

# Information about the NSW Reportable Conduct Scheme for authorised carers

## Contents

<b>Information about the NSW Reportable Conduct Scheme for authorised carers....</b>	<b>1</b>
<b>Introduction .....</b>	<b>2</b>
<b>What is the role of the OCG in guiding OOHC agencies? .....</b>	<b>2</b>
<b>What is a reportable allegation? .....</b>	<b>2</b>
What is a reportable conviction? .....	3
What is reportable conduct? .....	3
What conduct is not reportable conduct? .....	3
Reportable conduct and the code of conduct for authorised carers .....	4
<b>Reportable conduct investigation and carers .....</b>	<b>4</b>
Reportable conduct is a normal part of your role as a carer .....	4
Protections for complainants.....	5
Your agency will report the allegation .....	5
Your agency will conduct a reportable conduct investigation .....	5
What happens if the police are involved?.....	5
What happens if DCJ becomes involved?.....	6
What happens to the child in my care? .....	6
What information will be provided to me? .....	6
Disclosure of information to a carer who is subject of the allegations .....	6
Disclosure of information to the parents, child and carer .....	7
What happens if a finding of reportable conduct is made? .....	8
Will my authorisation be reviewed?.....	8
Can I challenge a reportable conduct investigation finding? .....	8
Can I complain about my agency’s investigation? .....	8
Can I request a review of decision? .....	9
For more information:.....	9

## Introduction

The NSW Reportable Conduct Scheme is administered by the [Office of the Children's Guardian](#) (OCG). The purpose of the reportable conduct scheme ('the scheme') is to protect children – and everyone who falls under the scheme has a role to play in achieving this outcome.

The organisations who fall under the scheme are called relevant entities ('entities'). These include government and non-government organisations including schools, hospitals, juvenile justice centres, and designated agencies ('agencies') that authorise carers and provide out-of-home care (OOHC).

The scheme monitors how entities investigate and report on reportable allegations and reportable convictions made against their employees. The term 'employee' includes *paid* and *voluntary* employees, and include *authorised carers* and their *adult household members* who reside on the same property as the authorised carer on a regular basis or as a usual arrangement (for example several nights a week at the home of a carer).

## What is the role of the OCG in guiding OOHC agencies?

Following notification of a reportable allegation the OCG can provide guidance about how the agency should respond. They can also:

- monitor and guide progress of an investigation into a reportable allegation or conviction
- require further information about an allegation or an agency's response to it
- assess whether an agency has conducted a fair, transparent, effective and timely investigation
- determine whether appropriate actions have been taken by an agency following the investigation
- work with agencies to help them improve their systems for preventing reportable conduct and responding to reportable allegations.

Certain information may be shared within the OCG and with external agencies, to keep children safe.

## What is a reportable allegation?

A reportable allegation is an allegation that the employee has engaged in conduct that may be reportable.

'Reportable allegation' is defined at [section 18 of the Children's Guardian Act 2019](#) ('the Act'). The definition of a reportable allegation differs slightly depending upon the type of

relevant entity. Agencies providing OOHC are known as a 'Schedule 1 entity' under the Act and so, a reportable allegation is defined as:

*'Reportable allegation' in relation to an employee of a Schedule 1 entity, means an allegation that the employee has engaged in conduct that may be reportable conduct, whether or not the conduct is alleged to have occurred in the course of the employee's employment.'*

This means, if there is an allegation an authorised carer or adult household member has engaged in reportable conduct, it does not matter whether it was towards a child in care, their own child or any other child, it will still be a reportable allegation.

### **What is a reportable conviction?**

'Reportable conviction' is defined at [section 19 of the Act](#) as:

*'Reportable conviction means a conviction, including a finding of guilt without the court proceeding to a conviction, in [NSW...] or elsewhere, or an offence involving reportable conduct.'*

Because agencies are Schedule 1 entities, reportable convictions made against authorised carers and adult household members, include convictions of that type in relation to a child in care, their own child or any other child.

### **What is reportable conduct?**

'Reportable conduct' is defined at [section 20 of the Act](#) to mean (whether or not a criminal proceeding has been commenced or concluded):

- a sexual offence against, with or in the presence of a child
- sexual misconduct towards or in the presence of a child
- ill-treatment of a child that is unreasonable and seriously inappropriate, improper, inhumane or cruel
- neglect of a child involving the significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child, that causes or is likely to cause harm to a child
- an assault against a child whether intentional or reckless
- behaviour that causes significant emotional or psychological harm to a child
- any offence under [section 43B](#) (failure to reduce or remove a risk) or [section 316A](#) (concealing a child abuse offence) of the [Crimes Act 1900](#), whether or not with the consent of the child.

### **What conduct is not reportable conduct?**

'Reportable conduct' is not:

- conduct that is reasonable for the purposes of discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the child and to any relevant codes of conduct or professional standard
- the use of physical force that is trivial or negligible, and the circumstances in which it was used have been investigated, and the result of the investigation has been recorded
- other conduct that is exempted from being reportable conduct, by the OCG.

