

REPORTABLE CONDUCT

Investigations and Complaints Unit

August 2014

Attachment 16.

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KEY LEARNING OUTCOMES

On completion of this presentation you will be able to:

- Understand and identify what **constitutes** reportable conduct.
- Understand the **legislative** framework for handling allegations.
- Understand LWB's **expectations** regarding employee's participation in any child protection matters under investigation.
- Understand the **process** undertaken by LWB to resolve allegations of reportable conduct.
- Understand LWB 's reporting **obligations** to government agencies.

DEFINING REPORTABLE CONDUCT

Reportable Conduct

Section 25A of the Ombudsman Act defines 'reportable conduct' as:

(a) any **sexual offence, or sexual misconduct**, committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material), or

Behaviour involving sexually explicit comments and other overtly sexual behaviour which can constitute sexual misconduct. Some forms of this behaviour also involve crossing professional boundaries.

DEFINING REPORTABLE CONDUCT

Reportable Conduct

Sexual conduct may include:

- ✿ inappropriate conversations of a sexual nature
- ✿ comments that express a desire to act in a sexual manner
- ✿ unwarranted and inappropriate touching
- ✿ sexual exhibitionism
- ✿ personal correspondence (including electronic communications such as e-mails and text messages) with a child or young person in relation to the adult's sexual feelings for a child or young person
- ✿ exposure of children and young people to sexual behaviour of others including display of pornography
- ✿ watching children undress. For example, in change rooms or toilets when supervision is not required or justified

DEFINING REPORTABLE CONDUCT

Reportable Conduct

(b) any **assault**

An assault is any act by which a person intentionally inflicts unjustified use of physical force against another. An assault can also occur if a person causes another person to reasonably apprehend that unjustified force is going to be used against them.

'Recklessness' in this context relates to circumstances when the person **ought to have known** that their actions would cause a person physical harm or cause them to fear injury.

Assaults can include hitting, pushing, shoving, throwing objects or making threats to physically harm a child.

DEFINING REPORTABLE CONDUCT

Reportable Conduct

(c) ill-treatment

Ill-treatment captures those circumstances where a person treats a child or young person in an obviously or very clearly improper manner.

The focus is on the alleged conduct rather than the actual effect of the conduct on the child or young person.

Ill-treatment can include:

- ✿ disciplining or correcting a child in an obviously unreasonable or inappropriate manner;
- ✿ making excessive and obviously unreasonable demands on a child;
- ✿ malevolent acts towards children; and
- ✿ inappropriate and hostile use of force against a child.

DEFINING REPORTABLE CONDUCT

Reportable Conduct

(d) **neglect** of a child

Neglect includes either an action or inaction by a person who has care responsibilities towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.

Supervisory neglect:

An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or

An intentional or reckless failure to adequately supervise a child, or a significantly careless act or failure to act, that:

- ✿ involves a gross breach of professional standards, and
- ✿ has the potential to result in the death of, or significant harm to, a child.

DEFINING REPORTABLE CONDUCT

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(e) any behaviour that causes **psychological harm** to a child, whether or not, in any case, with the consent of the child.

Note: Examples of conduct that would not constitute reportable conduct include (without limitation) touching a child in order to attract a child's attention, to guide a child or to comfort a distressed child; a school teacher raising his or her voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental

DEFINING REPORTABLE CONDUCT

Reportable Conduct

Ill-Treatment

What is ill-treatment?

Ill-treatment captures those circumstances where a person treats a child or young person in an obviously or very clearly improper manner.

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Ill-treatment can include:

- ✿ disciplining or correcting a child in an obviously unreasonable or inappropriate manner;
- ✿ making excessive and obviously unreasonable demands on a child;
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DEFINING REPORTABLE CONDUCT

Reportable Conduct

Psychological Harm

What is behaviour that causes psychological harm to a child?

- very clearly **unreasonable** and results in significant emotional harm or trauma to a child. There needs to be a proven causal link between the inappropriate behaviour and the harm, and the harm must be more than transient.

For allegations of behaviour causing psychological harm to be notifiable to the Ombudsman, the following must be present:

- * an obviously or very clearly unreasonable or serious act or series of acts that the employee knew or ought to have known was unacceptable, and
- * evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self harm, and
- * an alleged causal link between the employee's conduct and the psychological harm to the child.

Psychological harm can include the exacerbation or aggravation of an existing psychological condition, such as anxiety or depression⁹

REPORTABLE CONDUCT

Case Studies

Read through the handout on reportable conduct case study and in your group jot down a few key points in response to the questions on the sheet.

MANDATORY REPORTING

Mandatory Reporting

- ✿ If you are a Mandatory Reporter with current concerns that a child under 16 years of age is at risk of harm, you are required to make a report to Community Services via the helpline on **13 21 11**.
- ✿ This is a legal obligation, which carries penalties if you fail to comply.
- ✿ The community expects we will value children and keep them safe.
- ✿ LWB as a designated agency, has an obligation to provide and maintain a safe environment for children and workers.

REPORTING AN ALLEGATION

Procedure for Reporting Allegations

Note the name and contact details of the person making the complaint

Make a detailed account of the content of the conversation, including the time, date and place

Pass the information on, without changing any of the details

CRITERIA OF AN ALLEGATION

Essential Criteria of an Allegation

- ✿ Conduct must be reportable (meets the guidelines 5 key elements as discussed earlier).
- ✿ The alleged victim is/was under the age of 18 at the time of the allegation.
- ✿ The alleged Person Subject of Allegation (PSOA) is an 'employee' as per the NSW Ombudsman's definition.
- ✿ The Ombudsman Act 1974 defines an 'employee' as a person who is working with children that can be directed to do a task by another person or agency.
- ✿ If during the intake process, the alleged conduct is considered NOT to meet the reportable conduct guidelines, it is then referred to as a 'Not In Jurisdiction' (NIJ) and in most cases will be sent back to the region for further investigation.

TIMEFRAMES

Timeframes for Reporting Allegations

- ✿ Region reporting to ICU – 5 days
- ✿ Part A to Ombudsman – 30 days from the date the agency *first* became aware of the allegations.
- ✿ Breaching this 30 day timeframe can leave the Director of Operations open to prosecution.

REPORTING TO OCG

Reporting to the Children's Guardian

- ✿ LWB is obliged to report to the Office of Children's Commission (OCG) on the completion of the proceedings if the allegations are found to be Sustained (Physical assault with evidence harm has been caused).
- ✿ The notification is made when the evidence is sufficient to sustain serious physical assault and sexual misconduct.

Ombudsman's Office

The Ombudsman's Office

What is their role?

- ✿ The NSW Ombudsman's office has a role in relation to child protection in the workplace.
- ✿ Part 3A of the Ombudsman's Act requires the Ombudsman's office to keep under scrutiny the systems that government and certain non-government agencies (such as LWB) in NSW have for preventing reportable conduct and handling reportable allegations and convictions involving their employees

Responsibilities

Responsibilities for LWB

- ✿ Ensuring the safety of our children by thoroughly investigating all allegations of harm.
- ✿ Ensure compliance with legislation relating to notification of allegations of harm to the NSW Ombudsman
- ✿ Responsible for conducting investigations of allegations of Reportable Conduct as defined by the *NSW Ombudsman's Act 1974* and the *Framework for the Management of Allegations Against Employees in the Area of Child Protection (2008)*
- ✿ Ensure investigations are conducted in accordance with legal standards and reflect best practise

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