

# ACT Reportable Conduct Practitioners' Forum 14 November 2024 – Communique

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On 14 November 2024, ACT Ombudsman (ACTO) staff hosted the latest ACT Reportable Conduct Scheme (the Scheme) Practitioners' Forum.

Several current and emerging issues were discussed at the Forum, including:

- when to submit a s17G notification, and
- drafting reportable conduct allegations.

We would like to take this opportunity to provide further clarifying information on those issues.

## When to submit a s17G notification

When a designated entity receives a report or complaint that may describe reportable conduct, initial consideration of the conduct should be aimed at identifying the issues and formulating an appropriate and proportionate response.

Gathering information to assist with identifying the issues and deciding how to proceed is distinct from the process of investigating the facts of a matter on the balance of probabilities. The initial process should be kept as short as possible and should avoid duplicating steps that would be undertaken during the investigation. The initial enquiries could include seeking further details from the reporter, reviewing other complaints received about the PSOA and reviewing CCTV footage.

The ACT Reportable Conduct Scheme is allegation based, which means there does not need to be available evidence to suggest that the alleged reportable conduct occurred, on the balance of probabilities, for it to be reported to the ACTO. The threshold for notifying the ACTO of an allegation is lower than the threshold for making a finding that reportable conduct occurred.

To be reportable the alleged conduct needs to have been committed by an employee of a designated entity against a child or young person under the age of 18 years and on the face of it appear to reach the reportable conduct threshold of the relevant category and sub-category. The reportable conduct categories and sub-categories are

explained in the [ACT Ombudsman Practice Guide No 2 – Identifying Reportable Conduct](#). The guide provides a definition of the conduct that is covered by each category and the threshold the conduct needs to reach to be reportable.

The ACTO acknowledges that there will be situations where it is necessary for a s 17G notification to be submitted before the allegations can be fully described. However, we encourage all designated entities, where possible, to provide detailed allegations that offer sufficient visibility of the alleged conduct to demonstrate how it may reach the criteria described above. In situations where the full nature and context of an allegation is not known when the s17G notification is submitted, designated entities should acknowledge any factors that have impacted the drafting of the allegations.

## Drafting reportable conduct allegations

The Australian Public Service Commission has published the [Handling Misconduct – A Human Resource Manager’s Guide](#). While this document specifically relates to misconduct against the APS Code of Conduct, it provides useful information about allegations that relate to employee misconduct more broadly, such as, the conduct seen in reportable conduct matters.

The APSC defines an ‘allegation’ in a misconduct investigation as a specific statement of the conduct the person subject of allegation (PSOA) is alleged to have performed at a specific time and place that is inconsistent with their obligations or expected behaviour.

The APSC explains that effective allegations of misconduct are expressed as a testable allegation that can be proved or disproved by the information gathered during the investigation.

The allegations presented to a PSOA at the beginning of an investigation need to explain the scope of the investigation and clearly describe what the PSOA is alleged to have done.

Allegations should:

- set out specific incidents of observable behaviour in clear, objective language
- state when and where the behaviour is alleged to have happened
- separate multiple incidents so that each can be tested on its own
- avoid using terms or descriptions that require the PSOA or witnesses to interpret their meaning when providing a response.

When responding to reportable conduct, effective allegations should form the basis of an investigation by guiding what questions need to be asked, what information needs to be gathered and demonstrating the nature and context of the conduct that has raised concerns.

In conclusion, we would like to thank everyone who participated in the Practitioners' Forum. We look forward to engaging further with designated entities on the investigation of reportable conduct matters.

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