

Fact Sheet

Summary of legislative amendments and updates to reportable conduct fact sheets

October 25

Introduction

On 1 October, some minor amendments to the Children's Guardian Act 2019 (the Act) took effect, including some relevant to the Reportable Conduct Scheme. The amendments are designed to provide clarity to existing provisions and do not impose any additional obligations on relevant entities. The amendments are summarised below, along with links to fact sheets where you can find the details about what the amendments mean in practice.

Summary of changes

Amendment	Practice impact	Fact sheet for detail
Section 13: Definition of Schedule 1 entity	The amendment confirms/puts beyond doubt existing practice – only the part of a Schedule 1 entity that provides the listed service is captured by the Reportable Conduct Scheme. For example, for an organisation that runs an aged care arm and a designated (OOHC) agency arm, only the part of the agency that is a designated agency is a relevant entity.	Fact Sheet 2

Amendment	Practice impact	Fact sheet for detail
Section 16(5): definition of volunteer	The amendment confirms/puts beyond doubt that a person undertaking vocational training, including a student undertaking an internship or practical placement as part of the student's course of studies, is a 'volunteer' and therefore an 'employee' under the Reportable Conduct Scheme.	Fact Sheet 2
Section 20 – examples of significant emotional or psychological harm	The examples are non-exhaustive illustrations consistent with existing practice.	Fact Sheet 1
Section 21 – examples of sexual offences	An additional, non-exhaustive, example of the sexual offence of 'voyeurism' has been added.	Fact Sheet 1
Section 24 – examples of neglect	An additional, non-exhaustive, example of 'failing to seek medical treatment for a child' has been added.	Fact Sheet 1
Various sections under Part 4 referring to timeframes.	The amendment confirms that all timeframes are calculated in business days, for example the 7-Day notification and 30-day interim report timeframes.	Fact Sheet 2
Section 34(1A) and (1B) – an employee may make a written submission to the HRE about whether the HRE should make a finding of reportable conduct or determine that a conviction is a relevant conviction	This is consistent with existing guidance on procedural fairness and is intended to clarify that section 34(2), which states that an employee may give the HRE a written submission to the HRE for the purpose of determining what, if any disciplinary or other action should be taken, does not preclude the employee also making a written submission on finding.	Fact Sheet 2 Fact Sheet 8
Section 31(1)(c) – an amendment consequential to the above, requiring that any such submission	Section 37(2) already requires entities to ensure that their entity reports are accompanied by copies of documents in the entity's possession that are relevant to the report.	Fact Sheet 2

Amendment	Practice impact	Fact sheet for detail
be included with the entity's entity report		
Section 40(3) – the requirement to undertake mandatory considerations has been omitted from the legislation	HREs are no longer required to consider whether reportable allegations relate to conduct that is in breach of standards applying to the employee of the relevant entity having regard to professional standards, codes of conduct or accepted community standards. However, these considerations are typically relevant to decision-making in many reportable conduct investigations and should be taken into account – where relevant – when deciding whether evidentiary thresholds for reportable conduct are met.	Fact Sheet 1 Fact Sheet 8
Section 41 – what is not reportable conduct	This amendment is consequential to a previous amendment and is designed to make clear that matters exempted from notification under a Class or Kind arrangement still constitute reportable conduct.	N/A
Section 57(2) – persons to whom relevant information must be disclosed	This section no longer refers to the authorised carer of a relevant child – however information can be disclosed to a child's authorised carer in some circumstances – see section 57(3).	Fact Sheet 7
Section 57(3) – obligation on Children's Guardian to disclose relevant information	This amendment makes clear that the Children's Guardian is required to disclose relevant information under section 57 only in matters directly investigated by the Children's Guardian.	Fact Sheet 7
Section 57(4) – persons to whom relevant information <i>may</i> be disclosed	Outlines circumstances under which the HRE <i>may</i> disclose relevant information to the head of another entity, an authorised carer, or a person with daily care and control of a relevant child.	Fact Sheet 11
Section 57(5) – disclosure of relevant information between public health entities	This provision enables the HRE of a public health entity, or their delegate or investigator, to disclose/exchange relevant information with another public health entity, as defined at section 57(8).	N/A

Amendment	Practice impact	Fact sheet for detail
Section 57(6) – information to subject employee	This provision is consistent with section 159, which permits the disclosure of reportable conduct information in connection with the execution of the Act, and makes clear that the disclosure is not required (in this regard, see section 57(7)) and that it extends to individuals who were an employee at the time the reportable allegation arose but are no longer employees at the time of the proposed disclosure.	Fact Sheet 3 Fact Sheet 4 Fact Sheet 8 Fact Sheet 11
Section 57(7)	This amendment legislates existing best practice around non-disclosure to an employee if doing so would put an individual's health or safety at serious risk, put a person who made a report/complaint/notification at risk of harassment or intimidation or compromise an investigation or inquiry.	Fact Sheet 4 Fact Sheet 8
Section 57(8) – disclosure of 'relevant information'	The definition of 'relevant information' makes clear that it includes information about the nature of the reportable allegation or conviction.	Fact Sheet 7
Section 159 – non-disclosure of information	This is not a new provision, however due to amendments to section 57, it is now the dominant provision governing the confidentiality of reportable conduct information.	Fact Sheet 11

In addition to reflecting the legislative amendments outlined above, the reportable conduct fact sheets have been revised to take into account recommendations arising from the legislative review and feedback from stakeholders. In particular:

- [Fact Sheet 1](#) has been revised to provide greater detail and include case studies to assist relevant entities to identify reportable allegations and understanding the elements and thresholds associated with each category of reportable conduct
- [Fact Sheet 2](#) has included information about how the Children's Guardian determines whether there is a public interest in monitoring a reportable conduct investigation, directly investigating a reportable allegation or investigating the way in which a relevant entity has responded to a reportable allegation
- [Fact Sheet 8](#) has been revised to provide clearer guidance on thresholds for making a finding of reportable conduct
- [Fact Sheet 12](#) outlines the requirement on relevant entities to consult with the Children's Guardian before disclosing information under a GIPA access request
- [Fact Sheet 13](#) provides guidance for entities on managing concurrent investigations
- [Fact Sheet 14](#) provides guidance for entities on managing historical allegations.