## Reportable conduct and the code of conduct for authorised carers

Reportable conduct is identified in the [Code of Conduct for Authorised Carers](#) that carers sign as part of their authorisation. Carers should know what's in the code, as it outlines their duties as an authorised carer.

## Reportable conduct investigation and carers

### Reportable conduct is a normal part of your role as a carer

Investigation of reportable allegations is a normal feature of the child protection and OOHC system. It applies to all employees and volunteers working with children, including youth workers, teachers, caseworkers and carers like yourself.

The inclusion of carers in the Reportable Conduct Scheme reflects both the significant trust and esteem we invest in carers, and community expectations that vulnerable children in OOHC will be protected from harm.

From time to time, a reportable allegation may be made against you as a carer. If so, a reportable conduct investigation will occur.

All reportable conduct investigations are based on procedural fairness and transparency. All details, records and documents about the case are treated confidentially. Only people who have a direct role in the investigation are included in any discussions. This is extremely important for protecting all concerned from undue stress and ensuring the investigation is fair.

It is not possible to prevent a reportable conduct investigation from causing anxiety, disruption and worry for you, your family or other children in the placement. But it is manageable. Understanding the process, knowing your rights and where to get support will help.

If at any time you are finding it difficult to manage during an investigation:

- reach out and ask for help from your agency's caseworker
- ask your agency if you can access free and confidential counselling and support
- get in touch with a carer support and advocacy group
- you also have the right to seek legal advice if you think it is necessary.

## Protections for complainants

Because authorised carers and adult household members, must report any reportable allegations, the Act includes important protections.

If acting in good faith, you report reportable allegations to the Children’s Guardian or the head of a relevant entity, under [section 64](#):

- it’s an offence for anyone to take detrimental action against you and
- it’s also an indictable offence for an employer to dismiss or otherwise prejudice an employee for assisting the Children’s Guardian.

It is important to clarify, if you disclose a reportable allegation related to your own conduct, your agency can take reasonable and appropriate action for the protection of the child in your care (this is not considered to be ‘detrimental action against you’). The safety, welfare and wellbeing of children is the paramount consideration.

## Your agency will report the allegation

Under [section 29\(4\)](#) of the Act, your agency must notify the OCG of any reportable allegations or reportable convictions against you or your adult household member within seven business days. The agency must then arrange for the allegations to be investigated unless exempted by the Children’s Guardian.

Your agency also has an obligation to report reportable allegations or reportable convictions to DCJ. They must report the allegation to:

- the Child Protection Helpline
- the Principal Officer of the relevant DCJ district
- the agency’s contract manager.

Depending upon the information in the reportable allegation, the agency may also need to report the matter to NSW Police (‘the police’).

## Your agency will conduct a reportable conduct investigation

Under [section 34](#) of the Act, after becoming aware of reportable allegations or reportable convictions against you or your adult household member, your agency will conduct an internal investigation into the reportable conduct (‘reportable conduct investigation’).

When your agency has conducted their reportable conduct investigation, they will report their findings to DCJ.

### ***What happens if the police are involved?***

If the police or the Joint Child Protection Response Program (JCPRP) are making inquiries into the reportable allegations, your agency’s reportable conduct investigation will be placed on hold.

This is so that any police or statutory child protection investigation is not compromised by the agency's reportable conduct investigation. Those investigations always take priority over the reportable conduct investigation.

### ***What happens if DCJ becomes involved?***

If DCJ have received a report to the Helpline and police are not involved in the matter, and DCJ need to assess whether any children are at risk of significant harm (ROSH), your agency's reportable conduct investigation may be placed on hold while DCJ conducts a Safety in Care (SIC) assessment. Wherever possible, DCJ and your agency will work together to allow the reportable conduct investigation and SIC assessment to occur at the same time. This is assessed on a case-by-case basis.

When DCJ has completed their SIC assessment, they will report the outcome of the assessment to your agency.

It is important to understand that a SIC assessment is something quite different to a reportable conduct investigation.

- When completing a SIC assessment, DCJ is assessing whether a child is at risk of significant harm at that point in time.
- When conducting a reportable conduct investigation, your agency is investigating and making findings about whether the reportable allegation occurred as alleged.

Because the SIC assessment and reportable conduct investigation are different processes, they can often have different time frames, different end points and even different outcomes.

### **What happens to the child in my care?**

What happens to the child in your care during the reportable conduct investigation will depend on the seriousness of the allegation made against you.

In most circumstances the child will remain placed with you while the reportable conduct investigation is ongoing. If so, it is critical that you ***do not discuss the allegations with the child.***

In some circumstances, DCJ may remove the child from your care, if they assess the child to be unsafe. If so, the child will be placed in another care arrangement while the SIC assessment and/or reportable conduct investigation is ongoing.

### **What information will be provided to me?**

#### ***Disclosure of information to a carer who is subject of the allegations***

There is no specific point in time in every reportable conduct investigation, when an authorised carer (or adult household member) is informed of the allegations against them. This is assessed on a case-by-case basis.

