

Guidelines for the Reportable Conduct Scheme

Guidelines for Staff



PCYC
Safeguarding
Program

PCYC Guidelines for the Reportable Conduct Scheme

The Royal Commission into Institutional Responses to Child Sexual Abuse recommended that jurisdictions implement a Reportable Conduct Scheme (RC Scheme) to provide independent oversight of how organisations prevent and respond to allegations of abuse and sexual misconduct regarding a child, or sexual offending, by employees. In Western Australia, the Parliamentary Commissioner Amendment (Reportable Conduct) Act 2022 (the Act) that establishes the RC Scheme is administered by the Ombudsman Western Australia office (OWA).

The Scheme implements key recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and provides that child abuse in organisations will be:

- » notified to an impartial and independent body;
- » investigated fully; and
- » dealt with to ensure children are protected from abuse within institutions.

Version 1 Updated

June 2024

Acknowledgement of Country and First Nations Peoples

In the spirit of reconciliation, PCYC acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community.

We pay our respect to their elders past and present and extend that respect to all Aboriginal and Torres Strait Islander Peoples.

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Why do we need a Reportable Conduct Scheme?

The Royal Commission highlighted the numerous times and ways in which children reported abuse and were not believed, or no action was taken. The Royal Commission recommended that States and Territories establish Reportable Conduct Schemes to prevent harm to children by holding organisations accountable for the conduct of their staff.

The Scheme supports people to speak up about concerning behaviours, helps prevent child abuse and improve systems and processes of organisations for preventing and dealing with complaints and reports of abuse about their staff.

What is Reportable Conduct?

The reportable conduct covered by the Scheme includes:

- » sexual offences;
- » sexual misconduct;
- » physical assault;
- » other prescribed offences;
- » significant neglect of a child; and
- » any behaviour that causes significant emotional or psychological harm to a child.

What are sexual offences?

A sexual offence is an offence of a sexual nature under a law of Western Australia, another State, Territory, or the Commonwealth committed against, with, or in, the presence of a child. Sexual offences include but are not limited to:

- » sexual penetration of a child;
- » indecent dealings with a child;
- » procuring, inciting or encouraging a child to engage in sexual behaviour or do an indecent act; and
- » production, distribution or possession of child exploitation material.

An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of a sexual offence.

What is sexual misconduct?

Sexual misconduct includes misconduct against, with or in the presence of a child that is sexual in nature but does not include a sexual offence. Sexual misconduct may include (but is not limited to) behaviours such as:

- » inappropriate touching;
- » sharing pornographic images;
- » speaking of sexual acts without a legitimate reason to do so;
- » comments to a child that express a desire to act in a sexual manner towards the child, or another child; and
- » grooming behaviour.

Sexual misconduct includes a broad range of behaviours, some of which may be sexual and some may be in preparation for sexual activity. Misconduct of a sexual nature may also occur when an employee involves a child in sexual activity by using their power over the child and taking advantage of their trust.

For example, grooming behaviour may be where there is evidence of a pattern of conduct where the employee gradually engages the child in

sexual activity by using inducements, bribes, rewards or threats. Often there is use of a variety of controlling techniques toward a vulnerable subject in order to establish trust or to normalise sexually harmful behaviour.

Grooming behaviour may also involve behaviour designed to prohibit exposure of the relationship.

The types of behaviours that may lead to a conclusion that grooming behaviour is occurring include persuading a child or group of children that they have a 'special' relationship, for example by:

- » spending inappropriate special time with a child;
- » inappropriately giving gifts; or
- » asking the child to keep their relationship to themselves.

What is physical assault?

Physical assault can occur when a person intentionally or recklessly:

- » applies physical force against a child without lawful justification or excuse – such as hitting, striking, kicking, punching or dragging a child (actual physical force); or
- » causes a child to apprehend the immediate and unlawful use of physical force against them – such as threatening to physically harm a child through words and/or gestures and regardless of whether the person actually intends to apply any force (apprehension of physical force).

For conduct to be physical assault under the Scheme, the actions of the employee must be either intentional or reckless.

Intentional means that the employee engaged in the behaviour or conduct deliberately. In the case of actual physical force, this applies where the employee intentionally carries out the conduct or behaviour when physical contact was made with the child. An example of conduct that would likely constitute a physical assault is an employee deliberately striking a child in their care.

An apprehension of physical force is where an employee carries out a conduct or behaviour with an intention of making a child believe there would be actual physical force that could injure or harm them. An example of conduct that may cause a child to apprehend the use of physical force is where an employee threatens to strike a child in their care, causing the child to believe they are going to be harmed by the employee.

