

Risk management following a reportable allegation

The NSW Reportable Conduct Scheme – Fact sheet 3

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 *Children's Guardian Act 2019* requires heads of relevant entities to have systems in place to prevent reportable conduct – that is, systems that manage the **risk of reportable conduct** from occurring.

What is risk management and who is responsible?

The head of a relevant entity is responsible for ensuring that any risk an employee may pose to a child(ren) is assessed and managed while responding to reportable allegations. This should be a dynamic process:

- An initial assessment on receipt of a reportable allegation should be based on all relevant information known at that time;
- The risk assessment should be revisited and – where appropriate – adjusted during the investigation, as new information becomes known;
- A final risk assessment should be undertaken at the end of the investigation.

At each stage, the assessment should inform any decision about risk management – that is, action that will be taken to address identified risks. It is important to record why the decision was made to take, or not take, any action following an initial, subsequent and final risk assessment.

Assessing risk

Under the Children’s Guardian Act, heads of relevant entities are required to provide information about **the nature of the entity’s initial risk assessment and risk management action** when they make their 7-day notification.

The initial risk assessment should identify and plan to avoid or minimise the risks to:

- the child(ren) who are the subject of the allegation;
- other children with whom the employee may have contact;
- the employee against whom the allegation has been made;
- the employing entity;
- other parties to the alleged incident (such as witnesses or reporters); and
- the proper investigation of the allegation.

Importantly, heads of relevant entities should assess the potential risk to the investigation or any individual’s health and safety before informing an employee about a reportable allegation against them. An entity should not inform an employee about the reportable allegation if doing so would compromise the investigation or put a person’s health or safety at serious risk.

Protecting children

The paramount consideration when responding to reportable allegations is to ensure the safety of the child or other children. Your risk assessment should consider the following:

- Does the child require protective intervention by another authority?

If you suspect that a child is at risk of significant harm you must make a report to your industry Child Well Being Unit or to the Child Protection Helpline of the Department of Communities and Justice (DCJ). When DCJ is involved, you should liaise with the relevant caseworker about any action you intend to take, to ensure it does not compromise any statutory child protection response.

- Do other steps need to be taken to prevent further allegations?

Where possible, the child’s daily circumstances should remain unchanged. Exceptions might be where the child is at risk of victimisation by peers or employees as a result of the allegations, or where it is difficult to ensure a child’s safety because of the entity’s inability to directly supervise the child and the employee.

Protecting employees

When taking action to address any identified risks, the entity should also take into consideration the needs of the employee against whom the allegation is made. An important factor to consider as part of this assessment, is the risk to the employee of being the subject of further reportable allegations if risk management action is not taken to manage the opportunity for this to occur.

Risk management action is sometimes misinterpreted as disciplinary action by parties who are affected by the decision. An entity's child protection or child safe policy should include a clear statement that a decision to take action based on a risk assessment:

- is not an indication that the alleged conduct occurred or is considered to have occurred;
- does not mean a finding has been made; and
- will not influence the investigation's findings.

Your risk assessment should also consider the level and type of support that should be provided to the employee during the investigation, such as access to counselling and a support person.

If the employee nominates a support person, it is important to ensure the nominated person is appropriate – for example, anyone who may be a witness in the investigation of the reportable allegation should not be assigned as a support person to the employee, as this would present a conflict of interest for them and would compromise the integrity of your investigation.

Employment-related issues

When an allegation is received, the entity needs to consider whether the employee should remain in their current position, be moved to another area or be suspended. Generally, the relevant entity should employ the least interventionist risk management action that can address identified risks. For example, suspending an employee in circumstances where risks could be managed by increasing supervision in the workplace, would be a disproportionate response.

If the employee remains in the workplace, a decision should be made about the duties that they will undertake and who will monitor and assess any risks associated with the employee having access to children in the care of the agency.

Factors to be considered in making this decision include:

- the nature and seriousness of the allegation(s);
- the vulnerability of the children the employee would be in contact with at work eg. the child(s) age, communication skills, or disability;
- the nature of the position occupied by the employee eg. levels of interaction with children;
- the amount and level of supervision available for the employee;
- the availability of support for the employee on a day-to-day basis if their duties are unchanged eg. managing children with challenging behaviours in a classroom; living in out of home care;
- the employee's disciplinary history;
- other possible risks to the investigation.

If DCJ and/or the police are involved, check with them first to ensure any action taken by the entity will not interfere with their investigations.

NSW Police or the Director of Public Prosecutions (DPP) may direct that an investigation by the entity is likely to prejudice a police investigation or court proceedings. In these circumstances, the investigation may be suspended pending their advice, and any risks managed (in consultation with

Protecting the integrity of your investigation

One risk to the integrity of an investigation is a failure to maintain confidentiality. Maintaining confidentiality should be carefully planned and managed as part of your response to a reportable allegation. In this regard:

- only parties with a need to know about the reportable allegation should be informed of it;
- all such parties should be advised of the need for confidentiality during the investigation; and
- the entity should have systems in place to deal with any breaches of confidentiality.

It is also important to ensure that the employee who is the subject of the allegation is treated fairly and afforded procedural fairness throughout the investigation. An unfair process is a risk to the investigation as it can undermine the process and the outcome and can leave children, employees and the organisation exposed to risk.

There are many other risks that may affect your investigation if you do not adequately plan, manage and document each step of the process. (See Fact Sheets 4 and 6.)

Ongoing risk management

During the investigation

When gathering information about an allegation, it is important to assess and manage any new risks that emerge. While new information may indicate a higher level of risk than initially assessed, it may also indicate a lower level of risk, and risk management plans should be adjusted accordingly. As new information comes to light that changes your assessment of risk, it is helpful to make contact with the Children's Guardian to discuss your assessment and ongoing risk management.

Entities should ensure that as part of their ongoing risk assessment and risk management plan, appropriate support is being provided for:

- the child(ren) who are the alleged victims of the alleged conduct;
- the employee who is the subject of the allegation; and
- other relevant parties (this may include parents or carers of the child, other children or other employees affected by the allegation, for example, a witness to the alleged conduct).

After the investigation

At the completion of the investigation, a final assessment of risk should be undertaken, regardless of the finding. This final risk assessment will inform the action the head of the relevant entity takes at the conclusion of the investigation. The head of the relevant entity is required to provide information about this final action to the Children's Guardian, along with the reasons for taking that action (or taking no action). The entity may also give the entity report to the employee the subject of the report. The action should address *all* identified risks, including those relating to:

- the employee – for example, consider whether the employee needs ongoing support, whether training or other remedial action is required, or if disciplinary action is warranted.
- the child or children involved – is there a need for counselling, other ongoing support or a plan managing future contact with the employee?
- organisational culture – for example, the investigation may have identified a need for improved education and awareness around child protection issues for children, employees or

both.

- systems – for example, did the investigation uncover work practices, or skills gaps that contributed to the reportable allegation arising? How can these be addressed?
- policies and procedures – were existing policies and procedures able to accommodate all the issues that arose during the investigation, or could they be refined?
- risks outside of the organisation’s control – the head of the relevant entity can consider whether there is a basis for releasing information about the reportable conduct matter to a prescribed body under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*.

All decisions and action taken should be fully documented and provided to the Children’s Guardian as part of the entity report.

Office of the Children’s Guardian

www.ocg.nsw.gov.au

Switchboard: (02) 8219 3600

Locked Bag 5100
Strawberry Hills NSW 2012