

ACT Reportable Conduct Practitioners' Forum – 23 February 2023 – Communique

On 23 February 2023, ACT Ombudsman staff hosted the latest ACT Reportable Conduct Scheme (the Scheme) Practitioners' Forum.

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

- reportable conduct not in the course of employment, and
- affording procedural fairness to persons subject of allegations of reportable conduct.

In the 9 months since my appointment as ACT Ombudsman, I have had the chance to consider the requirements of the Scheme, and I would like to take the opportunity presented by the Forum to highlight my expectations in relation to the Scheme generally, and the topics raised at the Forum specifically.

ACT Reportable Conduct Scheme

The primary purpose of the Scheme is to oversight investigations into employee misconduct when a child's safety or wellbeing is at risk, providing an additional level of monitoring and enhancing public confidence in the outcomes of investigations.¹

A key feature of the Scheme is that it is allegation-based, meaning the reporting obligations of a designated entity arise from the moment an allegation of reportable conduct is made. Accordingly, it is my strong expectation that notification of allegations under section 17G of the *Ombudsman Act 1989* (ACT) (the Ombudsman Act) will be received within the legislated timeframe of 30 days.

Following an investigation of an allegation, a designated entity must then make reportable conduct findings, identify, and implement all appropriate actions, and provide my Office with a section 17J written report. In accordance with the legislation, it is also my strong expectation that these reports will be provided as soon as possible after the conclusion of an investigation.

Throughout reportable conduct processes, a designated entity should regularly assess and record possible risks and document and implement appropriate risk management strategies. Further information on risk management is available at [ACT Ombudsman Practice Guide No.3 - Risk management following an allegation of reportable conduct](#).

Reportable conduct not in the course of employment

During the Forum participants raised and discussed with ACT Ombudsman staff some of the challenges designated entities face when dealing with allegations of reportable conduct outside the course of employment.

Contact us

ombudsman.act.gov.au
02 5117 3650

act@ombudsman.gov.au

GPO Box 442
Canberra ACT 2601

¹ Explanatory Statement to the Reportable Conduct and Information Sharing Legislation Amendment Bill 2016.

The Ombudsman Act expressly provides that reportable conduct includes conduct engaged in by an employee, whether or not in the course of employment with the entity.² It follows that conduct engaged in by an employee outside their employment, including in their private life, clearly falls within the scope of the Scheme and related allegations and investigations must be reported to my Office under sections 17G and 17J. This may include an employee's conduct with their family and friends, or while volunteering for an organisation other than their employer.

I appreciate investigations of alleged conduct outside the course of employment are challenging due to entities having less access to evidence, less scope to identify and implement effective risk management strategies, and fewer available actions open to them following an investigation. However, they are no less significant in achieving the Scheme's purpose.

When investigating alleged conduct outside the course of employment, designated entities may have limited access to witnesses or information gathered by other agencies. I acknowledge this will impact the level of detail included in the section 17J report, however these reports should still include a reportable conduct finding based on the available information.

In circumstances where alleged conduct outside the course of employment results in a police investigation or a judicial process, the designated entity should not commence an investigation until these processes have concluded. In many cases the designated entity will be able to use the outcome of a judicial process to inform their reportable conduct finding.

At the conclusion of an investigation into alleged conduct outside the course of employment, a designated entity may not be able to impose employment based disciplinary action on the employee. However, the designated entity's improved understanding of the conduct will facilitate better risk assessment and management of the employee's employment-based interactions with children and young people.

Affording procedural fairness to persons subject of allegations

During the Forum participants also raised and discussed with ACT Ombudsman staff some of the challenges designated entities face deciding when and how to inform employees of allegations of reportable conduct, particularly when the allegation relates to historical conduct, or the report has been received with minimal detail.

It is my strong expectation that employees and victims will be provided procedural fairness, by being kept fully informed throughout reportable conduct investigations and receiving supported opportunities to respond to allegations and proposed findings before they are finalised.

I acknowledge designated entities may need to consider extenuating circumstances when planning to inform an employee of allegations of reportable conduct and the employee may find their involvement in the process distressing. However, for the purpose of the Scheme to be achieved, the requirements of the Scheme must be sensitively undertaken in all matters, and I strongly encourage designated entities to implement robust support mechanisms.

As an allegation-based Scheme, I want to stress that a lack of available evidence is not grounds for a designated entity to decline to notify the ACT Ombudsman of an allegation or conduct an appropriate investigation. If a designated entity proposes to deviate from the requirements and expectations of the Scheme, I strongly expect timely and detailed liaison with my Office.

In conclusion, I would like to thank everyone who participated in the Practitioner's Forum. These collegial discussions are invaluable, and I look forward to engaging further with designated entities regarding the investigation of complex matters and the decision-making processes that are undertaken in cases where allegations of reportable conduct may not be being reported to my Office.

² See s 17E(1)(a).