

# Risk management following a reportable allegation

## The NSW Reportable Conduct Scheme – Fact Sheet 3

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Under the NSW Reportable Conduct Scheme (Scheme), heads of “relevant entities” have a number of obligations in connection with allegations against their employees (including contractors and volunteers). These obligations are set out in the *Children's Guardian Act 2019* (the Act).

The purpose of the Scheme is to protect children by ensuring child abuse allegations (called “reportable allegations” and “reportable convictions”) are properly addressed, fostering a child safe culture and improving organisational responses to child safety concerns.

This Fact Sheet is designed to assist heads and employees of relevant entities to identify and manage risks associated with reportable allegations.

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## What is risk management and who is responsible?

The head of a relevant entity (HRE) 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 the reason/s the decision was made to take, or not take, any action following an initial, subsequent and final risk assessment.

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## Assessing risk

Under the Act, HREs 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)
- the proper investigation of the allegation.

Importantly, HREs should assess the potential risk to the investigation or any individual's health and safety before informing the employee about a reportable allegation against them. [Section 57\(7\)](#) of the Act makes clear that an HRE or their delegate should not inform an employee about the reportable allegation if doing so would compromise the investigation (or a third party investigation, including police inquiries), put any person's health or safety at serious risk or put a person who made the report, complaint or notification at risk of being harassed or intimidated.

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## 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.

Similarly, if you suspect that a criminal offence is involved, report to police and be guided by police on risk management. See [Fact Sheet 13 – Report conduct investigations and the NSW Police Force](#) for further guidance on reportable conduct matters that involve criminal allegations.

### **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.

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## Protecting employees

When taking action to address any identified risks, the entity should also take into consideration the circumstances 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
- 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.

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## 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 e.g. the age of the child(ren), communication skills, or disability
- the nature of the position occupied by the employee e.g. levels of interaction with children and whether it is 1-1 or in a group setting
- 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 e.g. managing children with challenging behaviours in a classroom; living in out of home care
- the employee's disciplinary history or prior similar concerns (even if not substantiated)
- other possible risks to the investigation.

Section 33 of the Act envisages that relevant entities will not commence investigative action in a matter involving – or having the potential to involve – DCJ or police inquiries (concurrent investigations), unless those parties provide clearance to the entity. Instead, the entity should suspend its reportable conduct investigation until clearance is obtained.

However, when a reportable conduct investigation is suspended, the relevant entity still needs to assess and manage risks. Unless a serious risk to a child is imminent, entities should check with police/DCJ first to ensure any risk management action taken by the entity will not interfere with their investigations. In this regard, taking risk management action, even without providing the employee with detailed reasons, can be enough to alert the employee to allegations having been raised. This can result in evidence being destroyed or witnesses being influenced before police have been able

to take action.

For more information about managing concurrent investigations, please see [Fact Sheet 13 – Report conduct investigations and the NSW Police Force](#).

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## 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
- the entity should have systems in place to deal with any breaches of confidentiality.

[Section 159](#) of the Act is a non-disclosure provision that applies to anyone who is in possession of reportable conduct information. It works to limit the extent to which individuals may disclose reportable conduct information, and disclosure outside of the circumstances section 159 permits is an offence. See [Fact Sheet 11 – Disclosing Reportable Conduct Information](#) for more information about how section 159 applies in reportable conduct investigations.

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. [Fact Sheets 4 and 8](#) outline procedural fairness steps expected during a reportable conduct investigation.

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](#).)

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## 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 important to update the OCG.

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

- the child or children who are the alleged victims of the alleged conduct
  - the employee who is the subject of the allegation
  - 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).
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### 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 HRE takes at the conclusion of the investigation. The HRE is required to provide information about this final action to the OCG,

along with the reasons for taking that action (or taking no action). 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?
- any other party – For example, if the identity of the informant becomes known to the employee, is action required to ensure the informant is not subject to retribution? Or as another example, if the allegation is found to be false and vexatious, is action required in relation to this?
- organisational culture – for example, the investigation may have identified a need for improved education and awareness around child safety 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 HRE 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. Guidance about, and resources, for Chapter 16A information sharing is available on the [DCJ website](#).

All decisions and action taken should be fully documented and provided to the OCG with the entity report.

## Office of the Children's Guardian

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