



ABN 18 227 035 605

ABOUT THE VICTORIAN REPORTABLE CONDUCT SCHEME

The scheme is administered by The Commission for Children and Young People

The scheme commenced **July 1, 2017** and requires organisations dealing with children to **report any allegation of employee, contractor, volunteer misconduct**. A child is anyone under 18.

The definition of misconduct is very wide:

FIVE TYPES OF 'REPORTABLE CONDUCT'

- **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 is likely to cause **significant EMOTIONAL OR PSYCHOLOGICAL HARM**
- **significant NEGLECT**.

What are sexual offences?

In Victoria, it is an offence to engage in certain sexual behaviours against, with or in front of, a child. Reportable conduct includes:

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

What is sexual misconduct?

'Sexual misconduct' captures a broader range of inappropriate behaviours of a sexual nature.

Examples of sexual misconduct include:

- developing an intimate relationship with a child, for example, through regular contact with the child without the knowledge or approval of the organisation's management
- inappropriately discussing sex and sexuality with a child
- other overtly sexual acts that could lead an organisation to take disciplinary or other action.

What is physical violence?

Physical violence includes an act that causes physical injury or pain. Examples of physical violence can include:

- hitting/kicking/punching
- pushing/shoving/grabbing/throwing/shaking

- using an object to hit or strike
- using inappropriate restraint/excessive force.

Physical violence does not include lawful behaviour. For example:

- reasonable steps taken to protect a child from immediate harm, such as taking a child's arm to stop them from going into oncoming traffic
- medical treatment given in good faith by an appropriately qualified person, such as a senior first aid officer administering first aid.

Threats of physical violence that causes significant emotional or psychological harm is included (see below).

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

For behaviour to be reportable under this category:

- a child must have suffered significant emotional or psychological harm
- there must be a clear link between the alleged conduct and the harm suffered.

The behaviour must cause emotional or psychological harm that is 'significant'. Signs that a child may have been emotionally or psychologically harmed may include:

- patterns of out-of-character behaviour
- regression in behaviour
- distress and anxious behaviours
- other physical symptoms, such as self-harm.

Emotional or psychological harm may also occur where an existing mental health disorder has been exacerbated or aggravated. A professional psychological or medical assessment of the child may assist to determine whether a child has suffered emotional or psychological harm. However, a clinical diagnosis will not be required in every case. For example:

- the alleged conduct is so serious and/or occurred over such a sustained period, that it can be reasonably inferred that the child has been harmed
- requiring a child to be assessed may unreasonably re-traumatise or otherwise further harm the child.

It is also important to stress that there must be a clear link between the emotional or psychological harm and the alleged conduct. In deciding if there is a clear link, organisations should consider the likelihood that the child would have been harmed, if the alleged conduct had not occurred.

Examples of emotional or psychological harm may include:

- exposure to violence or threats of violence – could even involve showing an inappropriate movie
- self-destructive behaviour
- antisocial behaviour
- persistent hostility/rejection
- humiliation/belittling
- scapegoating.

It will not be reportable conduct if:

- a person takes reasonable steps to protect a child from immediate harm

- a person with responsibility for discipline takes 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
- an appropriately qualified person gives medical treatment in good faith.

What is neglect?

Neglect occurs when a person does not meet their obligations and responsibilities to keep a child safe and well.

The neglect:

- must be more than minor and insignificant
- does not need to have a lasting or permanent effect
- may be an ongoing situation or a one-off incident, as long as it is not minor in nature.

Examples of different types of neglect include:

- supervisory neglect, which is the absence or inattention of a person which places the child at risk of physical harm or injury, sexual abuse or allows other criminal behaviour towards the child
- physical neglect, which is the failure to provide basic physical necessities for a child, such as adequate food, clothing and housing
- medical neglect, which is the failure to provide for appropriate medical care for a child, including a failure to acknowledge the seriousness of an illness or condition, or deliberately withholding appropriate care.

What does 'significant' mean?

It is enough that the alleged conduct is more than *trivial* or *insignificant* to fall within the definition of *significant* under the Reportable Conduct Scheme.

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. 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 person who witnessed the reportable conduct or misconduct).

Heads of organisations 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 had no basis at all in reality.

G.A.T.E.WAYS OBLIGATIONS RE REPORTING TO THE COMMISSION

It is an offence to fail to notify and update the Commission about reportable allegations. If the allegation is criminal in nature we must get a clearance from Victoria Police first. We must follow the following timeline:

- NOTIFY the Commission within 3 business days (name; DOB; nature of allegation)
- INVESTIGATE and report back within 30 days (details of allegations; our response; details about proposed action; any written response from the person concerned)

The investigation should be governed by the following:

- Proof- investigation should apply the 'balance of probabilities' as the standard of proof
- Procedural fairness – the subject of the allegation should be notified of adverse information and have a reasonable opportunity to respond

In summary the scheme aims to improve organisational responses to suspected child abuse and to facilitate the identification of individuals who pose a risk of harm to children, but do not have a criminal record.

Other matters of interest:

- Allegations can be made about someone even if the conduct occurred outside of work
- The Commission will refer any reported allegation to the VIT or Working with Children Check

Victorian website: <https://ccyp.vic.gov.au/reportable-conduct-scheme/>

NSW scheme: <https://www.schoolgovernance.net.au/2017/03/16/nsws-reportable-conduct-scheme-valuable-guidance-for-all-states-and-territories/>