

Heads of entities and reportable conduct responsibilities

The NSW Reportable Conduct Scheme – Fact sheet 2

August 2022

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

The role of the Office of the Children's Guardian

The Office of the Children's Guardian works to improve the safety of children in NSW by helping organisations, employers and individuals understand the meaning, importance and benefits of being child safe. Our legislative responsibilities include the Reportable Conduct Scheme, which provides a framework for the oversight of how organisations respond to reportable allegations that have been made against their employees.

The heads of these entities are required to notify the Office of the Children's Guardian of reportable allegations and convictions against their employees, investigate the allegation, advise us of the outcome and take appropriate action to prevent reportable conduct by 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.

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

- a sexual offence
- sexual misconduct
- ill-treatment of a child
- neglect of a child
- an assault against a child
- an offence under s 43B (failure to protect) or s 316A (failure to report) of the Crimes Act 1900; and
- behaviour that causes significant emotional or psychological harm to a child.
-

For more information read Fact Sheet 1 – Identifying reportable allegations

Which entities have reportable conduct obligations?

There are three types of entity that must notify the Office of the Children's Guardian of reportable allegations or convictions against employees (including volunteers and contractors):

- Schedule 1 entities are entities listed at **Schedule 1** of the *Children's Guardian Act 2019*. This includes:
 - the Department of Education, including government schools
 - the Ministry of Health
 - local health districts
 - non-government schools
 - designated agencies arranging or providing out-of-home care
 - approved education and care services
 - Youth Justice within the Department of Communities and Justice
 - the part of the Department of Communities and Justice with staff administering
 - legislation under the Minister for Families, Communities and Disability Services
 - statutory health corporations
 - affiliated health organisations
 - the Ambulance Service of NSW
 - the TAFE Commission
 - an agency providing substitute residential care for children¹
 - A schedule 1 entity also refers to an authorised carer not employed by or in an entity mentioned in Schedule 1 as listed above or an adult who resides on the same property as an

authorised carer for three weeks or more and who is required to hold a Working with Children Check Clearance

- all other *public authorities*, and
- *religious bodies*, about their employees who hold, or are required to hold, a Working with Children Check for the purposes of their engagement with the religious body.

All of these entities must notify the Office of the Children’s Guardian about reportable allegations and convictions against employees that arise in the course of an employee’s work.

Schedule 1 entities and *religious bodies* must also notify about an employee’s alleged conduct outside of work.

Public authorities must notify about an employee’s alleged conduct outside of work, to the extent the employee holds, or is required to hold, a Working with Children Check for the purposes of their work.

Who is the head of an 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.

In some instances, the head of the entity may not be clear or obvious and the entity should contact the Office of the Children’s Guardian for advice. An entity head may wish to nominate a contact person for day-to-day correspondence or inquiries. The Children’s Guardian has the power under the legislation to ‘deem’ a head of entity where it is otherwise unclear (see s.66).

Who is an employee?

Under the *Children’s Guardian Act 2019*, an *employee* of an entity includes:

- an individual employed by, or in, the entity
- a volunteer providing services to children
- a contractor engaged directly by the entity (or by a third party) where the contractor holds, or is required to hold, a Working with Children Check for the purposes of their work with the entity; and
- a person engaged by a *religious body* where that person holds, or is required to hold, a Working with Children Check for the purposes of their work with the religious body.

¹ Substitute residential care means care involving the provision of accommodation together with food, care and other support **and** in the State for more than 2 nights **and** of a type ordinarily provided to children in a home environment provided by persons other than the child’s parents or relatives.

Responsibilities of the head of an entity

The head of an entity (or their delegate) is required to:

- ensure specified systems are in place for preventing, detecting and responding to reportable allegations or convictions;
- make a notification to the Office of the Children’s Guardian **within 7 business days of becoming aware of a reportable allegation or conviction against an employee of the entity**;
- as soon as practicable after receiving the reportable allegation/conviction, arrange for it to be investigated/determined;
- complete the investigation within a reasonable time, having regard to the principles of procedural fairness and the mandatory considerations outlined in Division 6 of the Act;
- provide information about the allegation, the progress of the investigation and the finding and action taken to the alleged victim and their parent/carer unless the head of the relevant entity considers that it is not in the public interest to do so;
- by **30 calendar days** after the head of the entity becomes aware of the reportable allegation, provide either a finalised *entity report* or an update (an *interim report*, reasons the investigation has not been completed and an estimated timeframe for completion);
- make a finding of reportable conduct if satisfied, on the balance of probabilities, that the case against the employee the subject of the reportable allegation has been proved;
- provide information to the Children’s Guardian that the Guardian requires under relevant provisions of the Act, which may include information about a reportable allegation, the relevant entity’s response to a reportable allegation, and systems for preventing and responding to reportable allegations;
- ensure an appropriate level of confidentiality of information relating to reportable allegations and only disclose information about the allegations in circumstances permitted by the Act or other legislation;

At the end of the investigation of a reportable allegation, the head of agency must send a report to the Office of the Children’s Guardian that enables the Office of the Children’s Guardian to determine whether the investigation was carried out in a satisfactory manner and whether appropriate action was or can be taken.

