

## REPORTABLE CONDUCT SCHEME

The Reportable Conduct scheme was introduced as a part of the Victorian Government's response to a 2012-2013 inquiry into the handling of child abuse by religious and other non-government organisations. The report highlighted an immediate need for new legislation to prevent child abuse, to respond to allegations of child abuse and to ensure access to justice.

The scheme commenced in 2017 and phased in coverage. All businesses with obligations under the scheme are now required to report allegations of child abuse to the Commission for Children and Young People.

The Reportable Conduct Scheme is designed to complement the Child Safety Standards. These standards apply to a broad range of organisations and has a goal to promote child safety including the implementation of preventative systems. For more information on the Child Safe Standards, please see the following [link](#).

### Types of reportable conduct:

The *Child Wellbeing and Safety Act 2005* (section 3(1)) defines reportable conduct as:

- > sexual offences committed against, with or in the presence of a child, whether or not a criminal proceeding in relation to the offence has been commenced or concluded
- > sexual misconduct committed against, with or in the presence of a child
- > physical violence against, with or in the presence of a child
- > any behaviour that causes significant emotional or psychological harm to a child
- > significant neglect of a child

### Who does the scheme apply to?

#### People

According to the *Child Wellbeing and Safety Act 2005* allegations of reportable conduct can be made against:

- > employees
- > volunteers
- > contractors
- > office holders or officers
- > ministers of religion, religious leaders, officers of a religious body
- > foster carers in a formal care arrangement (where a permanent care order has not been made)

**Note:** Allegations can only be made against a person who is 18 years or older.

#### Organisations

The reportable conduct scheme applies to entities that exercise care, supervision or authority over children. Organisations covered by the scheme are detailed below with reporting obligations having been phased in over time. Broadly, coverage includes schools, government services, religious bodies, boarding schools and camps, health & disability services, after hours care, child care services and certain event centres.

**Note:** If any part of an organisation is within scope of the scheme, then the entire organisation is in scope.

PHASE 1		
Operative Date	Summary of Scope	Organisations Covered
<b>1 July 2017</b> (This date is prior to the commencement date of the scheme and requires covered organisations to report previous allegations from this date and beyond)	Schools, residential/in-patient services, and government funded services.	An entity that: <ul style="list-style-type: none"> <li>&gt; operates a registered <b>school</b> (non -government and Government)</li> <li>&gt; is registered to provide accredited senior <b>secondary courses</b> or qualifications</li> <li>&gt; is an <b>out-of-home care</b> service</li> <li>&gt; is a Victorian Government <b>Department</b></li> <li>&gt; is a <b>disability service provider</b> that provides <b>residential services</b> for children with disabilities</li> <li>&gt; is a <b>mental health service provider</b> that provides in-patient beds</li> </ul> An entity that is approved to: <ul style="list-style-type: none"> <li>&gt; provide courses to <b>students from overseas</b></li> <li>&gt; operate a <b>student exchange</b> program</li> </ul> Government funded entities that: <ul style="list-style-type: none"> <li>&gt; provide <b>drug and alcohol treatment</b> services and in-patient beds</li> <li>&gt; provides housing assistance/ other <b>homeless assistance</b> services and provide overnight beds to persons under 18</li> <li>&gt; provide <b>child protection services</b></li> </ul>

PHASE 2		
Operative Date	Summary of Scope	Organisations Covered
<b>1 January 2018</b> (This date is prior to the commencement date of the scheme and requires relevant organisation to report previous allegations from this date and beyond)	Religious bodies, boarding schools/camps, health & disability services	All organisations covered in phase 1 and: <ul style="list-style-type: none"> <li>&gt; <b>Religious bodies</b></li> <li>&gt; Entities that:               <ul style="list-style-type: none"> <li>&gt; operate a residential facility for a <b>boarding school</b></li> <li>&gt; provide overnight <b>camps</b> for children as part of its primary activity (except certain youth organisations)</li> <li>&gt; are a public or private <b>hospital</b></li> <li>&gt; are a public <b>health service</b></li> <li>&gt; provide disability services and other applicable entities that provide <b>disability services</b> (applicable under disability Act 2006)</li> </ul> </li> </ul>