Reckless means the employee might not have intended to use actual physical force, or to make a child believe actual physical force would be

used, but was reckless about the impact their conduct or behaviour could have on a child. An example of conduct that may constitute a physical assault is an employee acting in a reckless manner that results in the employee unintentionally striking a child.

Investigations will often need to be undertaken before it is possible to determine whether or not the conduct or behaviour was reckless as it will frequently require an examination of all of the circumstances surrounding the incident.



What is significant neglect?

Neglect is a failure to meet the basic needs of a child. In deciding whether alleged conduct is significant neglect, it may be helpful to consider if:

- » the worker or volunteer could have met the child's needs but failed to do so; and
- » the failure was deliberate or reckless.

Examples of different types of neglect could include:

- » supervisory neglect: This may occur when a person responsible for the care of a child is unable or unwilling to exercise adequate supervision or control of the child or young person.
- » medical neglect: This may occur where there is a failure to seek or comply with appropriate or recommended medical treatment.
- » physical neglect: This may occur where there is the failure to meet a child's physical needs including the provision of adequate and appropriate food, clothing, shelter or physical hygiene needs.
- » educational neglect: This may occur when there is a failure to ensure that a child's formal education needs are being met.
- » emotional neglect: This may occur where there is a failure to provide adequate nurturing, affection, encouragement and support to a child.

When is neglect 'significant'

The use of the word 'significant' refers to the impact on the child of the failure to act, not to the duration, severity or gravity of the outcome of the neglect. It is not necessary to establish whether any harm was suffered or whether any harm that did result could be treated, resolved or cured. It is the failure or failures that will be

assessed for significance when considering whether conduct is reportable.

The Ombudsman defines 'significant' as a deliberate or reckless failure or failures that separately or together have had, or could have, considerable detrimental force or effect on the safety or wellbeing of the child who has been neglected.

While actual harm is not required, it is important to consider the possible harm or impact on a child as a result of the neglect to assess how significant the neglect is.

The possible harm in question will be a consequence that a reasonable person would consider to be a likely result of the neglect.

For example, if a young child is locked in a hot car in summer, a reasonable person may conclude that this neglect could lead to this child suffering serious harm or possibly even death.

Neglect that could lead to serious harm is likely to be significant neglect.

Identifying Emotional or Psychological Harm

What is significant emotional or psychological harm to a child?

While a child can be significantly emotionally or psychologically harmed by behaviour, such as sexual offences, sexual misconduct, physical violence and significant neglect, other types of behaviours can also cause significant emotional and psychological harm to a child.

Examples include:

- » coercive or manipulative behaviour;
- » hostility towards, or rejection of, a child;
- » verbal abuse; and
- » humiliation, belittling or scapegoating.



Identifying the elements

For reportable conduct involving significant emotional or psychological harm, the following elements must be present:

- » a serious act or series of acts that the employee knew or ought to have known was unreasonable, and
- » evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self-harm, chronic depression, post-traumatic stress disorder or the exacerbation or aggravation of an existing psychological condition, and
- » an alleged causal link between the employee's conduct and the psychological harm to the child.

Further information regarding the 'clear link' and 'significant' elements is outlined below.

There must be a clear link between the behaviour and the harm.

There must be a clear link between the alleged behaviour and the significant emotional or psychological harm. In deciding whether there is a clear link, it may be helpful to consider the likelihood that the child would have been harmed if the alleged behaviour had not occurred.

Significant emotional or psychological harm may also be caused where an existing mental health disorder, such as anxiety or depression, has been exacerbated.

A child may display physical or behavioural signs that suggest they may have experienced behaviour which has caused them significant emotional or psychological harm. These signs may include:

- » suicidal action, suicidal ideation or self-harm;
- » patterns of out-of-character, self-destructive, antisocial, or anxious behaviour;
- » ongoing sleep disturbance, nightmares or bedwetting; and
- » regression in behaviour.

Identifying the Harm

The harm must be 'significant'

Allegations that are reportable under this category must concern significant emotional or psychological harm. To be considered significant under the scheme, the alleged harm must be more than trivial.

A professional psychological or medical assessment of the child may assist to determine whether they have suffered significant emotional or psychological harm. However, a clinical diagnosis will not be required in every case, for example where:

- » the alleged behaviour is so serious and/or occurred over such a sustained period, that it can be reasonably inferred that the child has been harmed; or
- » assessment may unreasonably re-traumatise or otherwise further harm the child.

