



# COMMUNITY SPIRIT FOUNDATION

## Child Safety and Wellbeing Policy

### TABLE OF CONTENTS

1 Introduction.....	2
2 Commitment Statement .....	2
3 Purpose.....	3
4 Scope.....	3
5 Core Principals of the Policy .....	3
6 Roles and Responsibilities .....	4
7 Child Protection Contacts .....	5
8 Definitions.....	6
9 Risk Management .....	7
Screening and Recruitment .....	7
Staff Induction.....	7
Working Alone with Children.....	7
Travelling In Vehicles with Children.....	8
Social Media Policy .....	8
10 Reporting and Responding to Child Abuse .....	8
Relevant Legislation and Standards .....	8
Confidentiality, Record Keeping and Information Handling .....	9
Protection from Civil Liability.....	9
Debriefing.....	9
Policy Status and Review .....	9
Recognising Child Abuse.....	9
Sexual Abuse .....	10
Physical Abuse .....	10
Emotional Abuse .....	11
Neglect.....	12
How to Deal with Disclosures of Abuse .....	13
Process for Reporting for Mandatory Reporters in Queensland .....	15
Process for Reporting for Mandatory Reporters in Victoria .....	16

Process for Reporting for Mandatory Reporters in Northern Territory .....	17
11 Appendices.....	19
Appendix 1: Code of Conduct.....	19
Appendix 2: Pre-Employment Screening Overview: Working With Children Checks and Police Checks .....	20
Appendix 3: Working Alone with Children Policy.....	23
Appendix 4: Travelling in Vehicles with Children Policy.....	24
Appendix 5: Social Media Policy.....	26
Appendix 6: Relevant State Reporting Service.....	29
Appendix 7: Reporting Standards for Australian States .....	30
Appendix 8: Responding to Children and Young People’s Disclosures of Abuse .....	34
Appendix 9: Reporting Form .....	35
Appendix 10: Guidance for Reportable Conduct Scheme.....	36
Appendix 11: Child Safe Standards Victoria.....	48

## 1 INTRODUCTION

The Community Spirit Foundation was established in 2007 to help Indigenous children and their families recognize the power of education and achieve their goals and dreams. Working with over 1600 Indigenous children and their families, the Community Spirit Foundation delivers education programs that assist children from Pre-Prep through to Year 12.

The Foundation recognizes that their mission – of empowering children to live rich and bright futures - can only be successful where the children in their care are healthy, safe, and protected from abuse. Therefore, out of respect and recognition to the role that they play in helping to ensure this happens for every child, this document has been created as a guide for how employees and volunteers can work towards a safer world for children in their care.

The Foundation believes it is the responsibility of *every* worker and volunteer to play a part in this. Therefore, while this document outlines some key areas of focus to assist in this, it encourages all employees, volunteers, and people otherwise associated with their programs, to hold the safety of children to the highest priority.

## 2 COMMITMENT STATEMENT

We are dedicated to helping children experience their potential in school and beyond. We value the traits of experience, learning, loyalty, family, integrity, and initiative. With these as our foundation, we know that it is the responsibility of every person to work together to create a child safe environment.

The Community Spirit Foundation commit to making the safety and wellbeing of all children and young people the primary focus of our care and decision making.

We will not tolerate child abuse.

We are committed to providing and promoting environments in our programs and our communities where all children and young people, including those with disability, are safe and protected from harm.

We are committed to giving children and young people a voice in decisions made about their lives.

We commit to respecting the cultural safety of all children from diverse cultural and linguistic backgrounds.

We exist to improve the wellbeing of children and commit to ensuring everything that we do supports our mission of helping Aboriginal and Torres Strait Islander children realise their potential.

### 3 PURPOSE

The purpose of this policy is to support the staff and volunteers of The Community Spirit Foundation to ensure the health, safety and wellbeing of children involved in our activities.

It aims to do this by

- giving guidance on the processes and procedures designed to ensure children's safety and wellbeing across all areas of the organisation's work;
- informing all leaders, staff and volunteers of their obligations to act ethically towards children, and
- providing guidance on their obligations under Australian and State Legislation.

### 4 SCOPE

This policy applies to all people who conduct work for The Community Spirit Foundation.

This includes people working in a paid or unpaid capacity, who are engaged in all programs connected with The Foundation.

For example,

- Board Members
- Staff
- Volunteers
- Contractors
- Consultants
- Others who work with The Foundation,

Involved in activities including

- HIPPY
- Starting Block
- Horizons
- Sprints / Activities,

In all locations, including

- Palm Island in northern Queensland;
- Wurrumiyanga on Bathurst Island in the Northern Territory;
- Woorabinda in central Queensland;
- Galiwin'ku in Arnhem Land, Northern Territory, and
- Melbourne, Victoria.

### 5 CORE PRINCIPALS OF THE POLICY

All statements and directions within this policy are underpinned by the following Core Principals.

The Community Spirit Foundation:

- wants children to be safe, happy and empowered
- supports and respects all children, as well as its employees and volunteers
- is committed to child safety
- has zero tolerance for child abuse, and will treat all allegations and safety concerns very seriously and consistently with its policies and procedures
- has legal and moral obligations to contact authorities when it has concerns about a child's safety
- is committed to preventing child abuse and identifying risks early, and removing and reducing these risks
- is committed to the cultural safety of Aboriginal and Torres Strait Islander children, the cultural safety of children from culturally and/or linguistically diverse backgrounds, and to providing a safe environment for children with a disability

- will promote the involvement and participation of children and young people in developing and maintaining child-safe environments.

The Royal Commission into Institutional Responses to Child Sexual Abuse 2017 handed down a proposed national standard representing national 'best practice' for organisations to develop a child safe environment. In 2018 the Coalition of Australian Governments (COAG) affirmed these standards. Some states including Victoria and Queensland developed state specific Standards, however these are in line with the National ten standards. As the Community Spirit Foundation operates in several states of Australia the organisation has confirmed its commitment to the ten National Standards. The processes and reporting structure of the organisation have been developed within this document to meet all state requirements.

The ten National Child Safe Standards are:

- Standard 1:* Child safety is embedded in organisational leadership, governance and culture
- Standard 2:* Children participate in decisions affecting them and are taken seriously
- Standard 3:* Families and communities are informed and involved
- Standard 4:* Equity is upheld and diverse needs are taken into account
- Standard 5:* People working with children are suitable and supported
- Standard 6:* Processes to respond to complaints of child sexual abuse are child focused
- Standard 7:* Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
- Standard 8:* Physical and online environments minimise the opportunity for abuse to occur
- Standard 9:* Implementation of the Child Safe Standards is continuously reviewed and improved
- Standard 10:* Policies and procedures document how the organisation is child safe

## 6 ROLES AND RESPONSIBILITIES

This section briefly outlines how we apply the principles of child protection in our work.

All Staff and Volunteers will:

- Comply with the procedures outlined in this policy for reporting and/or responding to harm
- Participate in relevant induction and training programs for child safety
- Work to empower children with the skills and strategies to protect themselves and to teach other children to protect themselves
- Comply with the Code of Conduct (**Appendix 1**)
- Monitor child protection risks during program implementation
- Ensure information held about children is safely stored in line with confidentiality guidelines

In addition to standard roles and responsibilities of all staff and volunteers,

Board Members and Senior Management will:

- Ensure child safe recruitment, including screening of all staff in line with the Community Spirit Foundation Recruitment Policy
- Monitor staff and volunteers to ensure compliance with the Code of Conduct
- Induct new staff, including providing information and training on child protection
- Arrange regular child protection refresher training in line with State Legislation
- Conduct screening and risk assessment of community organisation partners
- Ensure monitoring and supervision of interactions between supporters and children/communities;
- Undertake child protection risk assessment before undertaking new programs;
- Monitor child protection risks during program implementation;
- Ensure information held about children is safely stored; and
- Comply with the procedures outlined in this policy for reporting and/or responding to harm.

## 7 CHILD PROTECTION CONTACTS

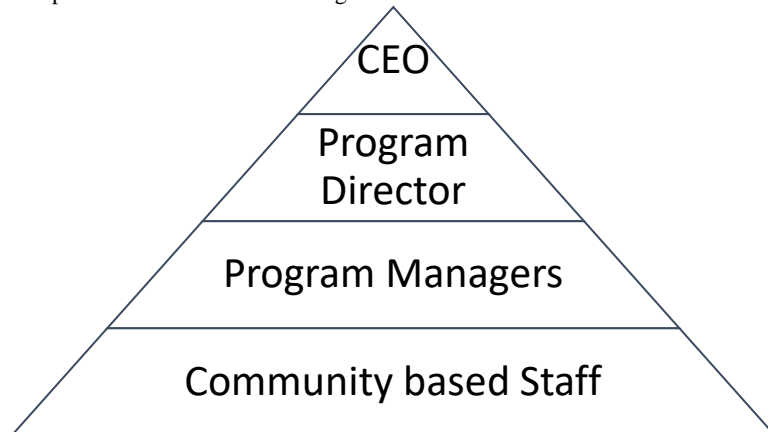
The CEO of the Community Spirit Foundation will have the overall responsibility to ensure the organisation provides an appropriate response to child protection.

The Program Director, will oversee and manage the organisations operational response to child protection.

Reporting processes and State specific issues will initially be responded to by the following State representatives:

- Northern Territory – Program Manager
- Queensland – Program Manager

The process in terms of line management would be:



The logging and tracking of WWC Checks and Police Checks etc will be held by the Office Manager at CSF.

Confidential and broader reports will be held in a secure file.

## 8 DEFINITIONS

<b>Abuse</b>	Abuse is defined as any action that intentionally harms or injures another person.
<b>Allegation</b>	A claim or assertion that someone has done something illegal or wrong, typically one made without proof.
<b>Child Protection</b>	Child protection is the protection of children from violence, exploitation, abuse and neglect. .
<b>Civil Liability</b>	Potential responsibility for payment of damages or other court-enforcement in a lawsuit, as distinguished from criminal <b>liability</b> , which <b>means</b> open to punishment for a crime.
<b>Confidentiality</b>	Information that is confidential is meant to be kept secret or private.
<b>Debrief</b>	The process of interviewing a person about an experience, project, or mission they've completed.
<b>Disclosure</b>	The action of making new or secret information known.
<b>Emotional Abuse</b>	See Child Abuse Indicators in this policy
<b>Harm</b>	Harm to a child is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.
<b>Legislation</b>	A law or set of laws suggested by a government and made official by a parliament.
<b>Mandatory</b>	Something that is mandatory must be done, or is demanded by law
<b>Mandatory Reporter</b>	Mandatory reporting is a term used to describe the legislative requirement for selected groups of people to report suspected cases of child abuse and neglect to government authorities.
<b>Neglect</b>	See Child Abuse Indicators in this policy
<b>Physical Abuse</b>	See Child Abuse Indicators in this policy
<b>Policy</b>	A course or principle of action adopted or proposed by an organization or individual.
<b>Psychological Abuse</b>	See Child Abuse Indicators in this policy
<b>Record</b>	A thing constituting a piece of evidence about the past, especially an account kept in writing or some other permanent form.
<b>Reporting</b>	Give a spoken or written account of something that one has observed, heard, done, or investigated.
<b>Risk</b>	A situation involving exposure to danger.
<b>Sexual Abuse</b>	See Child Abuse Indicators in this policy
<b>Substantiated</b>	Provide evidence to support or prove the truth of.
<b>Suspicion</b>	A feeling or thought that something is possible, likely, or true.

