

# Reportable Conduct Fact Sheet 9

## Information for Employees

The Reportable Conduct Scheme was introduced in May 1999 under the Office of the NSW Ombudsman. It was transferred to the Office of the Children's Guardian on 1 March 2020. The scheme is outlined in [Part 4 of the Children's Guardian Act 2019](#) (the Act).

Under the scheme, certain organisations (relevant entities) are required to have systems for receiving, handling and disclosing information about reportable allegations – allegations about an employee engaging in harmful conduct towards a child. Heads of relevant entities (HRE) must also make sure their agency has systems and practices in place that aim to prevent children from being harmed when they are under the care of that agency.

Heads of relevant entities must notify the Office of the Children's Guardian of any reportable allegation against people who work in their organisation. Depending on the nature of your work and who you work for, an allegation may be a reportable allegation whether or not the conduct happened in the course of work for the relevant entity.

### Does the scheme apply to me?

Under the Act, the definition of 'employee' captures a range of individuals who work with children in all government and certain non-government organisations (relevant entities) and extends to volunteers and certain contractors.

'Employee' includes:

- an individual employed by or in a relevant entity
- an individual engaged by the relevant entity – whether directly or indirectly – to provide services to children
- an authorised carer
- an adult who resides on the same property as an authorised carer in circumstances requiring the adult to hold a Working with Children Check clearance
- others listed in [section 16 of the Act](#).

### What if I was not an employee at the time of the alleged conduct?

If you are an employee at the time your HRE becomes aware of a reportable allegation against you, the scheme applies even if the alleged conduct happened when you were not an employee. This is because the scheme is designed to address any current risk an employee may pose to children being cared for by a relevant entity.

If you don't know if you are an employee under the Reportable Conduct Scheme, please contact us on (02) 8219 3800.

As a worker under the scheme, it is important for you to understand your obligations and how the scheme may affect your employment.

## What are my obligations under the Scheme?

The Act requires all employees under the scheme to give a report about any reportable allegation they become aware of, and this report must be made as soon as practicable.

### Giving a report

'Giving a report' means telling the head of your organisation (the HRE) or their delegate about a reportable allegation or conviction against another employee of the organisation (or yourself). Your organisation's internal reporting policy should tell you how to do this.

Identifying whether an allegation of wrong conduct is a reportable allegation can sometimes be difficult. The simplest way to comply with your reporting obligation is to make sure you report any allegation, disclosure, complaint, concern, incident or observation involving alleged misconduct of a worker (including volunteers and contractors) with, towards or in the presence of a child.

For more information, see *Fact Sheet 1 – Identifying reportable allegations* on our [Reportable Conduct fact sheet web page](#).

### What if the allegation is against the HRE?

If the conduct you need to report is against the HRE, the Act says you must make the report directly to the Children's Guardian, which you can do by sending all the relevant details to [reportableconduct@kidsguardian.nsw.gov.au](mailto:reportableconduct@kidsguardian.nsw.gov.au).

### What protections do I have if I make a report?

A work culture that encourages and supports the appropriate reporting of child protection concerns is a critical component of a child safe organisation.

Protections apply for people who make reports under the Scheme. The Act outlines protections against retribution at sections 63 and 64, and these provisions apply to employees who make reports in good faith.

Ensuring employees feel confident to make reports is one component of the systems relevant entities are required to have in place.

If you have concerns about the reporting culture in your organisation, or the systems in place to ensure and enable reporting, you can speak with the Office of the Children's Guardian.

### What happens if I do not make a report?

The HRE is required to have certain systems in place, including systems to ensure all employees make reports of reportable allegations they become aware of. A failure to make a report may constitute misconduct, which your employer would respond to in accordance with the organisation's disciplinary processes.

### 'In some circumstances, a failure to make a report may be a criminal offence.'

In some circumstances, a failure to make a report could also constitute a reportable allegation against you (of neglect), or a criminal offence (under [section 43B of the Crimes Act](#)).

If you realise you have unintentionally overlooked the need to make a timely report, it is important to make the report as soon as you can. If you do, you will fulfil your reporting obligation. It is best to make your report in writing and keep a record of the report and the date and how it was made.

### What if I report to my HRE but the HRE does not notify the Children's Guardian?

If you give a report to the HRE and the HRE is required to, but does not, notify the Children's Guardian, you are not responsible. However, if you are aware that your HRE has not fulfilled their reporting obligations, you should (and in some circumstances must) alert the Children's Guardian to this. If you are concerned about any aspect of the HRE's response to your report, you may make a complaint to the Office of the Children's Guardian (see below for details about how to make a complaint).



