

The Reportable Conduct Scheme, under the *Parliamentary Commissioner Act 1971*, compels heads of organisations that exercise care, supervision or authority over children to notify allegations of, or convictions for, child abuse by their employees (including contractors and volunteers) to the Ombudsman and then to investigate these allegations.

The Reportable Conduct Scheme requires that information regarding the risk assessment made and the risk management action taken, or proposed to be taken, be provided with the notification. This information sheet is provided to assist organisations identify, monitor and manage risk concerning a reportable allegation.

What is risk management?

Risk management is the process of identifying, monitoring and managing risks to minimise their potential adverse impacts. The paramount and by far the most important risk to minimise is potential adverse impacts on children. However, there are risks that must be considered to both employees and organisations. Employers should assess the risks to the children and employees for whom they have responsibility.

Organisations should have a risk management plan in place which takes into account the unique risks of their employment setting and the individual vulnerabilities of the children it provides services to and its employees.

In relation to risk management, an organisation's procedures should include:

- Information about the stages involved in risk management, and how a risk assessment is conducted, including that risk assessment (and risk management) is an ongoing process.
- Steps that may be taken to reduce the risk to a child concerning a reportable allegation, during and at the conclusion of the investigation.
- Clarification and guidance that any action taken, such as relocating or suspending an employee, on the basis of a risk assessment or during an investigation, is not an indication that the alleged reportable conduct has occurred or that a finding has been made.
- Instruction that decisions and actions taken when assessing risk including why any action was or was not taken in response to a risk assessment should be properly recorded and kept by the employer.

Risk assessment and who is responsible

The head of the organisation is responsible for ensuring that the risk to a child, the employee who is the subject of the allegation, other affected people and the investigation is assessed.

The three stages of risk assessment are:

- 1) **Initial risk assessment**, based on all relevant information known at the time that the reportable allegation is made, should identify and take steps to minimise the risk to:
 - The child(ren) who are the subject of the allegation;
 - Other children with whom the employee may have contact;

- The employee against whom the allegation was made;
- The organisation;
- Other parties to the alleged incident (such as witnesses or reporters);
- The proper investigation of the allegation; and
- Other investigations, including by the Western Australian Police Force (WA Police).

Where there is limited information to inform the initial risk assessment, the organisation may need to seek further information and should undertake a review as further information becomes available.

Information relevant to the risk assessment made and the risk management action taken, or proposed to be taken, by the organisation should be provided to the Ombudsman as part of the Notification process.

- 2) **Ongoing risk assessment** during or on suspension of the investigation. During an investigation new risks may emerge and/or new information become known. New information may raise or lower the level of risk. If the new information significantly alters the level of risk, the initial risk assessment and risk mitigation actions should be adjusted accordingly, and information provided to the Ombudsman.

For various reasons an investigation may be suspended, for example, where an organisation is requested or directed to discontinue the investigation of the matter. A suspension should trigger a review of the risk assessment and risk mitigation actions. A suspension does not alter the obligation to assess and manage risk on an ongoing basis.

- 3) **Final risk assessment** on completion of an investigation, regardless of the finding, will inform any actions taken, or proposed to be taken, by the head of the organisation. Such actions may include improvements to the identification or prevention of reportable conduct, and/or the reporting, notification or investigation of reportable conduct (**improvement actions**).

This risk assessment may consider all relevant risks to the organisation's entire operations, include environmental factors and work practices that result in situations that pose risk to children. Identified risks and corresponding actions may include:

- The child(ren) – counselling, ongoing support, future contact with the employee.
- The employee – ongoing support, training, remedial or disciplinary action.
- Others affected – ongoing support.
- Organisational culture – improved education and awareness around child safety issues for children, employees or both.
- Systems – any work practices, skills or gaps that contributed to the reportable allegation and how these can be addressed.
- Physical environment – any change(s) that may be required, if and as appropriate.
- Policies and procedures – are they able to accommodate all the issues that arose during the investigation, or can they be refined.

Improvement actions should be fully documented and provided to the Ombudsman in the final report.

Most important risks to consider

Risks relevant to child(ren)

The paramount and immediate consideration following a reportable allegation is the best interests and safety of the child(ren), and the risk assessment should consider whether:

- Any child requires protective intervention - depending on the level of risk identified, a report may need to be made to the Department of Communities - Child Protection (**Communities**) and advice sought on its response.
- The allegation, if true, may be a criminal offence - if so, a report should be made to the WA Police, and advice sought on its response.
- Action should be taken to prevent further reportable conduct.
- There are other risks to the child that may need to be managed, including:
 - The potential for self-harm;
 - A change to the child's daily routine, which should remain unchanged, except as necessary to keep the child safe and protect them from any victimisation; and
 - Further trauma to the child as a result of the investigation.
- Appropriate supports, including any culturally responsive supports, for the child and other children involved are required, and the type of supports.

Other risks to consider

Risks relevant to the employee

For the employee, the risk assessment should consider:

- Access to the appropriate level and type of support for the employee, such as counselling and a support person.
- Whether the employee should remain in their current position, relocated, or suspended. Factors to consider when making this decision include:
 - The nature and seriousness of the allegations;
 - The vulnerability of the child(ren) the employee is in contact within the workplace, including their ages, communication skills and the impact of any disabilities;
 - The nature of the work done by the employee and their level of interaction with children;
 - The level of supervision or daily support available for the employee if their duties are unchanged, for example, if they are managing children with challenging behaviours;
 - The employee's disciplinary history;
 - Any directions or instructions which may be given to the employee to alter their behaviour, if appropriate; and
 - Other possible risks to the employee and to the investigation.
- If the employee remains in the workplace, what duties they will undertake and who will monitor and assess any risks associated with the employee.
- If Communities and/or the WA Police are involved, advice should be sought as to whether any action taken will interfere with their investigations or any court proceedings. It may also be appropriate to discuss any proposed changes to the employee's duties.

Protecting the integrity of the investigation

There are also risks to the integrity of an investigation, and the risk assessment should consider the following factors:

- Addressing conflicts of interest (actual, potential, or perceived) – ensure that the investigator does not have a conflict of interest that could give rise to a perception of bias, or actual bias during the investigation.
- Protecting against interference with the investigation by interested third parties.
- Planning, conducting and documenting the investigation – ensure that the process undertaken is fair and in accordance with relevant policies and procedures and by appropriately qualified persons.
- Procedural fairness – ensure that the employee is treated fairly and allowed to make submissions when they are informed:
 - That they are the subject of an investigation, and of the reportable allegation or reportable conviction being investigated;
 - Of any proposed adverse finding; and
 - That any disciplinary or other action will be taken as a result of the findings of the investigation, and the proposed action to be taken.
- Maintaining confidentiality - should be carefully planned and managed during the investigation of a reportable allegation, and:
 - Only parties who need to know about the reportable allegation should be informed;
 - All such parties should be advised of the need for confidentiality during the investigation; and
 - The organisation should have systems in place to deal with breaches of confidentiality.
- Recordkeeping – should be kept confidentially and securely.

One of the most important ways to mitigate risks that arise during an investigation process is the adequate planning, management, conduct and documentation of that process. Your organisation may already have robust investigation procedures in place, or you might like to refer to our Information Sheets 6 and 7 relating to Investigations of Reportable Allegations.

Where to get help

Organisations covered by the Scheme should contact the Ombudsman for clarification and guidance, and to talk through any issues of concern.

- Telephone: (08) 9220 7471
- Email: reportableconduct@ombudsman.wa.gov.au
- Website at www.ombudsman.wa.gov.au