## 9 RISK MANAGEMENT

It is the hope of the Community Spirit Foundation that all children are safe, happy and empowered.

The best scenario for the Community Spirit Foundation is one where all employees and volunteers are trained in their obligations in child protection, and by operating in line with policies and procedures conduct themselves in such a way that they do not cause any child harm. The best scenario would also see members of the Community Spirit Foundation assisting others outside of the organisation with encouraging a safe environment for children. The best way for this to be achieved is through managing the risk of harm coming to any child, and where possible removing the risks entirely. Where this can be done successfully, the need for reporting procedures is minimised.

The following points address some key risks that may be encountered while an employee or volunteer conducts work with the organisation, and provides processes to help to minimise these risks. These policies do not cover all risks that may be encountered. If in doubt, employees and volunteers should direct their concerns to relevant Child Protection Contacts within the organisation.

### SCREENING AND RECRUITMENT

The Community Spirit Foundation:

- will ensure that it takes all reasonable steps to ensure that it engages the most suitable and appropriate people to work with children. This may be achieved using a range of screening measures. Such measures will aim to minimise the likelihood of engaging (or retaining) people who are unsuitable to work with children.
- will ensure that Working With Children assessments and Police Checks (**Appendix 2**) are conducted for all employees and volunteers working with children. Irrespective of assessment required by law in each State, it is a minimum requirement for all employees and volunteers to complete a Working with Children assessment. If a criminal history report is obtained as part of their screening process, the foundation will ensure that the criminal history information is dealt with in accordance with relevant State/Territory requirements.
- actively encourages applications from Aboriginal and Torres Strait Islander people, people from culturally and/or linguistically diverse backgrounds and people with a disability.

### STAFF INDUCTION

The Community Spirit Foundation will ensure that employees who work with children or their records have ongoing support and training such that their performance promotes the establishment and maintenance of a child-safe environment.

### WORKING ALONE WITH CHILDREN

Ideally, all work conducted by employees and volunteers should be in the presence of other people. The purpose of this is twofold: to ensure that the right thing is always done by employees and volunteers; and to ensure that they are *seen* to be doing the right thing by others.

The Community Spirit Foundation acknowledges however that there may be times where this might not be possible. For example, where an employee or volunteer engages in a one-on-one discussion with a child. In these circumstances, the employee or volunteer should refer to the Working Alone with Children Policy (**Appendix 3**).



## TRAVELLING IN VEHICLES WITH CHILDREN

A volunteer or employee may on occasion need to travel in a vehicle with children. The Travelling in Vehicles with Children Policy (**Appendix 4**) is to assist with taking reasonable precautions to protect children from harm when they must travel in a vehicle with a volunteer or employee of The Community Spirit Foundation.

## SOCIAL MEDIA POLICY

The Community Spirit Foundation acknowledges the growing role that Social Media has to play in our society, as well as the vast impacts (both good and bad) it can have on a child's wellbeing – the effects of which are long lasting. To ensure that staff and volunteers use social media in a way that promotes the wellbeing of children, they should refer to the Social Media Policy (**Appendix 5**)<sup>10</sup> Reporting and Responding to Child Abuse

Even when employees and volunteers have followed the guidelines provided above to minimise risk, and done everything that they can to ensure the health, wellbeing and safety of children; there are times when they may either become aware that a child is being abused, or form a suspicion that a child might be being harmed.

Some employees and volunteers have mandatory reporting responsibilities as part of their role and must make a report if they have reasonable grounds to believe a child is currently, is at risk of in the future, or has in the past; experienced Child Abuse.

Regardless of whether the employee or volunteer is a 'mandatory reporter' under the law of their own state or territory, the following principals apply for all employees and volunteers within the Community Spirit Foundation:

- the safety, wellbeing and best interests of the child are paramount, and are the foundation of all decisions made regarding child safety and reporting
- actions should always be in the best interests of the child
- children's rights and privacy should always be protected

If in doubt, err on the side of seeking help for the child.

## RELEVANT LEGISLATION AND STANDARDS

All states and territories within Australia have their own legislation and standards for reporting Child Abuse. **Appendix 6** details the mandatory reporting requirements for the states and territories in which the Community Spirit Foundation currently operate.

All reporting procedures within this document have been written in alignment with the legislation for each state and territory.

### Reportable Conduct Scheme in Victoria

As the Victorian Reportable Conduct Scheme in Victoria continues to expand to include further organisation working with children in activities in Victoria. The Community Spirit Foundation has committed to ensuring all processes when responding to allegations of harm against an employee or volunteer of the organisation meet the reportable conduct scheme requirements as set out in the Commission for Children and Young People Guidance for Organisations.

The CEO of The Community Spirit Foundation as the "Head of the Organisation" as defined within the reportable conduct scheme is to ensure compliance with the schemes processes.

Implemented to support the CEO are the following processes:

- An organisational approach of prevention to keeping children safe.
- A system in place to enable anyone to notify their concerns or allegation that conduct in line with the reportable conduct scheme may have occurred.
- A supportive environment to allow other people to report to the Commission if the reportable allegation concerns the head of the organization (CEO)

- Have investigation processes clearly defined and developed. The engagement of *In Safe Hands Educators In Safety* to support the CEO in all investigations under the reportable conduct scheme.

Commission for Children and Young People as at the 23 June 2020 has been unable to provide an definitive answer on whether the programs offered by the Community Spirit Foundation fall under the Reportable Conduct Scheme. To safe guard the organization and to maintain best practice the CEO will seek direction from the Commission on each and every occasion a report is made which would constitute a reportable act.

#### CONFIDENTIALITY, RECORD KEEPING AND INFORMATION HANDLING

All matters relating to the safety of children and young people should be dealt with sensitively and in the strictest confidence.

All records and information relating to child protection matters must be kept strictly confidential. This is for the protection of the child/children involved, the reporter, and any other persons named by the report.

It is important to note that claims against persons named in the reports are not yet substantiated, and may never be proven. Therefore, no information regarding the reports, the actions involved, or any persons named; should be released at any time. Likewise, no information that could lead to a person figuring out what a report contains should be disclosed or discussed. Confidentiality is of the utmost importance and must not be breached.

#### PROTECTION FROM CIVIL LIABILITY

All Australian states provide in legislation pathways for protection from civil liability for persons who, acting honestly and reasonably, notify or give information about suspected harm to a child. This means that an employee or volunteer of the Community Spirit Foundation who submits a report of suspected abuse is protected from being sued provided they have reported honestly and in accordance with legislation and policy.

#### DEBRIEFING

Matters surrounding child abuse are sensitive and can be troubling for those who are exposed to them. As a staff member or volunteer who encounters such matters, it is vital that you look after your own wellbeing in a way that is beneficial to yourself, and still upholds the confidentiality requirements of reporting.

It is recommended that, if you are feeling distressed, you seek professional help.

#### POLICY STATUS AND REVIEW

The CEO and Programs Director have approved this policy in 2019. Both the CEO and Programs Director can be contacted for further information on this Policy. When due, this Policy will be reviewed by the Programs Director and signed off by CEO.

#### RECOGNISING CHILD ABUSE

Reporting Child Abuse can be divided into four main subtypes. The reporting requirements of each subtype differ in different states of Australia, and are outlined in following sections. They include:

- Sexual Abuse
- Physical Abuse
- Emotional/Psychological Abuse
- Neglect

## SEXUAL ABUSE

Child sexual abuse is when a child is used by an adolescent or adult for his or her own sexual stimulation or gratification. The abuse can be contact or non-contact.

Sexual Abuse involving contact can include:

- Oral sex
- Vaginal or anal intercourse
- Vaginal or anal penetration with object or finger

Any of these acts on a child under the age of consent is abuse – regardless of whether the child consented.

Non-contact Sexual Abuse can include:

- Obscene calls, texts, remarks, questions, signs or internet chat
- Obscene or sexual conversations or chat in person
- Indecent exposure
- Voyeurism
- Exposure of the child to pornography
- Inappropriate photographs of children used as a pornographic tool
- The taking of an indecent photo of a child
- Forced to self-masturbate or watch others masturbate

Before sexual abuse occurs, often there will be a process of ‘grooming’ by the abuser. Grooming is when the offender prepares the victim for sexual abuse. It can be done in person, on phone/text, online, or a combination of all of these. The intentions of grooming are to build a relationship, trust or emotional connection with a child so that they can later manipulate, exploit or abuse them.

If you believe a child is being groomed, it is important to report your suspicions.

### **Indicators of Sexual Abuse can include:**

- over sexualised behaviour
- physical symptoms
- behavioural symptoms
- online and social media exposure
- self-harming
- indicators involving parents, caregivers, siblings, other adults

## PHYSICAL ABUSE

Child physical abuse is the non-accidental use of physical force against a child that causes, or is likely to cause, harm to the child. It does not matter if the child is physically harmed by the abuse – the focus of reporting physical abuse is on the intention of the perpetrator.

Physical abuse includes:

- shoving, hitting, slapping, shaking, throwing, punching, kicking, biting, burning, strangling and poisoning
- using an object to cause harm e.g. throwing a stick, electrical device for shocking or stunning, tying up or tethering, etc.
- physical punishment that is inappropriate or unreasonable
- fabricating or inducing illness or injury in a child (now called Fabricated or Induced Illness by Carers but formerly known as Munchausen By Proxy Syndrome).

Injuries can be unexplained due to a number of reasons:

- their location on the body

- how often they occur
- the shape or type of injury
- the severity of injury in circumstances

**Indicators of Physical Abuse can include:**

- bruises on non-contact areas such as the face and neck
- bruises in suspicious locations such as small of the back, neck, area behind the ear, earlobe or genitals
- bruising to buttocks, face and upper lip are seen in children who are kicked or punched
- multiple bruises particularly if varying degrees of healing
- bruises in suspicious shapes or shapes of objects e.g. fingertip bruising, tramline/track bruising, pinch marks, slap marks, implement bruising
- burns in suspicious locations such as flat palm of hand, back of hand, top side of forearm
- burns to children where there is previous history of physical abuse
- burns on ankles, buttocks and up backs of upper legs
- imprint burns, branding burns or suspicious shapes i.e shape of the top of a cigarette
- broken bones or dislocations can also be a sign of abuse, considering the type of break or the frequency of the child breaking bones
- cuts and scratches, considering the location and whether caused by fingernails
- welts, considering their location, severity and frequency
- bites, considering whether they were caused by adult or child, as well as location, frequency and severity
- hair loss, including patches or clumps or reddened bald areas
- scars, including the number, location, age and size of the scars

A child's behaviour can also indicate physical abuse – including if they

- are overly submissive or anxious
- have a frozen watchfulness – nobody moves, nobody gets hurt, assessing situations carefully
- flinch and cower when approached by adults or when they think they are in trouble
- crave attention, or fear going home
- are aggressive or violent with others
- get extremely upset when they get a certain grade for an assessment or subject

**EMOTIONAL ABUSE**

Emotional Abuse occurs when a parent or caregiver uses inappropriate verbal or symbolic acts toward a child, or demonstrates a pattern over time of failing to provide a child with adequate non-physical nurture and emotional availability.