Heads of organisations will not need to notify the Ombudsman about an allegation if:

- » it is reasonable for the discipline, management or care of a child or of another person in the presence of a child;
- » having regard to the characteristics of the child and any relevant code of conduct or professional standard that applied at the time;
- » it is trivial or negligible and that has been or will be investigated and recorded as part of another workplace procedure; or
- » the conduct has been exempted by the Ombudsman from being reportable conduct.

For example, an employee restraining a child to prevent that child from hurting themselves or others would not need to be reported to the Ombudsman, as long as the employee's conduct was consistent with relevant codes of conduct or professional standards that applied at the time.

What is a reportable allegation?

A reportable allegation is any information that leads a person to form the belief on reasonable grounds that an employee (as defined under the Act) of an organisation covered by the Scheme has engaged in reportable conduct, whether or not the conduct is alleged to have occurred in the course of the employee's employment.

What is a reportable conviction?

A reportable conviction is, in summary, a conviction for an offence of a sexual nature committed against, with, or in the presence of a child. A conviction for an offence committed by a person includes:

- » a court making a finding of guilt in relation to the offence;
- » if there has been no formal finding of guilt before conviction, a court convicting the person of the offence;
- » a court accepting a plea of guilty from the person in relation to the offence;
- » a court acquitting the person following a finding under The Criminal Code section 27 that the person is not guilty on account of unsoundness of mind or an acquittal following an equivalent finding under a law of another State, a Territory or the Commonwealth; or
- » a conviction that is a spent conviction (but does not include a conviction that is subsequently quashed or set aside by a court).

Notifying Reportable Conduct

What must be notified to the Ombudsman?

Under the Scheme, both 'reportable allegations' and 'reportable convictions' need to be notified to the Ombudsman.



Forming a belief on reasonable grounds

A reportable allegation is any information that leads a person to form a belief on reasonable grounds that an **employee** has engaged in reportable conduct or conduct that may involve reportable conduct, whether or not the conduct is alleged to have occurred in the course of the employee's employment. This includes where a reportable allegation is made against the head of the organisation.

The existence of some uncertainty or doubt about whether an employee engaged in reportable conduct or conduct that may involve reportable conduct does not prevent the reporting person from forming a belief on 'reasonable grounds' that the reportable allegation occurred.

A reporting person is not required to prove that a reportable allegation occurred.

A person is likely to form the belief on reasonable grounds if they:

- » observed the child's behaviour;
- » observed the conduct themselves;
- » heard directly from a child that the conduct occurred; or
- » received information from another credible source (including another witness).

Who in PCYC is subjected to the Reportable Conduct Scheme?

Within PCYC The types of organisations covered by the Scheme include:

- » OSHC - childcare services.
- » IOT - education services.

Who are Employees?

Given that the Scheme is about preventing child abuse, it is important that as many employees as possible are included. This includes the following persons over 18 years of age:

- » paid staff;
- » unpaid staff; and
- » contractors.

What is the Ombudsman's role?

The Ombudsman is an impartial officer who serves Parliament and is independent of the Government of the day. The office of the Ombudsman has particular expertise in investigating matters involving the safety and welfare of children, including its longstanding child death review and family and domestic violence review functions.

The Ombudsman will monitor, oversee and review investigations undertaken by organisations into allegations of, and convictions for, abuse of children involving any of the organisation's employees. The Ombudsman may also at any time investigate matters of their own motion.

What does PCYC and the Safeguarding Office need to do?

The CEO and the Safeguarding Manager (delegated authority) are required to:

- » notify the Ombudsman of allegations of, or convictions for, child abuse by their employees;
- » investigate the allegation; and
- » provide a report to the Ombudsman on the outcome of the investigation and any action taken.

PCYC through the Safeguarding Office have systems in place to enable better protection against, and in response to, reportable conduct.

The Act provides mechanisms to ensure that there is no unnecessary duplication of investigations, including interviewing vulnerable children and young people.

These mechanisms include providing for consultation and sharing of information between the Ombudsman and other investigatory or oversight bodies, such as the WA Police Force. It also includes the capacity for the Ombudsman to exempt a matter, or an organisation from an investigation where appropriate, including that it is being investigated by another appropriate person or body.

Contact Details for the Ombudsman of WA

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Acknowledgements: PCYC acknowledges the office of The Ombudsman Western Australia and the New South Wales Office of the Children's Guardian, ACT Ombudsman's office and the Victorian Commission for Children and Young People on which this document has been created.





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