PHASE 3		
Operative Date	Summary of Scope	Organisations Covered
1 January 2019	After Hours Care, Child Care & certain Event Centres	<p>All organisations covered in phases 1 &amp; 2 and:</p> <ul style="list-style-type: none"> <li>&gt; <b>approved education and care services</b> within the meaning of the Victorian Education and Care Services National Law (e.g. kindergartens, after hours care services)</li> <li>&gt; <b>Children's services</b>, within the meaning of the children services Act 1996 (e.g. Child care.)</li> <li>&gt; An applicable entity that is constituted by or under any Act and that has functions of a <b>public nature</b> (e.g. museums, libraries etc)</li> </ul>

## When an allegation has been made

### Who to report to:

All behaviour that meets the definition of reportable conduct must be reported to the Commission for Children and Young People by the head of an organisation. The head of the organisation has obligations to report the details within a legislated timeframe.

Please note that in addition to meeting your reporting obligations with the Commission for Children and Young People, businesses may still have other obligations to report to other authorities. These include Victoria Police and Child Protective Services. Businesses should also investigate if other pieces of legislation apply based on the industry in which they operate.

### Who has reporting obligations:

The head of an organisation has the obligation to notify the Commission for Children and Young People of any reportable conduct. The head of an organisation includes:

- > The chief executive officer or principal officer of the entity
- > The secretary of a department or the secretary's delegate
- > A person, or person belonging to a class of persons prescribed as the head of an entity

### When does an allegation need to be reported?

When the head of an entity is notified of conduct that needs to be reported, the head must notify the Commission for Children and Young People within 3 business days. This needs to be a written notification.

The *Child Wellbeing and Safety Act 2005* details what needs to be reported and when:

### Within 3 days:

#### **16M Head of entity to notify Commission of reportable allegation**

- (i) that a reportable allegation has been made against an employee of the entity; and
- (ii) the name (including any former name and alias, if known) and date of birth, if known, of the employee concerned; and

- (iii) whether Victoria Police has been contacted about the reportable allegation; and*
- (iv) the name, address and telephone number of the entity; and*
- (v) the name of the head of the entity;*

## Within 30 days:

### **16M Head of entity to notify Commission of reportable allegation**

- (i) detailed information about the reportable allegation; and*
- (ii) whether or not the entity proposes to take any disciplinary or other action in relation to the employee and the reasons why it intends to take, or not to take, that action; and*
- (iii) any written submissions made to the head of the entity concerning the reportable allegation that the employee wished to have considered in determining what, if any, disciplinary or other action should be taken in relation to the employee.*

## The Investigation

The business will need to obtain clearance from Victoria Police and commence an investigation into the conduct. Businesses should consider getting assistance with this investigation in order to ensure findings are unbiased and the process is procedurally fair. Investigations should also be compliant with the *Child Wellbeing and Safety Act 2005*. Findings must be provided to the Commission for Children and Young People.

## Procedural fairness:

Businesses have an obligation to adopt a fair and flexible process when conducting a workplace investigation. This includes:

- > the respondent knows what is alleged against them and has an opportunity to give their side of the story
- > an absence of bias: parties are treated equally through the process; conclusions are based on evidence; and the investigator remains neutral, not making any prejudicial steps along the way

## Further information

Please contact the Victorian Chamber Workplace Relations Advice Line on 8662 5222 for further assistance with the scheme and your obligations.

To make a notification to the Commission for Children and Young People please contact them on (03) 8601 5281.

## Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues. Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission. For assistance or more information, please contact the Workplace Relations Advice Line on (03) 8662 5222.

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