**Indicators of Emotional Abuse can include:**

- extremes of behavior from overly aggressive and uncooperative to overly passive and compliant
- demonstrating a lack of empathy due to
  - no modelling at home
  - child being numb and ignorant of needs of others
- inappropriately destructive or cruel behaviour including
  - destructive for enjoyment
  - destructive out of anger or inability to deal with emotions
  - cruel to others

- cruel to pets
- repeat the emotional abuse with peers
- Poor peer relationships which can be complicated and made worse due to:
  - a child's reluctance to interact with others
  - forbidden contact with other children
- Negative emotions that are persistent or recurrent, such as
  - Anxiety
  - Depression
  - Fears
  - Shame
  - Guilt
- Compulsive behaviours such as
  - excessive neatness and cleanliness
  - rituals to provide comfort
  - behaviours that impede normal daily activities.
- Low Self Esteem including
  - lacking in confidence
  - fear of failure
  - overly high standards
- Attention or affection seeking behaviours may be concerning because they are uncharacteristic for the child such as
  - frequent psychosomatic complaints
  - headaches
  - nausea
  - abdominal pains
  - risk taking behaviours
  - compulsive lying or stealing
- Erratic appetites including
  - eating hungrily
  - eating hardly at all
  - eating for attention
- Reluctance to go home including
  - unusual focus on home time
  - anxiety increases as home time approaches
  - hanging around at the end of the day with no real purpose

#### NEGLECT

Neglect refers to any non-accidental behaviour by parents, caregivers, other adults or older adolescents that is outside the norms of conduct and entails a substantial risk of causing physical or emotional harm to a child or young person.

There are SIX main categories of neglect:

- Physical, which involves
  - Failing to provide adequate supervision
  - Failing to provide appropriate housing
  - Failing to provide appropriate clothing
  - Failing to provide adequate food and health care including psychological care
  - abandonment
- Medical, which involves
  - failure to acknowledge the seriousness of an illness or condition
  - the deliberate withholding of appropriate care

- Emotional, which involves
  - a lack of caregiver warmth, nurturance, encouragement and support
- Educational, which involves
  - Failing to provide appropriate educational opportunities for a child
- Supervisory, which involves
  - Failing to adequately supervise or ensure appropriate supervision which takes into account the child's developmental capabilities or exposure to health and safety hazards
- Abandonment, which is
  - When a caregiver leaves a child alone for more than a reasonable period and does not provide for the presence of alternative age-appropriate care.

**Indicators of Neglect can include:**

- signs of malnutrition
- poor hygiene
- unattended physical medical problems
- inadequate supervision
- child appears constantly tired
- frequent lateness or absence
- inappropriate clothing
- alcohol or drug abuse present in the house
- frequent illness
- home environment inappropriate

**HOW TO DEAL WITH DISCLOSURES OF ABUSE**

A disclosure is any communication from a child that they have been or are being abused. A child disclosing abuse simply means they are revealing that they are being or have been abused.

Disclosures can be:

- **Verbal:** the child tells you about abuse.
- **Non-verbal:** a child uses pictures, acting, gestures, to communicate about abuse.
- **Direct:** the child makes a clear statement, like "Uncle Rodney is sexually abusing me."
- **Indirect** – referring to:
  - the offender in the third person
  - they might talk about a "friend" who has an uncle who is having sex with them
  - they might ask a question to test how it will be received – like "If a student tells you something do you have to report it?"
- **Prompted** by a question, a story or activity eg you notice bruises and welts on a child's upper thigh and when you ask them how the bruises happened they reply, "That's where Mum hit me with the stick" or "Uncle Peter plays strip poker with me but I don't like playing with him because he's rude and plays with no pants on."
- **Spontaneous** - these disclosures can come out of the blue and may take you by surprise.

How you respond to a disclosure of child abuse is crucial for two reasons:

1. The Child: Your reaction can determine how a child feels about the disclosure. For most victims, the two events that are etched in their minds years after they disclose abuse are:
  - a. the abuse itself, and
  - b. disclosing
2. The Investigation: Your reaction to a disclosure could provide investigators with the best opportunity to conduct an effective investigation and ensure the best possible outcome for children and their families.

Children may be:

- scared that they won't be believed
- scared of how you will react
- scared of what the perpetrator might do to them
- worried about what might happen to the perpetrator – particularly if they are a parent or caregiver or close relative
- scared that they will be taken from home
- defensive of their own or the perpetrators' actions
- guilt and shame about their involvement in the abuse – and feel like they deserved it or they were at fault.

But they may also present as

- emotionless – almost robotic in the way they talk and answer questions
- calm and even chatty – as though they are talking about their favourite toy
- unconcerned
- dismissive – trying to minimise the abuse or the actions of the perpetrator – they may even defend the perpetrator

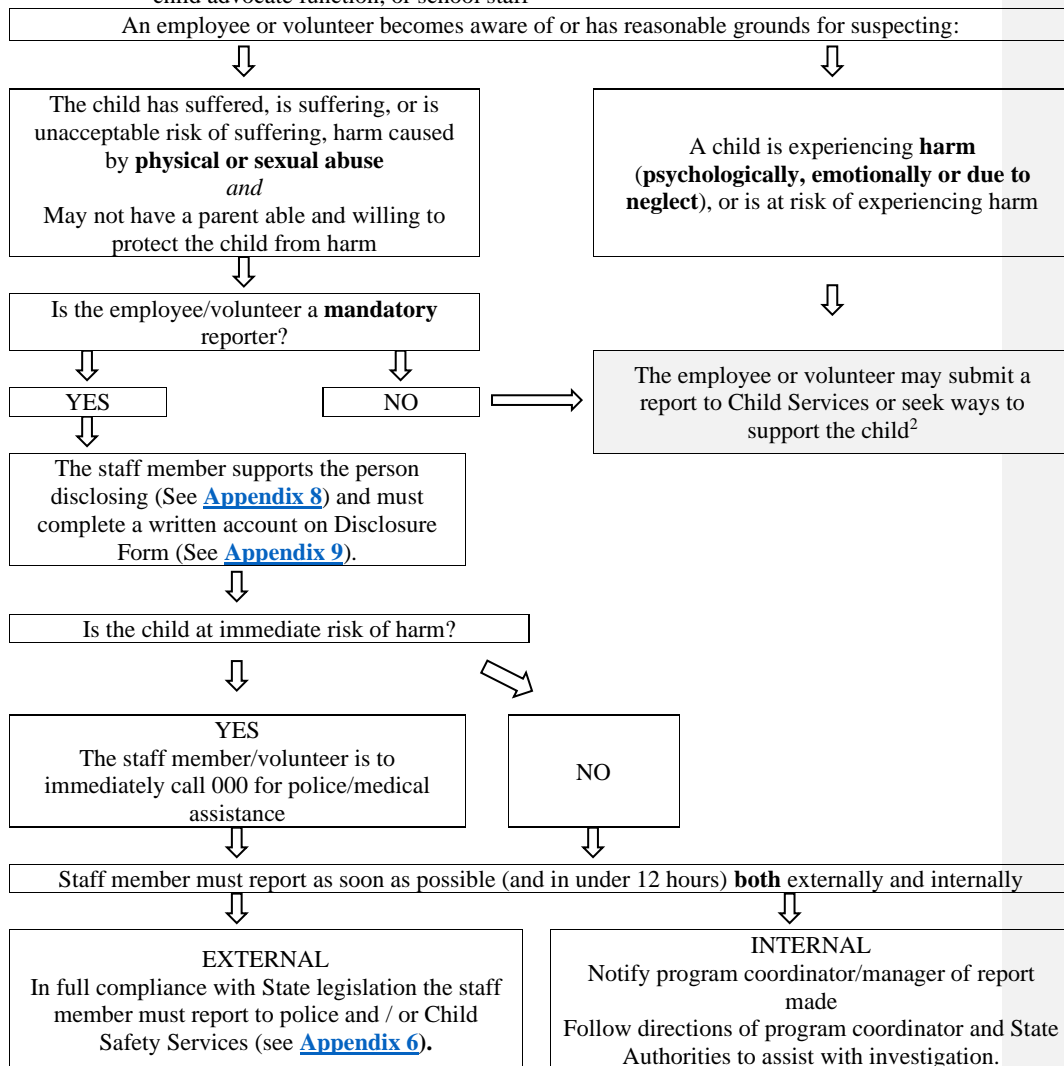
When a child is disclosing their behaviour and moods can be confusing. Keep an open mind during a disclosure and let the child's behaviour and feelings guide you as to how you react. Regardless of how the child behaves or what emotions they show when they're disclosing, the most important thing you need to make sure you do is to **believe them**. The harm done to a child when they aren't believed far outweighs any risk of harm happening because you believed something that wasn't true.

See **Appendix 8** for further guidance on how to act when receiving disclosures of harm.

## Process for Reporting for Mandatory Reporters in Queensland

Mandatory Reporters in Queensland include<sup>1</sup>:

