulfilled, they should (and in some circumstances must) alert the Children’s Guardian to this.

Protections apply for people who make reports to the Office of the Children’s Guardian. In particular, s63 and s64 of the *Children’s Guardian Act 2019* contains protections against retribution in relation to reportable conduct allegations.

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

If the allegation is a reportable one, there is no discretion not to notify. When reportable allegations are identified and addressed immediately, an appropriate employer response may be to provide training and support to the employee, which will assist to ensure the conduct does not reoccur. Left unreported, however, reportable conduct may escalate and the potential consequences for the employee can be more severe. This may also place children at risk.

The role of prevention

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.

A lot of reportable conduct is situational and can be prevented, especially in organisations that have established child safe systems, policies and practices. This is the reason the goal of ‘prevention’ is a critical element of the Reportable Conduct Scheme, which sits within the extensive child safe organisations information, training and resources program operated by the Office of the Children’s Guardian.

For further information go to <https://ocg.nsw.gov.au/child-safe-scheme>.

Employers are encouraged to ensure their child related workers have access to appropriate information, training and support to help them understand and prevent potential risks to children in their care.

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

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