## Can I talk to my colleague about changing their behaviour, to give them a second chance before reporting?

Immediate reports protect both children and employees. If reportable allegations are reported early on, they can often be addressed through training and support. Left unreported, reportable allegations often escalate and the potential consequences for the employee can be more severe.

## What if someone makes a report about me?

If a reportable allegation is made against you, the HRE is required to take certain action. If the allegation makes it mandatory for the HRE to make a report to Police or to the Department of Communities and Justice (DCJ), the HRE must do that.

The HRE must also tell the Children's Guardian about the allegation within 7 days of becoming aware of it.

While the Act places other obligations on the HRE (and in some cases they may be exempt from these requirements) they generally must:

- assess and manage risks (including any risks to you)
- conduct an investigation
- make a finding for all reportable allegations
- provide a report to the Guardian about the finding and action taken.

The Act also requires the HRE to have regard to certain mandatory considerations and to the principles of procedural fairness when responding to any reportable allegation against you.

While a procedurally fair investigation will generally involve certain steps, when and how these steps are followed will be different in every case.

Several factors must be considered when the HRE decides how to investigate a reportable allegation, including:

- any requirement by Police, DCJ or the Children's Guardian to defer the investigation
- the safety, welfare and wellbeing of a child or children impacted by the investigation
- the rights of other parties involved in the investigation.

For example, if a reportable allegation is made against you, it is natural to want to know who made the allegation.

Sometimes it will not be appropriate for the HRE to tell you the source of the allegation, and sometimes it can be illegal to tell you.

## How can I avoid having allegations made about me?

Most people who work with children will never harm a child. The Reportable Conduct Scheme responds to matters where a child has or may have been harmed by a person who works with them or works with other children.

### 'Most people who work with children will never harm a child'

The Reportable Conduct Scheme has a dual focus of prevention and response. These functions are interconnected, as timely and rigorous responses to reportable allegations are key to prevention.

Much reportable conduct is situational and can be prevented, especially in organisations that have established child safe systems, policies and practices.

## Tips for employees

Here are some tips to help you avoid situations that may give rise to a reportable allegation.

- Ensure you are familiar with your organisation's Code of Conduct and expectations of the ways you interact with children in your role.
- Keep your interactions with children professional at all times, even in less formal environments including extracurricular activities such as musical or dramatic productions.
- Ensure you receive adequate induction into your role, and if not raise this with your supervisor – even if you are engaged for a short time or you are a volunteer
- If you do not have the required experience or training to perform your role safely, discuss this with your supervisor so steps can be taken to make you ready for the role.
- If you are an authorised carer, casual, agency or shift worker, it is necessary that you receive adequate handovers when you begin a shift or are caring for a child for the first time, so you have the information you need to perform your role and keep children safe.
- Where possible, avoid interacting with children one-on-one in an area not visible to others – unless it is required in your role.
- If you mentor a child, be sure this is a recognised and approved role by your employer, and you have a clear understanding of appropriate boundaries in that role.
- Do not engage with children (outside of family or legitimate social circles) through social media.
- If you engage with children through other electronic media (such as email) as part of your role, follow your employer's guidance on appropriate communication.
- If you are having personal, health or other issues that may affect your work performance or overall wellbeing, access any support available to you.

It is also important to know that 'special care' criminal offences may apply to you.

## Special care offences

Ordinarily, a young person aged over 16 years can consent to sexual touching and sexual intercourse. However, a child aged 16 or 17 years cannot legally consent to sexual touching by, or sexual intercourse with, a person who has a special care relationship with them.

These provisions apply to authorised carers; members of school teaching staff, health professionals, custodial officers and people providing religious, sporting, musical or other instruction.

## Making a complaint

If you are concerned about the way the HRE is responding to a report about reportable allegations, it is important to raise your concerns with the HRE at the earliest opportunity. Your concerns may relate to the response to a report you made, or the response to reportable allegations against you.

If you are not satisfied with the response to any concerns you raise with the HRE, you can make a complaint to the Children's Guardian by using the [Contact Us form on our website](#).

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## For more information about the Reportable Conduct Scheme

Phone: **(02) 8219 3800**

Email: [reportableconduct@kidsguardian.nsw.gov.au](mailto:reportableconduct@kidsguardian.nsw.gov.au)  
[www.kidsguardian.nsw.gov.au/reportableconduct](http://www.kidsguardian.nsw.gov.au/reportableconduct)

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