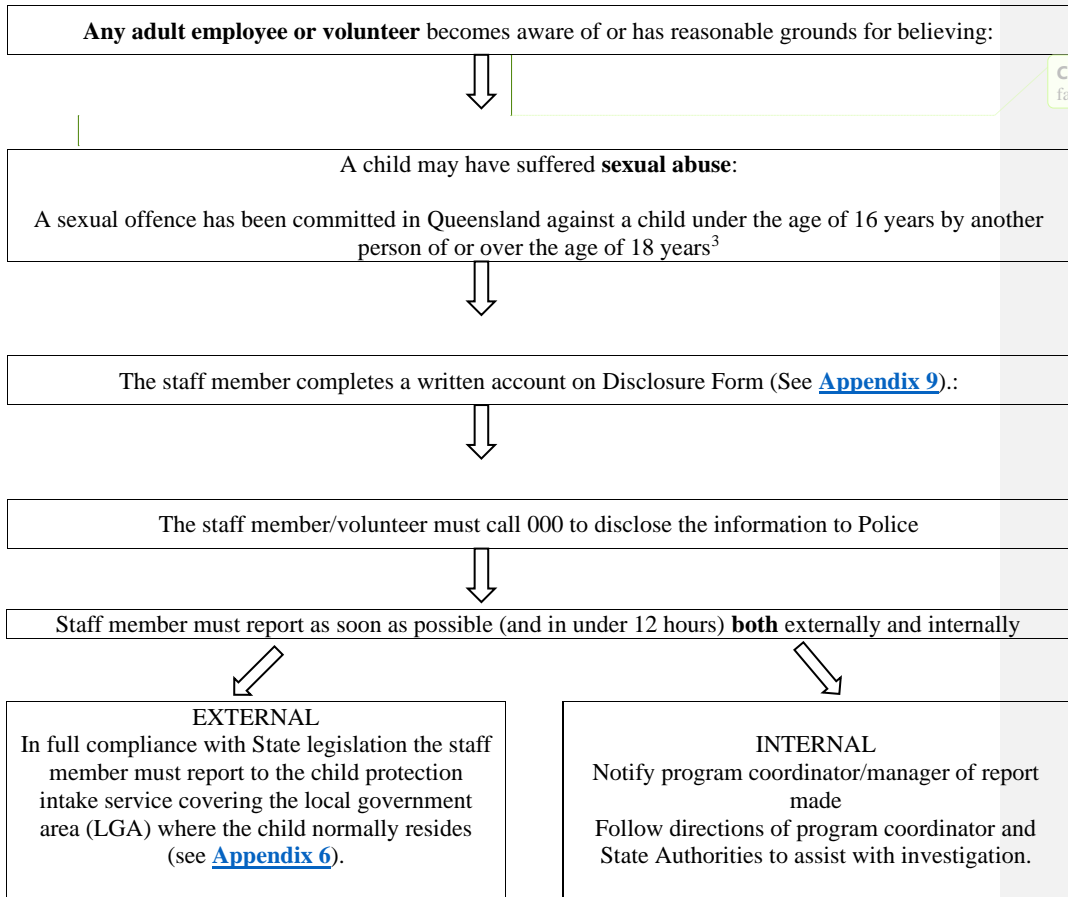
- An authorised officer, public service employee employed in the department, a person employed in a departmental care service or licensed care service,
- Relevant persons including doctors, teachers, early childhood education and care professionals, registered nurses, Police Officers, or a person engaged to perform a child advocate function, or school staff



<sup>1</sup> *Child Protection Act 1999* (Qld) s13E

<sup>2</sup> If a person does not have a reportable suspicion about a child but considers the child is likely to become a child in need of protection if no preventative support is given, the person may take other appropriate action under the *Child Protection Act 1999* (QLD) s13B





Commented [SS1]: Have added this to cover the new QLD failure to report legislation

**PROCESS FOR REPORTING FOR MANDATORY REPORTERS IN VICTORIA**

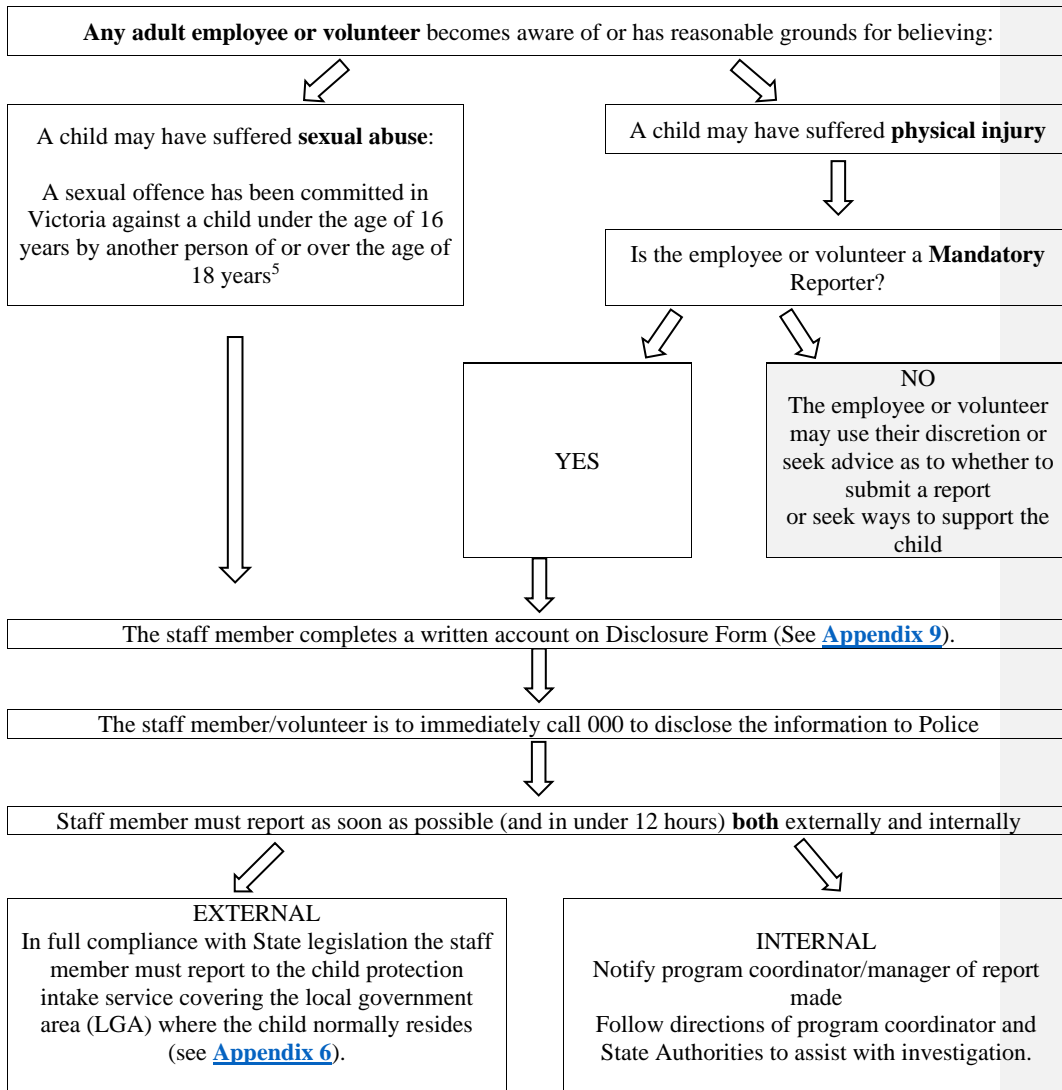
Mandatory Reporters in Victoria include<sup>4</sup>:

- For reporting sexual offences: Any Adults
- For reporting Physical Injury: Registered medical practitioners, nurses, midwives, a person registered as a teacher or an early childhood teacher, police officers and Principals of schools.

Others not covered in the mandatory reporter list may choose to submit a report.

<sup>3</sup> Crimes Act 1958 (Vic) s327

<sup>4</sup> Children, Youth and Families Act 2005 (Vic) s182

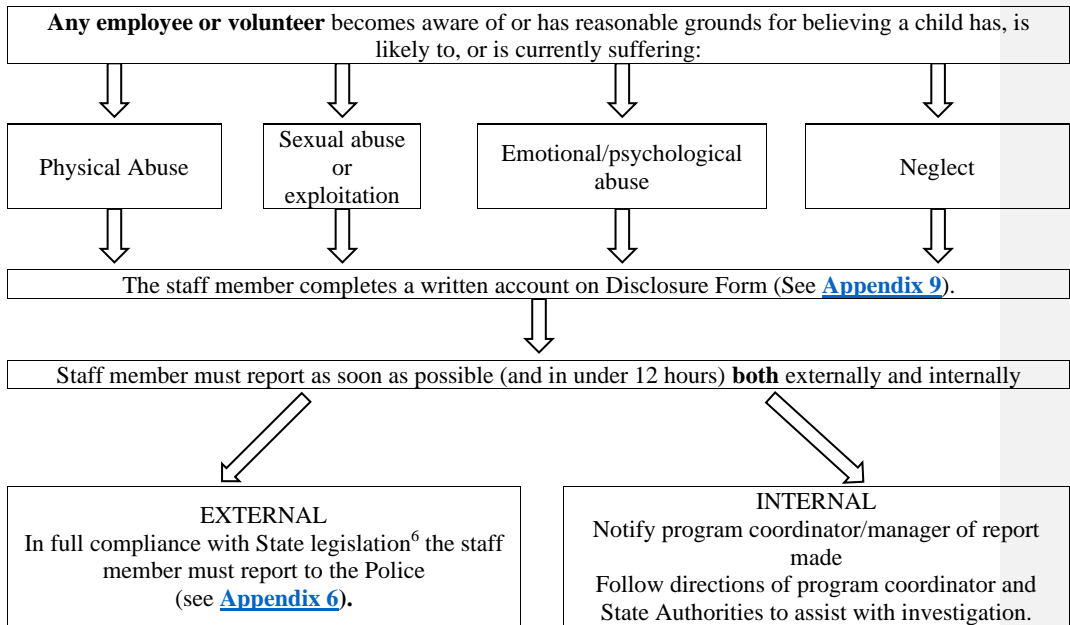


**PROCESS FOR REPORTING FOR MANDATORY REPORTERS IN NORTHERN TERRITORY**

Mandatory Reporters in the Northern Territory include:

- Any person who believes that a child has suffered, or is likely to suffer, harm or exploitation

<sup>5</sup> Crimes Act 1958 (Vic) s327



<sup>6</sup> Care and Protection of Children Act 2007 (NT) s26

## 11 APPENDICES

### APPENDIX 1: CODE OF CONDUCT

1. The Community Spirit Foundation (CSF) expects employees to act in the best interests of CSF, its employees, suppliers, customers and the general public at all times.
2. All people with whom a CSF employee, contractor, volunteer or board member has contact in the course of his or her work should be treated fairly and with respect, courtesy and sensitivity.
3. Employees must act with integrity and honesty and be able to demonstrate this in relation to any advice or service provided,
4. Employees and others must conduct themselves with a respect for the law and lawful instructions by CSF.
5. Employees, contractors, volunteers and board members are expected to treat all colleagues with respect and utilise their professional knowledge and expertise. Awareness of issues around the use of position and power should be maintained. Feedback should be provided in a confidential and private manner.
6. Employees, contractors, volunteers and board members are expected to maintain personal hygiene and present themselves in a clean, neat and professional manner.
7. Employees, contractors, volunteers and board members are to perform their duties diligently, impartially and responsively and to the best of their ability. This includes declaring or avoiding any conflict of interest.
8. Employees, contractors, volunteers and board members are to observe relevant Health, Safety and Environmental requirements, and act to remove or bring to the attention of their managers, any situation which is, or may be, a health or safety hazard.
9. Activities outside working hours must not diminish public confidence in CSF or the employee, contractor, volunteer or board member's ability to perform their duties.
10. Employees and others should use CSF facilities and other physical resources for their intended purpose and ensure they are maintained properly at all times.
11. Employees and others must treat CSF equipment, tools and machinery with care, in accordance with instructions and only in order to perform their duties on behalf of CSF.
12. Unethical conduct will not be tolerated. Without being definitive, unethical conduct includes the violation of any law, regulation or rule, professional codes or internal operational systems of CSF. It also includes conduct that might endanger the health and safety of others.

