

Information Sheet 2

What is reportable conduct under the Reportable Conduct Scheme?

What types of conduct are reportable?

There are five types of 'reportable conduct' listed in the *Child Wellbeing and Safety Act 2005*:

- sexual offences (against, with or in the presence of, a child)
- sexual misconduct (against, with or in the presence of, a child)
- physical violence (against, with or in the presence of, a child)
- behaviour that causes significant emotional or psychological harm
- significant neglect.

 **A child is anyone who is under 18 years of age.**

A short description of the types of reportable conduct is provided below.

What are sexual offences?

In Victoria, it is an offence to engage in certain sexual behaviours against, with or in front of, a child. Many of these behaviours are reportable conduct under the Reportable Conduct Scheme. This includes:

- sexual assault
- indecent acts
- possession of child abuse material
- 'grooming' a child in order to commit a sexual offence.

A full list of the relevant sexual offences is set out in clause 1 of Schedule 1 to the *Sentencing Act 1991*.

A worker or volunteer does not need to be charged with, or found guilty of, a sexual offence for their behaviour to be reportable conduct.

The terms *worker* and *volunteer* are used to cover a range of people subject to the scheme. Further details are provided in Information Sheet 1 – About the Victorian Reportable Conduct Scheme, under the heading Who can a reportable allegation be made about under the scheme?

What is sexual misconduct?

'Sexual misconduct' captures a broader range of inappropriate behaviours of a sexual nature that are not necessarily criminal.

Sexual misconduct refers to conduct that:

- amounts to misconduct
- is of a sexual nature, and
- occurred against, with, or in the presence of, a child.

Please refer to [Information Sheet 9 – Sexual misconduct](#) for further guidance.



What is physical violence?

Physical violence committed against, with or in the presence of a child can fall into two categories. Physical violence can be either:

- actual physical violence - a worker or volunteer intentionally or recklessly uses physical force against, with, or in the presence of a child without a lawful reason, which has the ability to cause injury or harm to the child. Actual physical violence can include hitting, punching, kicking, pushing or throwing something that strikes a child or another person.
- apprehended physical violence - a worker or volunteer intentionally or recklessly engages in conduct or behaviour against, with, or in the presence of a child that is capable of causing a child to think that physical force is about to be used against them or another person. This could include words, gestures or actions that cause a child to believe physical force is about to be used against them, regardless of whether or not the worker or volunteer actually intended that any physical force would be applied.

Please refer to [Information Sheet 10 – Physical violence](#) for further guidance.

What is behaviour that causes emotional or psychological harm to a child?

You should consider each allegation carefully, keeping in mind the context in which the behaviour occurred and the child's circumstances.

To be reportable under this category:

- the allegation must concern the worker's or volunteer's behaviour
- there must be a clear link between the worker's or volunteer's alleged behaviour and the harm suffered by the child
- the harm must be significant.

Identifying the behaviour

A child can be significantly emotionally or psychologically harmed by behaviour, such as sexual offences, sexual misconduct, physical violence and significant neglect. However, other types of behaviours can also cause significant emotional and psychological harm to a child, for example, severe or sustained instances of:

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

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

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

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
- regression in behaviour.



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* or *temporary*.

We encourage organisations to consult with us if you need assistance to determine if the allegation involves significant emotional or psychological harm.

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.

Exceptions

An allegation will not be reportable if:

- the worker or volunteer has taken reasonable steps to protect a child from immediate harm
- the worker or volunteer has responsibility for discipline and has taken lawful and reasonable disciplinary action, such as sending a child to sit in 'time out' for a period of time, in line with organisational policy
- the worker or volunteer is an appropriately qualified worker or volunteer who has given medical treatment in good faith, such as a senior first aid officer administering first aid.

What is significant neglect?

Significant neglect occurs when there is a significant, deliberate or reckless failure to meet the basic needs of a child in circumstances where the adult understood the needs of the child, or could have understood those needs if they had turned their mind to the question, and had the opportunity to meet those needs but failed to do so.

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, or fails to seek or comply with appropriate 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.

'Significant' neglect

Neglect will be significant where there has been a deliberate or reckless omission or omissions that separately or together have had, or could have, considerable force or effect on the safety or wellbeing of the child who is the victim of the neglect. For detailed guidance on significant neglect together with some practical examples, please refer to Information sheet 11.

What is a reasonable belief?

A reportable allegation is made where a person makes an allegation, based on a reasonable belief, that a worker or volunteer has committed reportable conduct or misconduct that **may** involve reportable conduct. This includes where a reportable allegation is made against the head of the organisation.

A reasonable belief is more than suspicion. There must be some objective basis for the belief. However, it is not the same as having proof and does not require certainty.



For example, a person is likely to have a reasonable belief if they:

- observed the conduct themselves
- heard directly from a child that the conduct occurred
- received information from another credible source (including another witness).

Heads of entity do not need to agree with or share the belief that the alleged conduct has occurred. However, they do not need to notify the Commission about the allegation if it is plainly wrong or has no basis at all in reality.

Where to get help

Organisations covered by the Reportable Conduct Scheme should contact the Commission for clarification and guidance, and to talk through any issues of concern.

- Telephone: 8601 5281
- Email: contact@ccyp.vic.gov.au

Further information is also available on the Commission for Children and Young People's website at www.ccyp.vic.gov.au

