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Health insights

High stakes for organisational heads as Victoria introduces new requirements as part of reportable conduct scheme

In the wake of the “Betrayal of Trust Inquiry” the Victorian government is rolling out wide ranging new legislative amendments [1] in the form of the Reportable Conduct Scheme (the Scheme). These changes aim to strengthen organisational responses to child abuse allegations, and ensure systems are in place to prevent child abuse.

Changes include strict reporting and investigation requirements for heads of organisations to ensure the Commission for Children and Young People (the Commission) is informed of every allegation of certain types of misconduct involving children by employees and volunteers in relevant organisations. The Scheme gives far reaching powers to the Commission [2] to administer, oversee and monitor organisational response to allegations of ‘reportable conduct’.

The Scheme applies to organisations that exercise care, supervision or authority over children, whether as part of their primary or secondary function.

Ultimate responsibility for compliance with the Scheme lies with the head of a relevant organisation, [3] by ensuring reportable conduct of which they become aware, is reported to the Commission. Heads of organisations must be mindful that it is a criminal offence to fail to notify and update the Commission about a reportable allegation. The individual head of organisation should be aware they can be individually penalized.

Heads of organisations should familiarise themselves with the broad range of obligations imposed upon them by the Scheme. Systems should be in place to enable anyone to notify their concerns or allegations and to prevent abuse and follow up allegations appropriately. The Commission must be made aware of any reportable allegations within 3 business days. Investigation processes need to be clearly defined and developed. The threshold for reporting is low, with a temporal link to employment. All reportable allegations regarding current employee or volunteers must be notified – regardless of whether the conduct occurred before, during or outside their role within the organisation. The Scheme enables a reportable allegation to be made about the head of an organisation, which will be followed up by the Commission and investigated.

A 'reportable allegation' must be about 'reportable conduct' which encompasses a broad range of misconduct. These include sexual offences, sexual misconduct, physical violence, behaviour that causes significant emotional or psychological harm, or significant neglect. The victim must be under 18 year of age when the alleged conduct occurred. For example, sexual misconduct includes inappropriate behaviours that are not necessarily criminal, such as inappropriate discussion of sex and sexuality with a child. However, certain situations can arise in which an allegation is not reportable, for example if the employee/ volunteer has responsibility for discipline, and has taken lawful and reasonable disciplinary action.

Reportable allegations can only be made about certain persons; they must be 18 years old when the conduct occurred, and have been employed or been engaged by the organisation as a volunteer, religious leader, foster carer or contractor. Allegations must be reported and investigated, even if the conduct occurred outside the workplace or was reported after the person left the organisation's employment or volunteer role. 'Volunteer' is broadly defined and can for example apply to a parent who volunteers at a school canteen, even on a one - off basis. The Scheme covers all employees, not only those who work with children.

However, the reach of the Scheme is limited to allegations made after its introduction, regardless of when the conduct occurred. But, if the head of an organisation becomes aware of new information that causes them to form a 'reasonable belief' that reportable conduct was committed prior to the Scheme, this should be investigated. The head of an organisation may choose to delegate the task of investigation.

A 'reasonable belief' must be held that an employee/ volunteer have committed reportable conduct or misconduct that may involve reportable conduct. In addition there must be some objective basis for the belief, more than suspicion, but it does not require certainty or proof. An investigator should apply the 'balance of probabilities' as the standard of proof, and should consider whether it is more likely than not that reportable conduct has occurred.

The Scheme is being applied to organisations over an 18 month period. Phase 1 commenced in July 2017 with organisations operating government and non- government schools and government departments, and disability service providers. Phase 2 started in January 2018, and includes religious bodies, public and private hospitals including inpatient mental health and drug and alcohol treatment services. The roll out will continue with statutory bodies that have responsibility for children included from January 2019. [4] If an organisation provides a service which would be caught by an earlier phase, the whole organisation is within the Scheme from the earliest phase.

Notification to the Commission triggers a series of steps to be followed by the head of an organisation to investigate the allegation or permit a regulator (such as AHPRA) or an independent investigator to investigate. Oversight by the Commissioner includes reporting to the Commission within 3 days, and further communication at 30 days post allegation.

Following an investigation under the Scheme, the findings and outcome will be reported to the Commission. Findings of reportable conduct can be shared by the Commission with Police, Working with Children Check Unit, and regulators such as AHPRA. Information shared by the Commission can then be considered in assessing an individual's suitability to hold professional registration.

The Scheme exists alongside existing Child Safety Standards and complements existing child safety and protection measures. It does not replace the need to report allegations of abuse including criminal conduct and family violence to Victoria Police. If an allegation is criminal in nature, the head of an organisation must notify both the Victorian Police and the Commission before commencing an investigation. Any matter under investigation by Victoria Police takes priority over a reportable conduct investigation, and may require an organisation's investigation to be put on hold until the Police report is completed.

The Commission is focussed on providing information, guidance and support, assisting organisations to understand and comply with their obligations under the Scheme. Information sheets, training materials and seminars are available to assist organisational compliance. [5] Specific information is provided on how an investigation should be conducted, ensuring the process is fair and reasonable, and accords procedural fairness.

It is important to note the wide range of organisations that are affected by the Scheme, the low threshold for reporting, the short time frame required for action, and the strict requirements stipulating the steps taken in the investigation. Non-compliance is an offence for which the individual head of an organisation is penalized. The net is widely cast for capturing complaints that need to be reported, and includes workers and volunteers who may have long since left the organisation, and conduct that occurred outside the workplace. Details of the investigation can be shared with others including the regulators of the individual and the organisation, and could have far reaching consequences for individuals and organisations.

This article was written by Kellie Dell'Oro, Principal and Rosemary Blanden, Associate. Please contact them if you have any questions or wish to discuss its contents.

[1] *Child Wellbeing and Safety Act 2005 (Vic)*

[2] www.ccyp.vic.gov.au

[3] Head of organisation is defined as the person with decision making responsibility or CEO, the person responsible for engaging, terminating and managing employees (in an organisation that exercises care, supervision or authority over children, whether as part of their primary or secondary function).

[4] Schedules 3, 4 and 5 of the *Child Wellbeing and Safety Act 2005 (Vic)* list the types of organisations and services that must comply with the requirements of the Scheme

[5] See the Commission's website, above n 2.