## APPENDIX 2: PRE-EMPLOYMENT SCREENING OVERVIEW: WORKING WITH CHILDREN CHECKS AND POLICE CHECKS

Pre-employment screenings such as WWCCs and Police Checks screen for an individual's criminal records and any reports on their professional conduct. They are designed to help ensure that the right people are chosen to work or volunteer with children. They aim to prevent people from working or volunteering with children if records indicate that they may pose a risk. Research has highlighted the advantages of having structured pre-employment screening processes in place (Child Protection Systems Royal Commission, 2016). These benefits include:

- Basing decisions on standardised points of reference, subjective decision making is minimised.
- The use of structured risk assessment approaches is more reliable and valid than the use of professional judgement alone.
- The assumptions on which the risk assessment models are based can be clearly set out and may be tested.
- Information can be dealt with transparently, and the person affected can put forward information as well as correct it.
- Public awareness of the use of structured risk assessment models may deter possible offenders.

**Table 1. Relevant legislation and state and territory screening programs**

Jurisdiction	Act	Type of program	Valid for
VIC	<i>The Working With Children Act 2005 (Vic.)</i>	In Victoria, all individuals aged 18 or over who work or volunteer with children (with the exception of children under the age of 18 who are supervising children under the age of 15 in employment) and those involved with practical training with children are required to undergo a screening process known as a Working With Children Check.	5 years
NT	<i>Care and Protection of Children Act 2007 (NT)</i>	Individuals are required to apply for a WWCC, known as an 'Ochre Card' or Clearance Notice in the NT. It applies to employees and volunteers in child-related employment settings.	2 years
QLD	<i>Working with Children (Risk Management and Screening) Act 2000 (Qld)</i>	Individuals are required to apply for a WWCC, known as a 'Blue Card' in Queensland. Blue Cards allow individuals to engage in child-related occupations/volunteering. Organisations providing child-related services must also have policies and procedures in place to identify and minimise the risk of harm to children. These policies and procedures are monitored by the Public Safety Business Agency.	3 years

### Professional registration and child safety policy development

In addition to child-related employment legislation, all states and territories have legislation that requires people who wish to register in certain occupations (e.g. teachers, doctors or child care workers) to be screened for criminal offences. This means that even if child-related employment legislation did not exist, there are still requirements for adults working in certain occupations to undergo screening. Where professional registration requirements require

screening, certain persons are exempt from the WWCC (e.g. in Victoria, persons registered under the *Education and Training Reform Act 2006*).

Organisations may also have developed their own policies that require employees and volunteers to undergo National Police Checks. State and territory police provide criminal history checks to individuals and organisations wishing to obtain Police Checks for employment, voluntary work and occupation-related licensing or registration purposes.

**The difference between a Police Check and a Working With Children Check**

Police Checks identify and release relevant criminal history information relating to convictions, findings of guilt or pending court proceedings. However, due to spent conviction/non-disclosure legislation and information release policies, there are limitations on the information a Police Check can provide (e.g. the Spent Convictions Scheme stipulates that prior convictions are not to be disclosed where 10 years have passed from the date of the conviction).

Working With Children Checks are more extensive, but also more targeted than Police Checks, as the purpose of a WWCC is to make an assessment of the level of risk an individual poses to children's safety. For example, WWCCs draw together information from various sources but may include a primary focus on certain types of offences (e.g. sexual offences, offences related to the harm or mistreatment of a child). In general, WWCCs give consideration to:

- convictions – whether or not they are considered spent or were committed by a juvenile
- apprehended violence orders and other orders, prohibitions or reporting obligations
- charges (i.e. where a conviction has not been recorded because, for example, a proceeding has not been heard or finalised by a court, or where charges have been dismissed or withdrawn)
- relevant allegations or police investigations involving the individual
- relevant employment proceedings and disciplinary information from professional organisations (e.g. organisations associated with teachers, child care service providers, foster carers and health practitioners).

Across the five jurisdictions that currently carry out WWCCs (NSW, NT, Qld, Vic., and WA) and the two that carry out a Working With Vulnerable People (WWVP) check (ACT, Tas.), there are differences in what information is considered and what sources of information are used. [Table 2](#) compares the information considered in WWCCs and the WWVP check across these jurisdictions.

**Table 2. Information considered in Working With Children Checks**

Jurisdiction	Information considered
Vic	The WWCC comprises <ul style="list-style-type: none"> <li>• a National Police Check – offences with most significance include: serious sexual offences; serious violent offences; serious drug related offences; offences against the Working With Children Act 2005 (Vic.) itself</li> <li>• a review of relevant findings from prescribed professional disciplinary bodies</li> <li>• information sought from other bodies such as courts, the Director of Public Prosecutions and any employee within the meaning of the Public Administration Act 2004, Corrections Victoria and employers – including where a court:                             <ul style="list-style-type: none"> <li>○ made a formal finding of guilt in relation to an offence</li> </ul> </li> </ul>

Jurisdiction	Information considered
	<ul style="list-style-type: none"> <li>○ convicted the applicant of an offence, accepted a plea of guilt from the applicant, or acquitted the applicant of an offence because of mental impairment</li> <li>○ information about any spent convictions, juvenile convictions and findings of guilt, pending charges and the circumstances surrounding any charges or convictions.</li> </ul> <p>In addition, the following individuals are ineligible to apply for a WWCC:</p> <ul style="list-style-type: none"> <li>• registered sex offenders within the meaning of the Sex Offenders Registration Act 2004 or subject to an extended or interim extended supervision order under the Serious Sex Offenders Monitoring Act 2005</li> <li>• individuals subject to a detention order, including an interim detention order or a supervision order including an interim supervision order under the Serious Sex Offenders (Detention and Supervision) Act 2009.</li> </ul>
NT	<p>The Working with Children (Ochre Card) Clearance Screening comprises:</p> <ul style="list-style-type: none"> <li>• a National Police Check – offences of most significance include: sexual offences involving children; violent offences involving children; and drug-related offences involving children</li> <li>• an analysis of employment history, including an assessment of references and/or disciplinary proceedings instigated as a result of malpractice</li> <li>• other material, which may include assessing whether an individual has attempted to change behaviours or address triggers to behaviours if they have a criminal history, etc.</li> </ul>
QLD	<p>The Working with Children (Blue Card) screening system comprises:</p> <ul style="list-style-type: none"> <li>• a National Police Check</li> <li>• consideration of any charge or conviction for an offence, whether or not a conviction is recorded</li> <li>• consideration of whether a person is a respondent to or subject to an application for a child protection prohibition or disqualification order; or whether a person is subject to reporting obligations under the <i>Child Protection (Offender Reporting) Act 2004</i></li> <li>• disciplinary information from professional organisations associated with teachers, child care service providers, foster carers, nurses, midwives and certain health practitioners</li> <li>• information from police investigations into allegations of serious child-related offences even if no charges were laid because the child was unwilling or unable to proceed.</li> </ul>

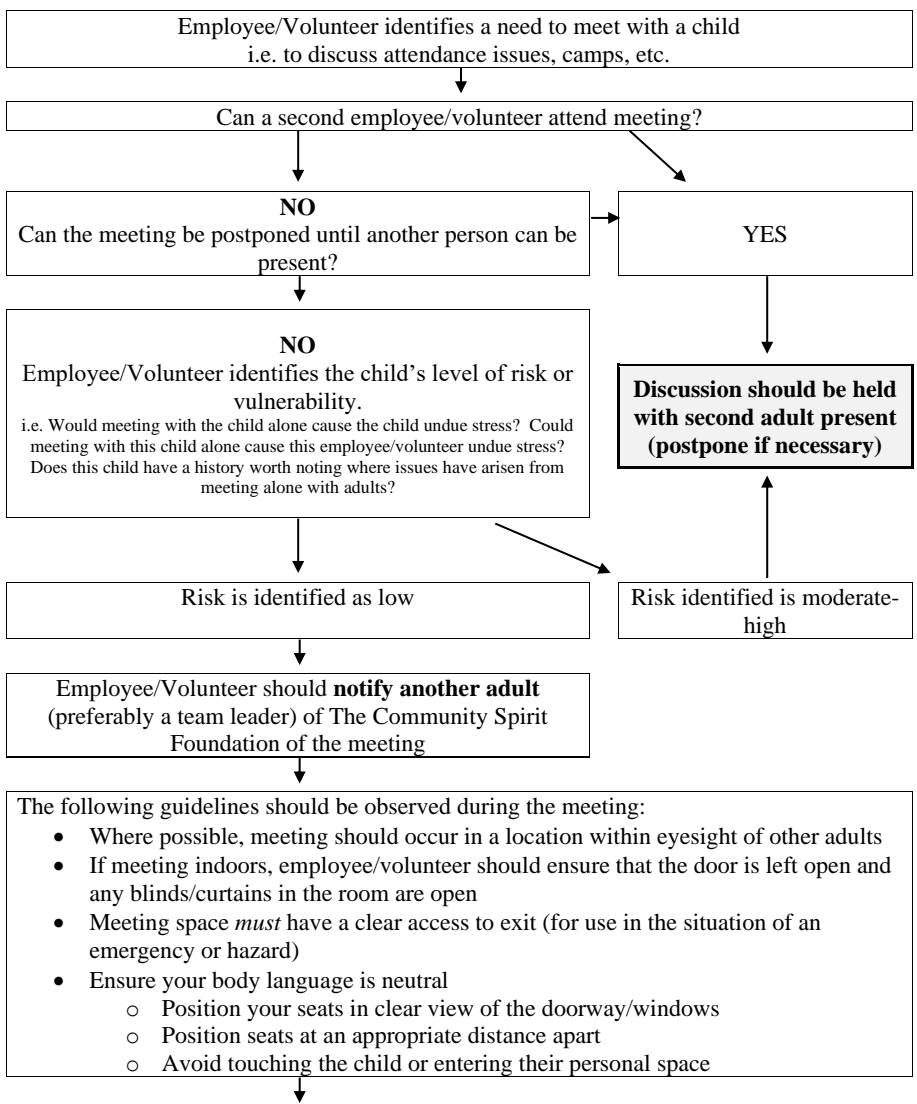
Adapted from Australian Government: Australian Institute of Family Studies  
Source: <https://aifs.gov.au/cfca/publications/pre-employment-screening-working-children-checks-and-police-checks/export>)

### APPENDIX 3: WORKING ALONE WITH CHILDREN POLICY

All work conducted by employees and volunteers should be, where possible, in the presence of others. The purpose of this is twofold: to ensure that the right thing is always done by employees and volunteers; and to ensure that they are *seen* to be doing the right thing. This is for the protection of the child, the employee/volunteer, and The Community Spirit Foundation as a whole.

*It is the policy of The Community Spirit Foundation that, as far as reasonably practicable, employees and volunteers should not meet with children without the presence of another adult.*

When considering whether to meet with a child alone, employees and volunteers should follow the directions outlined below to help ensure their own personal health, safety and welfare; and that of the child involved.





Following the meeting, **record** who you met with, the time and location of the meeting, what was discussed, any issues that arose during the meeting, and other points worth noting (for example, in a diary)

#### APPENDIX 4: TRAVELLING IN VEHICLES WITH CHILDREN POLICY

A volunteer or employee may on occasion need to travel in a vehicle with children. This policy is to assist with taking reasonable precautions to protect children from harm when they must travel in a vehicle with a volunteer or employee of The Community Spirit Foundation. This is for the protection of the child, the employee/volunteer, and The Community Spirit Foundation as a whole.

