

# REPORTABLE CONDUCT NEW SOUTH WALES



The NSW Reportable Conduct Scheme monitors how organisations investigate and report on allegations of certain conduct towards children. The Reportable Conduct Scheme is governed by the Children’s Guardian Act 2019 and is administered by the Office of the Children’s Guardian (OCG).

## What is the Reportable Conduct Scheme?

The Reportable Conduct Scheme is primarily about providing oversight to ensure organisations are properly investigating reports of concern regarding their workers (workers also include volunteers). In the NSW Reportable Conduct Scheme organisations are known as ‘entities’ and the leader of an entity is called a Head of Entity HoE. HoE’s are legally required to report allegations or conduct concerns to the Office of the Children’s Guardian and then proceed with a formal and thorough investigation.

Allegations of criminal behaviour must be reported to NSW Police. If the Police commence a criminal investigation, the HoE must not proceed with their investigation until advised to do so by the Police.

Reporting to the OCG does not automatically mean that the investigation should meet a certain outcome. The OCG will provide oversight to ensure that the investigation is carried out in a thorough, transparent and child centred manner.

## What is Reportable Conduct?

The Children’s Guardian Act 2019 defines reportable conduct as:

- a sexual offence (see notes below)
- sexual misconduct (see notes below)
- ill-treatment of a child
- neglect of a child
- an assault against a child
- an offence under s 43B (failure to protect) or s 316A (failure to report) of the Crimes Act 1900; and
- behaviour that causes significant emotional or psychological harm to a child.

## Sexual offence

A sexual offence is an offence of a sexual nature under a law of NSW, another state/territory, or the Commonwealth committed against, with or in the presence of a child, such as:

- sexual touching of a child;
- a child grooming offence;
- production, dissemination or possession of child abuse material.

An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of a sexual offence.

## Sexual misconduct

The Act defines sexual misconduct to mean any conduct with, towards or in the presence of a child that is sexual in nature (but is not a sexual offence) and provides the following (non-exhaustive) examples:

- descriptions of sexual acts without a legitimate reason to provide the descriptions;
- sexual comments, conversations or communications;
- comments to a child that express a desire to act in a sexual manner towards the child, or
- another child.

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## How does the Reportable Conduct Scheme work?

If a HoE receives a report or concern or allegation of child abuse or harm regarding the conduct of one of their workers, they must make a notification to the OCG within 7 business days.

As soon as possible the HoE or their delegate, must commence an internal investigation or engage an external investigator to do so.

Within 30 days of the initial submission, the HoE must provide details to the independent regulator including findings of the investigation (if completed), the status of the investigation (if incomplete), any risk mitigation strategies which have been implemented or written submissions.

At the end of the investigation, the HoE must provide details to the OCG including the findings of the investigation, the reasons for the finding and any actions taken.

## What will happen during an investigation?

Once a HoE has reported an allegation or concern to the OCG, an investigation must commence as soon as possible. The HoE must complete risk assessments to ensure children and young people are safe whilst the investigation is underway.

Organisations can conduct an investigation internally if they have personnel with the necessary skill set and do not have a conflict of interest. An external investigator may also be appointed.

The investigation involves interviewing the alleged victim and any available witnesses. Documentation will also be gathered. This may include work rosters, personnel files, reports of previous conduct or complaints, maps and other relevant information. The details of the allegation will be presented to the person subject of the allegation (PSOA), and they will have the opportunity to respond. Once all the relevant information has been collected, the investigator will prepare a report and provide the HoE with findings. The HoE then has a responsibility to read the full report and act appropriately on the findings.

Organisations have the responsibility to provide support to both the alleged victim and the PSOA throughout the investigation process.

## Does my organisation fall under the Reportable Conduct Scheme?

The Reportable Conduct Scheme is aimed at organisations that have a high degree of responsibility for children and/or engage with them in ways that put them at higher risk of harm (e.g., those that conduct overnight camps).

Religious bodies are defined under the Act as bodies established for a religious purpose that direct, control or administer a charitable entity or educational service in line with religious doctrines, beliefs or principles.

This includes faith-based bodies providing services, programs and activities for children, such as:

- childcare
- education
- social groups and meetings
- spiritual guidance
- sport and other recreational activities

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## Where can I find more information about the Reportable Conduct Scheme?

Further information about the NSW Reportable Conduct Scheme can be located on the Office of the Children's Guardian website:

<https://ocg.nsw.gov.au/organisations/reportable-conduct-scheme>

The CRCA Safe Church Unit (SCU) can support organisations throughout the Reportable Conduct process including advice and guidance, coordinating external investigations and ensuring organisations meet their legislative requirements.

SCU can be contacted on [scu@crca.org.au](mailto:scu@crca.org.au)