However your agency will:

- inform you (or your adult household member) of the reportable allegations and where appropriate, allegations should be provided in writing
- advise you that the reportable allegation or conviction has been notified to the Children's Guardian
- explain the process of the reportable conduct investigation and possible timeframes
- advise that you're entitled to have a support person present throughout the process and provide information about other supports available to you
- keep you informed of the progress of the investigation
- provide you a meaningful opportunity to respond to the allegations and afford you the opportunity to provide further evidence at decision making points
- advise you of the preliminary findings of the investigation where the agency intends to make reportable conduct findings
- advise you in writing of the final outcome of the investigation and any action to be taken, including the avenues for appeal.

At all times, your agency will manage any conflict of interests, maintain confidentiality and remain impartial.

Your agency is not required to release to you all of its information or documentation relating to an investigation. For example, carers and adult household members are not entitled to receive interview transcripts and statements of evidence in order to respond. However, your agency will provide you with enough information about what they have relied upon to make their finding, to give you a meaningful opportunity to respond.

### ***Disclosure of information to the parents, child and carer***

Under [section 57](#) of the Act, your agency has an obligation to disclose relevant information to the child, their parent and you (as the child's carer). This includes information about:

- the progress of the investigation
- the findings of the investigation
- action taken as a result.

Your agency may disclose relevant information in different ways that it considers to be feasible or practicable. For example orally or in writing, or by allowing you to read a document. Your agency is not required to provide you with documentation.

However your agency may withhold information if there are public interest reasons against disclosure. These include the conduct of police investigations or court proceedings, or concern for the safety or wellbeing of a child. Your agency may also withhold information from you if you are the subject of the allegations.

## What happens if a finding of reportable conduct is made?

If your agency makes a finding of reportable conduct, a flag (or electronic note) is added on your profile on the [NSW Carer Register](#). This flag does not provide any information about the allegation or the finding but indicates that your agency has relevant information about you, should you apply to be an authorised carer with another agency.

Depending upon the type of type of reportable conduct finding, your agency may take any number of actions such as requiring you undertake further training, making changes to your authorisation conditions, or reassessing your suitability as an authorised carer or adult household member.

When your agency advises the OCG of a finding involving a sexual offence, sexual misconduct or serious physical assault, this will trigger a risk assessment of your Working With Children Check (WWCC).

## Will my authorisation be reviewed?

As a result of reportable conduct findings, or other information obtained throughout the course of a reportable conduct investigation, your agency may conduct a carer review.

Carer reviews are conducted annually, but may be conducted when there has been a significant change in your circumstances, including when:

- there is an allegation of reportable conduct against you (or an adult household member)
- an alleged breach of the [Code of Conduct for Authorised Carers](#), that is not considered reportable conduct.

As part of the carer review, your agency may review probity checks for existing household members, if they are subject of the allegations of reportable conduct.

## Can I challenge a reportable conduct investigation finding?

Yes. In the first instance you should contact your agency in writing outlining the reasons why you think the evidence does not support the finding. Your reasons must be evidence-based.

If you are not satisfied with the response of your agency, you can submit a complaint to the OCG using the [OCG Reportable Conduct Complaint Form](#).

## Can I complain about my agency's investigation?

Yes. Under [section 28](#) of the Act, you may complain to the Children's Guardian if you are dissatisfied with the response of your agency to a reportable allegation or reportable conviction. It is noted however that the OCG is not a complaint handling body and only has a limited complaint handling function under the Act.



Each complaint is assessed on its merits and against the legislative framework that governs the Reportable Conduct Scheme. The following factors are relevant to whether the OCG takes action on your complaint and how much information they can provide you:

- whether the complaint relates to an active or finalised reportable conduct matter
- the seriousness of matters that are the subject of your complaint
- whether your agency has had an opportunity to respond to the complaint
- whether the Children’s Guardian’s powers enable any outcome or resolution of your complaint
- the extent of your connection to the matters that are the subject of your complaint.

### **Can I request a review of decision?**

You may also request a review of some decisions by your agency, in the NSW Civil and Administrative Tribunal (NCAT).

This includes some decisions that might flow from the findings of a reportable conduct investigation, including:

- a decision by your agency to change the placement of a child in your care or
- a decision by your agency to cancel, suspend or impose conditions upon your authorisation as a carer.
- a decision made by the OCG about your WWCC.

### **For more information:**

- [NSW Reportable Conduct Scheme Fact Sheets](#)
- [NSW Ombudsman’s advice about reportable conduct investigations to children, parents and carers](#)
- [Reportable conduct process](#)
- [NCAT Community Services Resources](#)
- [NCAT WWCC](#)
- [Heads of entities and reportable conduct responsibilities](#)
- [Planning and conducting an investigation](#)
- [My Forever Family reportable conduct resources for carers](#)
- [DCJ Foster, Relative and Kinship Care Resources](#)
- [Code of Conduct for Authorised Carers.](#)