*No volunteer or employee of The Community Spirit Foundation should ever travel in a vehicle with a child if they are not comfortable, and/or do not feel safe to do so. While this policy document may assist in managing the risks of travel, it should not negate the individual's right to choose not to travel in a vehicle if they are not comfortable.*

##### **1.0 Guidelines for transporting children in vehicles**

- 1.1 Parental consent **must** be sought prior to travelling with the child
- 1.2 Notification of intention to travel with a child **must** be sent to employee/volunteer's Program Manager or Team Leader prior to travel
- 1.3 Children must always be secured using a properly adjusted seat belt or child restraint
- 1.4 When transporting a child, the driver should not make any unauthorised stops, or deviate from a reasonable route to the destination
- 1.5 Drivers should avoid travelling alone in a vehicle with one child. Where possible, the presence of a second adult or child in the vehicle is encouraged.

##### **2.0 Guidelines for vehicles to be used**

- 2.1 A volunteer or employee of The Community Spirit Foundation should only ever transport a child using a company vehicle.  
*Transporting a child should never occur in a personal vehicle.*
- 2.2 Company vehicles kept by The Community Spirit Foundation must:
  - 2.2.1 Hold current vehicle registration
  - 2.2.2 Hold current Comprehensive Insurance (including compulsory Third Party Insurance)
  - 2.2.3 Be maintained in good repair, including the tyres, brakes, lights, windshield, etc.

##### **3.0 Guidelines for the Driver**

- 3.1 All drivers must hold their Full Driver's License (i.e. Open Driver's License in relevant states)
- 3.2 Driver must be approved by The Community Spirit Foundation prior to travel. Approval may consider the driver's driving history and other factors at the discretion of the foundation.
  - 3.2.1 On approval, The Community Spirit Foundation will maintain a copy of the Driver's License to store on file.
  - 3.2.2 Drivers must inform The Community Spirit Foundation of any changes to their Driver's License (i.e. suspension of license).

- 3.3 Drivers must not be under the influence of any substance while driving.
  - 3.3.1 Drivers must not, under any circumstance, drive while intoxicated or under the influence of any substance.  
This includes medications with warnings related to driving.
  - 3.3.2 Drivers must maintain a blood alcohol level of 0.00.

## APPENDIX 5: SOCIAL MEDIA POLICY

Social media is becoming an increasingly accepted form of communication. Many volunteers and employees of the Community Spirit Foundation hold personal social media accounts already, and many may at some point encounter accounts belonging to children with whom they work with through The Foundation, or adults or community members who are affected by the work of The Foundation. It is vital, therefore, that the online presence of volunteers and employees of the Community Spirit Foundation maintain their online presence in accordance with the principals supplied in this policy.

Within this policy the term ‘Social Media’ is used broadly to represent a vast and ever-changing variety of communication platforms. These include, but are not limited to:

- Social networking sites (e.g. Facebook, LinkedIn, Snap Chat)
- Video and photo sharing websites (e.g. YouTube, Instagram, Flickr, Pinterest)
- Blogs, including corporate blogs and personal blogs
- Micro-blogging (e.g. Twitter)
- Blogs hosted by media outlets (for example, via ‘comments’ or ‘your say’ feature)
- Wikis and online collaboration (e.g. Wikipedia)
- Forums, discussion boards and groups (e.g. Google groups, Whirlpool)
- Vod and podcasting
- Online multi player gaming platforms (e.g. World of Warcraft, Second life)
- Geo-spatial Tagging (e.g. Foursquare)
- Instant messaging (e.g. Messenger or SMS)
- Others

As members of the Australian community, volunteers and employees of the Community Spirit Foundation have the right to participate in public and political debate. However, this is not an unlimited right.

When engaging with social media, volunteers and employees must remember that their actions and comments on social media will reflect (both positively and negatively) on the Community Spirit Foundation, even when not connected with their work. Therefore, it is vital that they conduct themselves in a way that reflects the values of the Community Spirit Foundation and is in line with the Code of Conduct.

### **1.0 Official Community Spirit Foundation Social Media**

- 1.1 All actions on Official social media pages (including posting, commenting, etc.) must be done by a designated representative of the Community Spirit Foundation
- 1.2 All content that is posted on the Community Spirit Foundation social media channels must go through a rigorous process to ensure that it is factually correct, culturally sensitive and not in conflict with any partnerships or values to the foundation.
- 1.3 All photos and videos posted on the Community Spirit Foundation platforms should comply in full with relevant organisational policies.

### **2.0 Employee and Volunteer Personal Use of Social Media**

While respecting the right of employees to express their personal views, communications made through social media by individuals can be seen to reflect the values of the Community Spirit Foundation as a whole.

Therefore, employees and volunteers are held to professional conduct standards while using social media.

- 2.1 Employees and volunteers must not publish anything that may be harmful, offensive, obscene, abusive or illegal. This includes posting, commenting, sharing or liking content that:
  - a) is unlawfully discriminatory or perpetrates vilification on discriminatory grounds such as on the grounds of race, sexuality, religion or gender;
  - b) could be taken to promote substance use or abuse of any kind, including excessive use of alcohol;
  - c) could be taken to promote violence or harassment
- 2.2 Employees and volunteers must comply with all laws, including but not limited to anti-discrimination, victimisation, vilification, privacy, intellectual property, confidentiality, anti-bullying, harassment and defamation laws.
- 2.3 Employees and volunteers must be respectful at all times. They must not post anything on social media which may defame, disparage or bring into disrepute The Foundation, any employees or clients.
- 2.4 Employees and volunteers must not communicate on behalf of the Community Spirit Foundation using their personal accounts. This includes making comments or creating posts that present their personal views or opinions as those held by the foundation.
- 2.5 Employees and volunteers must not discuss the details of their work with the Community Spirit Foundation in public forums. This includes but is not limited to
  - 2.5.1 Details of the programs including how they are run, locations, timings, etc.
  - 2.5.2 Details of the children involved including names, ages, or other identifying features.
- 2.6 Employees and volunteers must not post photographs or videos on social media that may result in another employee or volunteer being bullied, harassed or discriminated
- 2.7 Employees and volunteers should not reply to or engage with negative comments made on social media.
  - 2.7.1 Employees should bring any negative comment to the attention of the Marketing & Communications Director or their line manager who will respond accordingly.
- 2.8 Employees and volunteers should refrain from accessing social media during working hours unless the use is directly related to the performance of their employment duties.

### **3.0 Interactions Involving Children on Social Media**

- 3.1 Employees and volunteers must not, under any circumstances, share photos or videos of children with whom the employee or volunteer has interacted with as part of their work with the Community Spirit Foundation

This includes but is not limited to photos/videos taken during

- Horizon Camps
- Starting Block awards
- Activities programs

3.2 Employees and volunteers should not initiate contact with a child via social media that they have interacted with as part of their work with the Community Spirit Foundation.

This includes but is not limited to

- Befriending them on social media
- Commenting on their posts
- Liking/responding to posts
- Initiating contact with child's contacts where a relationship is not already known for the purposes of capturing the child's attention

3.3 An employee or volunteer should not, under any circumstances, engage in contact with a child in a private forum (for example direct messaging, SMS, etc.) other than to direct the child to an appropriate communication channel.

3.3.1 Should a child contact the employee or volunteer via a private forum, the employee should in first instance direct the child to an acceptable and public communication channel.

For example, the employee may respond with:

“Thank you for reaching out to me! I cannot chat with you here, so please contact me via \_\_\_\_\_”

or

“Thank you for your message but I cannot talk with you on social media. You can contact me via the Community Spirit Foundation on \_\_\_\_\_”

3.3.2 An employee or volunteer should disclose to their team leader/manager if the child continues to contact them via social media.

3.4 An employee or volunteer concerned about the safety or wellbeing of a child involved in a Community Spirit Foundation program due to their online presence should in the first instance disclose their concerns to their team leader/manager or a child protection contact.

Where in doubt about online content, their engagement in social media or about maintaining privacy settings on social media platforms; an employee or volunteer should seek assistance from the Marketing & Communications Director.

#### **Policy Breach**

Any breach of this policy may result in the employee's access to social networking sites being restricted and disciplinary action, up to and including termination of employment. The Community Spirit Foundation may also require an employee to delete any information on social media that is in breach of this policy. Breach of this policy may also result in legal liability arising from breaches in anti-discrimination and other laws.

## APPENDIX 6: RELEVANT STATE REPORTING SERVICE

If you suspect a child/vulnerable adult is experiencing harm, contact Child Safety Services to report suspected child abuse. You can contact Child Safety Services through the:

Regional Intake Service;  
Child Safety Service Centre; or  
Child Safety After Hours Service Centre.

The contact point that you choose will depend upon the service you need, and the time you make contact with Child Safety Services.

### Queensland

If you believe a child is in immediate danger or a life-threatening situation call Triple Zero (000).

If you have a reason to suspect a child in Queensland is experiencing harm, or is at risk of experiencing harm or being neglected, contact [Child Safety Services](#) and talk to someone about your concerns:

During normal business hours - contact the [Regional Intake Service](#).

South East: 1300 679 849  
South West: 1300 683 390  
Far North Queensland: 1300 684 062  
North Queensland: 1300 706 147  
North Coast: 1300 703 921  
Brisbane: 1300 682 254  
Central Queensland: 1300 703 762

After hours and on weekends - contact the Child Safety After Hours Service Centre on 1800 177 135 or (07) 3235 9999. The service operates 24 hours a day, 7 days a week.

### Victoria

If you believe a child is in immediate danger or a life-threatening situation call Triple Zero (000).

To make a report, you should contact the child protection intake service covering the local government area (LGA) where the child normally resides.

Telephone numbers to make a report during business hours (8:45am -5:00pm, Monday to Friday) are listed below:

North Division intake: 1300 664 977  
South Division intake: 1300 655 795  
East Division intake: 1300 360 391  
West Division intake - metropolitan: 1300 664 977  
West Division intake - rural and regional: 1800 075 599

To report concerns about the immediate safety of a child outside of normal business hours, you should contact the After Hours Child Protection Emergency Service on 13 12 78.

### Northern Territory

If you believe a child is in immediate danger or a life-threatening situation call Triple Zero (000).

If it is not an emergency call police on 131 444 or contact your local police station. You can also report suspected child abuse and neglect to the Child Abuse Hotline on 1800 700 250 or Crime Stoppers on 1800 333 000.

