

The ACT Reportable Conduct Scheme

An Introduction

The ACT has introduced a reportable conduct scheme to oversee how organisations prevent and respond to allegations of child abuse and misconduct. The scheme commenced on 1 July 2017.¹ This introduction provides a broad description of the elements of the scheme.

The reportable conduct scheme addresses **employment-related** child protection.

Certain employers² who work with children (a person under 18 years old) are covered by the scheme and will need to report to the ACT Ombudsman. Broadly, 'reportable conduct' covers allegations or convictions of child abuse or misconduct toward children.

The reportable conduct scheme **does not interfere with reporting obligations** to ACT Policing or Child and Youth Protection Services (CYPS) or any other relevant professional bodies. If employers suspect criminal conduct has occurred, they should report to police in the first instance.

What is reportable conduct?

Employers must report allegations or convictions concerning child-related misconduct by an employee, including:

- ill-treatment of a child (including emotional abuse, and hostile use of force)
- neglect
- psychological harm
- misconduct of a sexual nature
- sexual or physical offences and convictions where a child is a victim or is present
- inappropriate discipline or offences relating to protecting children from harm in accordance with the provisions of the *Education and Care Service National Law (ACT) Act 2011*.

For more information about reportable conduct, see The *ACT Ombudsman Practice Guide No. 2: Identifying Reportable Conduct* on our website: ombudsman.act.gov.au

What is the difference between reportable conduct and mandatory reporting?

Reportable conduct covers a broader range of conduct compared to the types of child abuse which must be reported to CYPS. This means employers may become aware of an allegation or conviction that is reportable to the Ombudsman but is not conduct which must be mandatorily reported to CYPS.

Likewise, an employer may need to report conduct to CYPS, but if the alleged behaviour did not involve an employee³ (for example, the allegation is against a parent or patient), there is no requirement to report to the ACT Ombudsman.

¹ The *Reportable Conduct and Information Sharing Legislation Amendment Act 2016* updated the *Ombudsman Act 1989* (the Act) when the scheme commenced.

² The word 'employer' is substituted for the term 'designated entity.' See s 17D in the Act for the definition of 'designated entities.'

³ Under s 17D of the Act, an 'employee' is engaged to provide services to the entity under a contract of employment or is engaged by the entity to provide services to children other than under a contract (this includes a volunteer or contractor).

Who is an employer and who is an employee?

Employer

Employers covered by the scheme are referred to as 'designated entities' and include:

- all ACT directorates
- health service providers
- out of home care, kinship and foster care
- residential care organisations
- government and non-government schools
- child care services
- education and care service providers, such as after school care.

Some entities providing services to children that are **not covered** under the scheme include:

- sporting clubs
- religious organisations generally (unless otherwise classified as designated entity, such as a non-government school)
- a service which provides instruction in a particular activity (e.g. ballet, piano, swimming)
- Scouts and Girl Guides
- personal arrangements made for education and care of children (e.g. babysitting)
- universities.

Employees

All employees under contract of employment to an employer outlined above are included in the scheme. This means that some employees under the scheme will not work directly with children. Volunteers and contractors to an above employer are also considered as employees but only if they are **engaged to provide services to children**.

Conduct occurring in either a professional or personal capacity is reportable for anyone defined as an employee under the scheme. For example, conduct by an employee, while volunteering in a personal capacity, can be considered by an employer who falls under the reportable conduct scheme.

What is the ACT Ombudsman's role?

The Ombudsman will work with employers under the scheme to build on existing misconduct procedures and reporting obligations. The Ombudsman will:

- monitor employers' investigations and analyse trends
- share information with police and key organisations to better protect children from abuse
- take complaints about the handling of reportable conduct
- provide guidance and support to entities on best practice, including conducting investigations that are procedurally fair
- consider investigating an allegation or conviction in limited circumstances
- monitor the policies, practices and procedures of an employer for the prevention of child abuse and child related misconduct.

What does an employer need to do?

Employers in the reportable conduct scheme need to:

- notify the Ombudsman about any reportable conduct allegations or convictions involving an employee by submitting a *s 17G Notification* as soon as possible, but no later than 30 days after the employer becomes aware of the conduct
- investigate any allegations of reportable conduct and provide a final report to the Ombudsman
- report to other entities as required (for example, ACT Policing, CYPS, Access Canberra, Teacher Quality Institute, Children's Education and Care Assurance, Human Rights Commission etc.)
- adjust their policies and procedures to reflect their new responsibilities under the scheme and educate employees about these.

Further information:

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