

Keeping records

The NSW Reportable Conduct Scheme – Fact sheet 6

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The role of the Children's Guardian in relation to the Reportable Conduct Scheme

The role of the Children's Guardian in relation to the Reportable Conduct Scheme is to oversee how organisations respond to reportable allegations that have been made against their employees. The heads of affected entities are expected to keep adequate records that can demonstrate how their organisation has responded to a reportable allegation or conviction against an employee.

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.

This fact sheet aims to assist agencies to ensure their record keeping meets relevant legislative requirements.

What records should be kept?

Good record keeping assists in improving accountability and promotes transparent decision-making. When an allegation is made, it is important to document the following information:

- the allegation (an accurate and as close to verbatim account as possible of what has been said and by whom);
- the entity's initial response to the person making the allegation, the alleged victim(s) and the employee who is the subject of the allegation;
- notifications considered or made to Police of a suspected criminal offence; to a Child Wellbeing Unit of risk of harm; or the Department of Communities and Justice of a child who may be at risk of significant harm;
- the outcome of any reports made to other agencies;
- a plan detailing how the investigation is to be carried out;
- the initial risk assessment, including what the identified risks are and the arrangements to manage those risks;
- decisions made about the employee and the action taken in relation to the child or employee (eg change in duties, support or counselling);
- all interviews, including details of the questions and responses, the location of the interview, who was present, the start and finish times of the interview. Where possible, records should be verbatim, verified, signed and dated by all involved;
- any decisions made, both during and at the end of the investigation, including their rationale, the position and name of the person making the decision and the date the decision was made;
- any personal contact, discussions or emails with anyone about the matter including the date, details of the discussions, questions, advice and outcome, the name of the person making the contact, details of their position and agency and the reason for the contact;
- a summary report that details the allegation, the investigation process – including how the investigation had regard to the principles of procedural fairness – the findings in relation to each allegation (including the rationale for the finding); and
- the final risk assessment (which includes any final decision about the employee and the factors that have been considered) and any subsequent action that is to be, or has been, taken.

We would also expect that the entity will:

- advise the employee, in writing, of the findings in relation to each allegation and the action to be taken (noting that during an investigation, an employee may give the head of the entity a written submission concerning the allegation for the purpose of determining what, if any, disciplinary or other action should be taken);
- have an organised information management system. For example, all documents should be kept together in a file and be able to be readily located;
- store information and records relating to the investigation of an allegation against an employee in a safe and secure place within the agency; and
- have an organisational policy concerning information storage and access to these records.

Please also note that, under section 57 of the Children's Guardian Act 2019, heads of relevant entities are required to disclose certain information to the alleged victims of reportable allegations and their parents/carers, unless the disclosure is not in the public interest. All decision-making and

disclosures in connection with this provision should be fully documented. If you need further guidance about this disclosure requirement, please contact the Reportable Conduct Directorate at the Office of the Children's Guardian.

What are the consequences of poor record-keeping?

A failure to adequately document your response to a reportable allegation and maintain the records appropriately can have serious consequences for your entity, for an employee and for the safety of children in your care. For example:

- a failure to plan and document an investigation can result in inefficiencies, delays and key evidence being overlooked or lost;
- poor documentation of your risk assessment could mean that risks are not appropriately identified and/or managed, and this may place children or others at risk;
- inadequate recording of interviews and other evidence can lead to involved parties challenging the accuracy of the evidence attributed to them;
- a lack of records or adequate records will undermine the integrity of the investigation and may compromise the outcome;
- a reportable conduct finding and associated disciplinary action may be successfully appealed if the entity cannot produce records that support its process and decision;
- your entity may be found to be non-compliant with the requirement to have systems for receiving, handling and disclosing information about reportable allegations and information relating to investigations of reportable allegations.

Where should records be stored and for how long?

Heads of entities must set up systems for keeping records concerning the handling of allegations against employees. Records relating to the allegation should be kept on a file that is separate to the employee's personnel file.

Some information, in relation to the investigation, that may be pertinent to the care of the alleged victim or management of the employee, could be copied to their respective files. For example, a record of the critical incident and any ongoing action resulting from the investigation.

All records should be kept confidentially and securely, with access granted only to those persons in the entity who have a need to know about that situation. Related files should be cross-linked to each other, for the purposes of future management.

In addition, many records kept by an entity regarding such proceedings are subject to the provisions of the *Government Information (Public Access) Act 2009* (GIPA Act). These provisions apply to Government agencies and agencies in the private sector, whether the agency is ordinarily subject to the GIPA Act. However, please note that correspondence from the Children's Guardian about reportable allegations is 'excluded information' under section 6 of the GIPA Act. That means that you cannot release those records to any person under GIPA without first obtaining consent from the Children's Guardian.

Information regarding the storage of records can be obtained from State Records NSW at www.records.nsw.gov.au. Information about the GIPA Act can be obtained from the Office of the Information Commissioner NSW at www.oic.nsw.gov.au

What do we do with the information provided by entities?

The Office of the Children's Guardian retains records relating to all notifications of reportable allegations, regardless of the results of the investigation.

All information received is kept confidentially by the Office of the Children's Guardian and is stored in accordance with the *State Records Act 1998*.

We are obliged to provide some advice to Parliamentary review committees and to cooperate with hearings such as Royal Commissions.

The Office of the Children's Guardian may also release information that it considers to be relevant to the safety, welfare or wellbeing of a child or class of children.

Checklist

- Clearly record the initial and any subsequent allegation(s)
- Document the planning process
- Ensure all records are legible, signed and dated
- Confirm accuracy and consistency
- Avoid subjective language
- Include all notes (however rough) in the file
- Document all discussions and place on file (including emails sent and received)
- Document all advice, both given and received
- Document all decisions and their rationale
- Issue clear guidelines for staff about record keeping
- Be mindful of confidentiality and who should be able to access the records
- Keep records in a safe and secure place for the required period
- Don't release the Guardian's correspondence under GIPA without the Children's Guardian's consent

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