APPENDIX 7: REPORTING STANDARDS FOR AUSTRALIAN STATES  
 Australian Institute of Family Studies, *Mandatory Reporting of Child Abuse and Neglect*  
 (September 2017) Australian Government <<https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect>>

NORTHERN TERRITORY		
Who is mandated to report?	<ul style="list-style-type: none"> <li>Any person.</li> </ul>	<ul style="list-style-type: none"> <li>A health practitioner or someone who performs work of a kind that is prescribed by regulation.</li> </ul>
What must be reported?	<ul style="list-style-type: none"> <li>A belief on reasonable grounds that a child has suffered or is likely to suffer harm or exploitation.</li> </ul>	<ul style="list-style-type: none"> <li>Reasonable grounds to believe a child aged 14 or 15 years has been or is likely to be a victim of a sexual offence and the age difference between the child and offender is greater than 2 years.</li> </ul>
Abuse and neglect types that must be reported	<ul style="list-style-type: none"> <li>Physical abuse;</li> <li>Sexual abuse or other exploitation of the child;</li> <li>Emotional/psychological abuse or neglect;</li> <li>Exposure to physical violence (e.g. a child witnessing violence between parents at home).</li> </ul>	<ul style="list-style-type: none"> <li>Sexual abuse.</li> </ul>
Legal provisions	<ul style="list-style-type: none"> <li>Sections 15, 16 and 26 of the Care and Protection of Children Act 2007 (NT).</li> </ul>	<ul style="list-style-type: none"> <li>Section 26(2) of the Care and Protection of Children Act 2007 (NT).</li> </ul>

QUEENSLAND			
Who is mandated to report?	<ul style="list-style-type: none"> <li>An authorised officer, a public service employee employed in the department, a person employed in a departmental care service or licensed care service.</li> </ul>	<p>Relevant persons:</p> <ul style="list-style-type: none"> <li>Doctors;</li> <li>Registered nurses;</li> <li>Teachers;</li> <li>A police officer who, under a direction given by the commissioner of the police service under the <i>Police Service Administration Act 1990</i>, is responsible for reporting under this section;</li> <li>A person engaged to perform a child advocate function under the <i>Public Guardian Act 2014</i>; early childhood education and care professionals.</li> </ul>	<ul style="list-style-type: none"> <li>School staff.</li> </ul>
What must be reported?	<ul style="list-style-type: none"> <li>Has a reasonable suspicion that a child in care (a child placed in the care of an entity conducting a departmental care service or a licensee) has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse.</li> </ul>	<ul style="list-style-type: none"> <li>Has a reasonable suspicion that a child has suffered, is suffering or is at an unacceptable risk of suffering, significant harm caused by physical or sexual abuse; and</li> <li>may not have a parent able and willing to protect the child from the harm.</li> </ul>	<ul style="list-style-type: none"> <li>Awareness or reasonable suspicion that a child has been or is likely to be sexually abused; and</li> <li>The suspicion is formed in the course of the person's employment.</li> </ul>
Abuse and neglect types that must be reported	<ul style="list-style-type: none"> <li>Physical abuse;</li> <li>Sexual abuse.</li> </ul>	<ul style="list-style-type: none"> <li>Physical abuse;</li> <li>Sexual abuse.</li> </ul>	<ul style="list-style-type: none"> <li>Sexual abuse.</li> </ul>



Legal provisions	<ul style="list-style-type: none"><li>• Part 1AA, Section 13f of the Child Protection Act 1999 (Qld).</li></ul>	<ul style="list-style-type: none"><li>• Part 1AA, Section 13e of the Child Protection Act 1999 (Qld).</li></ul>	<ul style="list-style-type: none"><li>• Sections 364, 365, 365A, 366, 366A of the Education (General Provisions) Act 2006 (Qld).</li></ul>
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VICTORIA		
Who is mandated to report?	<ul style="list-style-type: none"> <li>Registered medical practitioners, nurses, midwives, a person registered as a teacher or an early childhood teacher under the <i>Education and Training and Reform Act 2006</i> or teachers granted permission to teach under that Act;</li> <li>Principals of government or non-government schools within the meaning of the <i>Education and Training Reform Act 2006</i>; and police officers.</li> </ul>	<ul style="list-style-type: none"> <li>Any adult.</li> </ul>
What must be reported?	<ul style="list-style-type: none"> <li>Belief on reasonable grounds that a child is in need of protection on a ground referred to in Section 162(1)(c) or 162(1)(d), formed in the course of practising his or her profession or carrying out the duties of his or her office, position or employment as soon as practicable after forming the belief and after each occasion on which he or she becomes aware of any further reasonable grounds for the belief.</li> </ul>	<ul style="list-style-type: none"> <li>A reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years must disclose that information to a police officer as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so. Failure to disclose the information to police is a criminal offence.</li> </ul>
Abuse and neglect types that must be reported	<ul style="list-style-type: none"> <li>Physical injury;</li> <li>Sexual abuse.</li> </ul>	<ul style="list-style-type: none"> <li>Sexual offence.</li> </ul>
Legal provisions	<ul style="list-style-type: none"> <li>Sections 182(1)(a)-(e), 184 and 162(c)-(d) of the <i>Children, Youth and Families Act 2005 (Vic.)</i>.</li> </ul>	<ul style="list-style-type: none"> <li>Section 327 of the <i>Crimes Act 1958</i>.</li> </ul>

## APPENDIX 8: RESPONDING TO CHILDREN AND YOUNG PEOPLE'S DISCLOSURES OF ABUSE

Sourced from the Australian Institute of Family Studies: Child Family Community Australia

### **Listen, reassure and respect**

- |                 |  |
|-----------------|--|
| <b>Listen</b>   | <ul style="list-style-type: none"><li>• Move to a suitable environment, free of distractions.</li><li>• Be calm and patient—allow for the child or young person to be heard.</li><li>• Let the child or young person use their own words—avoid asking leading questions.</li><li>• Avoid “quizzing” the child or young person about details of the abuse.</li><li>• Don’t be afraid of saying the “wrong” thing.</li><li>• Listening supportively is more important than what you say.</li></ul> |
| <b>Reassure</b> | <ul style="list-style-type: none"><li>• Reassure the child or young person that it is OK that they have told you what’s been happening.</li><li>• Address any concerns about the child or young person’s safety.</li><li>• Reassure the child or young person that he or she is not at fault, and not the cause of any distress you may feel.</li></ul>  |
| <b>Respect</b>  | <ul style="list-style-type: none"><li>• Respect that the child or young person may only reveal some details.</li><li>• Acknowledge the child or young person’s bravery and strength.</li><li>• Avoid making promises you can’t keep—manage the child or young person’s expectations.</li><li>• Explain to the child or young person that in order for them to be safe you will need to report their experience to someone else.</li></ul>  |

APPENDIX 9: REPORTING FORM

**CONFIDENTIAL**

DATE OF REPORT: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**MY PERSONAL DETAILS ARE:**

Mr/Mrs/Ms/Oth \_\_\_\_\_ Given \_\_\_\_\_ Family \_\_\_\_\_  
er: \_\_\_\_\_ name/s: \_\_\_\_\_ Name: \_\_\_\_\_  
Street \_\_\_\_\_ Postcode: \_\_\_\_\_ Suburb: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone \_\_\_\_\_ Mobil \_\_\_\_\_ Email \_\_\_\_\_  
e: \_\_\_\_\_ e: \_\_\_\_\_ : \_\_\_\_\_  
 Male  Female Date of birth: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**MY REPORT IS ABOUT:**

- Physical abuse  Sexual abuse or exploitation  
 Emotional/psychological abuse or neglect  Exposure to physical violence  
 Other (please specify): \_\_\_\_\_

**THE CHILD I AM CONCERNED ABOUT:**

Given \_\_\_\_\_ Family \_\_\_\_\_  
name/s: \_\_\_\_\_ Name: \_\_\_\_\_  
 Male  Female Date of birth: \_\_\_\_ / \_\_\_\_ / \_\_\_\_  
Street \_\_\_\_\_ Postcode: \_\_\_\_\_ Suburb: \_\_\_\_\_  
Address: \_\_\_\_\_

General Information about the child:

- Does the child speak English?  Yes  No  
If no, specify language: \_\_\_\_\_  
Cultural Background:  Aboriginal  Torres Strait Islander  
 Other (please specify): \_\_\_\_\_

**CHILD'S PARENT/GUARDIAN DETAILS:**

Parent/Guardian Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_  
Address (if different to child): \_\_\_\_\_  
Postcode: \_\_\_\_\_ Suburb: \_\_\_\_\_  
Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_ Mobile: \_\_\_\_\_

**Further Details About the Household (if known):**

Name:	Age	Gender	Relationship to Child

**ALLEGATION IS MADE AGAINST:**

Name: \_\_\_\_\_ Age (approximate): \_\_\_\_\_  
 Male  Female Relationship to child: \_\_\_\_\_  
Street Address: \_\_\_\_\_ Postcode: \_\_\_\_\_ Suburb: \_\_\_\_\_  
Is the allegation made against an employee/volunteer of The Community Spirit Foundation?  Yes  No

**INFORMATION ABOUT THE ABUSE**

Information recorded here could be referred to in Police Investigations and/or the Court of Law. It is important that your record is factual and does not differ from what the child has told you, or from what you have witnessed first-hand.

- Record only what the child has told you, or what you have witnessed for yourself
- Use language that is simple and matter-of-fact
- *Do not* expand or embellish facts
- *Avoid* using emotive language

Information recorded here could include details such as:

- What happened
- Where did it happen
- When did it happen
- Who was involved

Try to include as much information as possible (without pushing the child to share more than they are comfortable)

(attach additional page if necessary)

Are there any immediate safety concerns for the child?  Yes  No  Unknown

If yes, provide details of immediate safety concerns:

Is there any other information that you believe an investigating party should know?

**DETAILS AROUND PERSON/S WHO MAY HAVE ADDITIONAL DETAILS OF ALLEGED ABUSE:**

Name \_\_\_\_\_ Relationship to child: \_\_\_\_\_  
:

Address (if different to child): \_\_\_\_\_

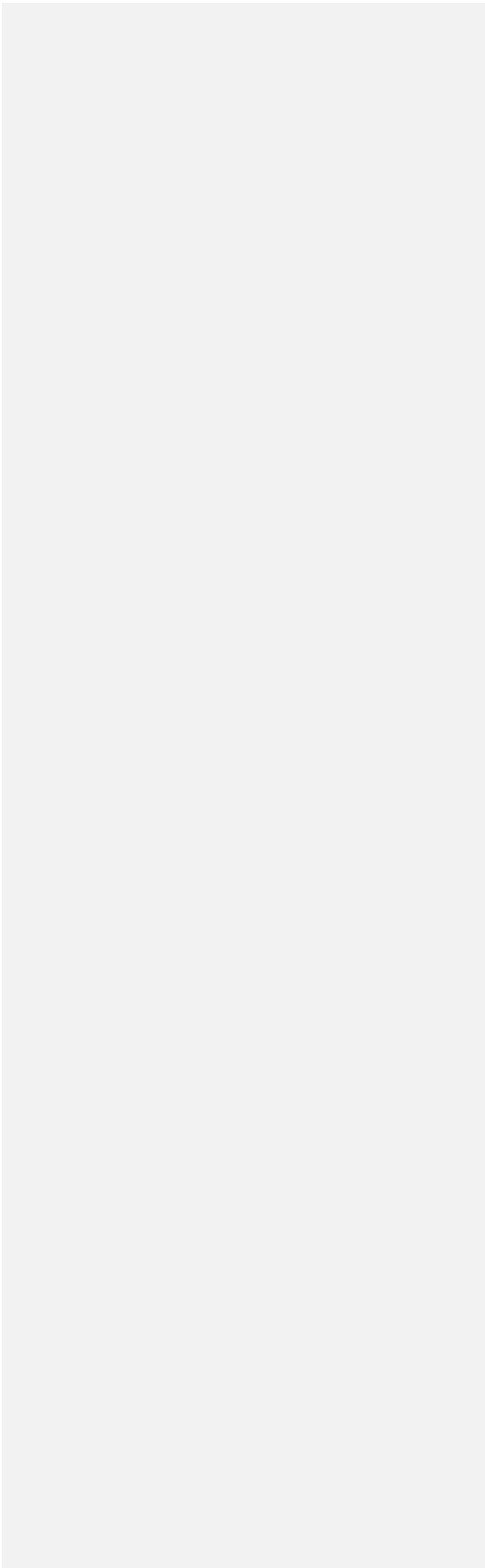
Postcode: \_\_\_\_\_ Suburb: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**DECLARATION**

I DECLARE that the information contained in this form is true and accurate to best of my knowledge and recollection.