What should be reported?

When any employment-related child protection concern is raised about an employee, the head of entity (or delegate) should consider whether it constitutes a reportable allegation or a reportable conviction. For guidance, see *Fact Sheet 1 Identifying Reportable Conduct*.

Notifying the Office of the Children’s Guardian

To notify the Office of the Children’s Guardian of a reportable allegation, complete and submit the 7-day notification form that is available at <https://ocg.nsw.gov.au/organisations/reportable-conduct-scheme>. Ensure it is sent to the Office of the Children’s Guardian within **7 business days** of the head of the entity becoming aware of the allegation. The 7-day notification needs to include the following information:

1. Type of reportable conduct

2. Name of employee
3. Name and contact details of the entity and head of entity (or approved delegate)
4. If the reportable allegation has been reported to Police and Child Protection Helpline
5. Nature of initial risk assessment
6. Risk management action

Entity heads should provide additional information and copies of relevant material (if available) at the time of notification.

If the Department of Communities and Justice and/or police are already investigating a reportable allegation against an employee, the entity is still required to notify the Office of the Children's Guardian of the allegation. However, the entity should consult those bodies before taking any other action (except action to address any immediate risks).

At the **30-calendar day** mark (ie within 30 days after the head of the entity receiving the report of the reportable allegation) an entity must either provide a finalised *entity report* or an *interim report* with the details set out below. If the entity report is not available at the 30-day mark, the relevant entity must provide an estimated timeframe for completion of the entity report.

The *interim report* is to include:

- in relation to a reportable allegation – if known, the facts and circumstances of the reportable allegation OR in relation to a conviction considered to be a reportable conviction – any known information about the conviction,
- action taken since the Children's Guardian received a notification about the reportable allegation or the conviction considered to be a reportable conviction,
- further action the head of the relevant entity proposes to take in relation to the reportable allegation or conviction considered to be a reportable conviction, including if the head of the relevant entity proposes to take no further action,
- the reasons for the action taken and the action proposed to be taken or the reasons for the decision to take no further action.

Providing a detailed and updated investigation plan with actions and timeframes, along with supporting documentation, should meet the interim reporting requirement.

At the conclusion of the agency investigation

Once the head of entity is satisfied that the investigation has been concluded, they must, as soon as practicable, provide the Office of the Children's Guardian with an Entity Report that includes:

- in relation to a reportable allegation – information about the facts and circumstances of the reportable allegation, the findings the head of the relevant entity has made about the reportable allegation and an analysis of the evidence and the rationale for the findings,
- in relation to a conviction considered to be a reportable conviction – information about the conviction considered to be a reportable conviction, and the determination the head of the relevant entity has made about the conviction (including whether the head of the relevant entity has determined the conviction is a reportable conviction),
- a copy of any written submission made by the employee,
- information about what action has been, or will be, taken in relation to the reportable allegation or conviction considered to be a reportable conviction, including the following –
 - remedial or disciplinary action in relation to the employee,
 - whether information about the matter has been referred to a different entity,
 - changes to systems or policies,
 - if no further action is to be taken – that no further action is to be taken,

- the reasons for the action taken, including taking no further action; and
- any copies of documents in the relevant entity's possession that are relevant to the report, including transcripts of interviews and copies of evidence.

What to expect from the Office of the Children's Guardian

If the investigation has been completed at the point of notification, we will assess the information that the entity has provided and either request further information or give feedback.

If the investigation has not been completed, we may ask for further information or wait for your interim or entity report.

The Office of the Children's Guardian can also:

- Monitor the progress of an entity's investigation concerning the reportable allegation or conviction.
- Conduct a direct investigation into any reportable allegation or conviction against an employee of an entity, regardless of whether or not it has been notified to us by the head of entity. If the Office of the Children's Guardian decides to directly investigate a reportable allegation or conviction, the entity may be required to defer its own investigation.
- Conduct an investigation into a relevant entity's response to a notification.

If we decide to monitor an entity's investigation or to conduct a direct investigation, we will let the entity know about this decision and what to expect.

After we receive an entity report, we will assess it and either request further information or finalise our involvement. As part of this process, we may provide feedback about the handling of the reportable allegation, including the investigation. If you do not understand or agree with our feedback, you can contact us to discuss your questions or concerns.

The Office of the Children's Guardian maintains records relating to all notifications of reportable allegations, regardless of the results of the investigation. It is required to make certain reports to Parliament under s138 of the *Children's Guardian Act 2019*.

The investigation and reporting records are not publicly accessible, as they are exempt from disclosure under the *Government Information (Public Access) Act 2009* (GIPA) and our records cannot be requested or subpoenaed for the majority of proceedings as evidence in a court or tribunal.

Entities should also be aware that correspondence from the Children's Guardian about reportable allegations is 'excluded information' under section 6 of GIPA. That means that you cannot release those records to any person under GIPA without first obtaining consent from the Children's Guardian.

Office of the Children's Guardian

www.ocg.nsw.gov.au

Switchboard: (02) 8219 3600

Locked Bag 5100
Strawberry Hills NSW 2012