Name : \_\_\_\_\_ Signature: \_\_\_\_\_ Date : \_\_\_\_/\_\_\_\_/\_\_\_\_





COMMISSION FOR CHILDREN  
AND YOUNG PEOPLE

APPENDIX 10: GUIDANCE FOR REPORTABLE CONDUCT

SCHEME **Guidance for Organisations  
Investigating a Reportable  
Conduct Allegation**



# Contents

<a href="#">_Toc32421960Introduction</a>	1
<a href="#">Purpose of this guide</a>	1
<a href="#">What is the Reportable Conduct Scheme?</a>	1
<a href="#">Role of the Commission</a>	1
<a href="#">What is an investigation into a reportable allegation?</a>	2
<a href="#">Overlap between investigations into reportable allegations and workplace investigations</a>	2
<a href="#">Balance of probabilities and findings</a>	3
<a href="#">Role of the investigator</a>	3
<a href="#">Process of an investigation</a>	5
<b><a href="#">Conducting an investigation</a></b>	6
<a href="#">1. Assessing the reportable allegation</a>	6
<a href="#">2. Establishing an investigation</a>	7
<a href="#">Planning an investigation</a>	8
<a href="#">3. Conducting a thorough investigation</a>	11
<a href="#">4. Assessing the evidence</a>	19
<a href="#">5. Finalising an investigation</a>	19
<a href="#">6. Making or recommending findings</a>	20
<b><a href="#">Resources</a></b>	22
<a href="#">Example: Blank Investigation Plan</a>	22
<a href="#">Example: Completed Investigation Plan</a>	26
<a href="#">Example: Letter of allegation</a>	31
<a href="#">Example: Terms of Reference</a>	33
<a href="#">Example: Investigation Report</a>	35

## Introduction

### Purpose of this guide

The purpose of this guide is to provide assistance to organisations and investigators that may not have formal investigation training or experience to conduct investigations into reportable allegations (allegations of reportable conduct) and to set out a series of minimum standards for these investigations. The standards that are set out in these guidelines are not prescriptive, but they do set out what the Commission for Children and Young People (Commission) expects in investigations conducted under the Reportable Conduct Scheme (scheme).

The Commission recognises that each organisation is different and will have different needs depending on the type of organisation, its size and the available resources. It is up to each organisation to decide how an investigation will be carried out, who will undertake the investigation and who will be the decision-maker responsible for making findings at the end of any investigation.

While organisations should conduct investigations in the way that works best for them, the Commission has a statutory function under the *Child Wellbeing and Safety Act 2005* (the Act) to ensure that all investigations into reportable allegations are properly conducted and are of a sufficiently high standard to achieve the purposes of the Act.

In order to achieve this objective, this guide sets out minimum standards and considerations in relation to investigations into reportable allegations.

The scheme does not seek to duplicate investigations into workplace allegations. Many organisations will already have existing policies and procedures in place for conducting investigations into alleged worker or volunteer misconduct, which in many cases will meet the requirements of the scheme.

This guide contains a number of template and example documents to assist organisations in conducting investigations into reportable allegations. The examples used, including all individual and business names, together with the incidents portrayed, are fictitious. No identification with actual persons (living or deceased), places or organisations is intended or should be inferred.

### What is the Reportable Conduct Scheme?

The scheme is established by the Act and it seeks to improve how organisations identify and respond to allegations of child abuse and neglect by their workers and volunteers. These allegations are called reportable allegations. The [types of reportable allegation](#) are described on page 6.

### Role of the Commission

The Commission has various functions under the Act. These functions include:

- educating, providing assistance and promoting compliance by organisations that are covered by the scheme to identify reportable conduct
- supporting and guiding organisations that receive reportable allegations in order to promote fair, effective, timely and appropriate responses to reportable allegations

independently overseeing, monitoring and, where appropriate, making recommendations to improve the responses of those organisations  
educating and providing advice to regulators that fall under the scheme

## What is an investigation into a reportable allegation?

The term '*investigation*' broadly means a process of inquiry that begins after an allegation has been made.

In relation to reportable allegations under the Act, the relevant head of an organisation must investigate a reportable allegation. In the context of investigations into reportable allegations the head of an organisation must:

- ensure that the organisation has systems in place in relation to the scheme, including systems for the prevention of reportable conduct
- notify the Commission when a reportable allegation has been made
- investigate the reportable allegation (this could include permitting a regulator or independent external investigator to investigate a reportable allegation)
- provide information or documents relating to a reportable allegation to the Commission
- ensure that the Commission (or independent investigator engaged by the Commission) is given 'any assistance' in connection with the reasonable performance of their functions
- provide detailed information about a reportable allegation to the Commission
- provide details of the outcome of an investigation into a reportable allegation and any proposed disciplinary actions.

This guide sets out minimum reportable allegation investigation standards set by the Commission that reflect the head of an organisation's obligations under the Act to investigate reportable allegations.

Following an investigation into a reportable allegation, findings must be made about whether or not the reportable allegation happened. This is important so that organisations can decide what action they may need to take to keep children safe. Organisations may also be undertaking an investigation for many different purposes, such as an investigation into worker or volunteer disciplinary matters, as well as reportable conduct. Different facts might be relevant to different purposes.

Investigations into reportable allegations must make findings as to whether or not the facts meet the definition of reportable conduct under the Act. It is important for organisations to note that some facts may be substantiated, but may not amount to reportable conduct. For this reason, organisations should draw a distinction between findings of fact and findings of reportable conduct. This is [explained further](#) on page 21.

A finding of reportable conduct is to be made on the '*balance of probabilities*' and all findings of the investigation must be reported to the Commission.

## Overlap between investigations into reportable allegations and workplace investigations

Organisations may already have obligations in respect of workplace investigations that come from different legal documents, such as an applicable employment award, an enterprise agreement, an individual contract of employment or a workplace policy. Organisations should consider the need to obtain their own advice about how these other laws or obligations work with the requirement to undertake investigations into reportable allegations under the Act. The Commission is not able to provide advice to organisations about other workplace laws.

## Balance of probabilities and findings

A reportable conduct investigation must apply the '*balance of probabilities*' as the standard of proof when deciding whether or not the reportable allegation is reportable conduct under the Act.

This means that an investigator should think about whether it is *more likely than not* that the reportable conduct happened. This is lower than the standard of proof needed in a criminal case, which is '*beyond reasonable doubt*'.

Given the serious nature of reportable allegations, the Commission expects that the '*Briginshaw test*' would generally be applied (from the case of *Briginshaw v Briginshaw* (1938) 60 CLR 336). This requires that the following be taken into account:

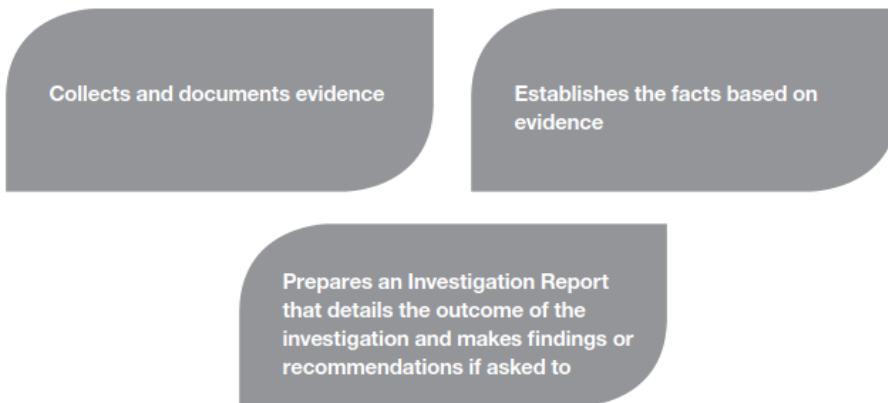
seriousness of the allegation  
inherent likelihood of the conduct occurring based on the evidence  
gravity of the consequences flowing from a particular finding.

The Briginshaw test requires that the more serious the allegation and gravity of a substantiated finding, the more comfortably satisfied on the evidence the decision-maker must be before making any substantiated finding. The balance of probabilities in reportable conduct investigations is [explained more](#) on page 19.

## Role of the investigator

[Figure 1](#) shows what the role of the investigator is.

Figure 1. Role of the investigator



The investigator is responsible for gathering and assessing all relevant evidence connected to a reportable allegation. At the end of the investigation, the investigator must prepare an investigation report and, if requested by the head of the organisation, make findings or make recommendations about the findings that could be made based on the evidence.

## Using an independent investigator

The Commission requires that an independent investigator be used for investigations into reportable allegations. An independent investigator means an independent body or person (who can come from within the organisation) with appropriate qualifications, training or experience to investigate reportable allegations.

An organisation should consider appointing an external independent investigator when:

the organisation cannot identify anyone within the organisation with suitable experience and/or training to conduct the investigation

internal workers, contractors or volunteers have a conflict of interest ([described more](#) on page 9)

the investigation cannot be conducted internally within a reasonable timeframe

the investigation is complex and beyond the skills, capability or experience of internal workers (for example, the allegation relates to multiple incidents, alleged victims or stakeholders).

Before engaging an external independent investigator, it is recommended that the organisation:

consider the proposed investigator's skills and experience, in particular their experience in conducting investigations involving children

conduct appropriate screening to make sure the proposed investigator is appropriate to work with children, including checking whether they have a Working With Children Check

sign the investigator's certificate and/or qualifications; a Certificate IV in Government Investigations is appropriate

check that their training is up to date and relevant to the investigation

identify any conflicts of interest or concerns about possible bias ([explained more](#) on page 9)

discuss the investigator's approach to managing the investigation and clarify the support that might be needed from the organisation

discuss how the investigator will be paid, for example an hourly rate or a fixed price

check the investigator's referee(s). A referee is a person who has knowledge of the investigator's experience, conduct and ability to undertake an investigation involving children. The referee should have enough knowledge about conducting investigations to be able to give this information.

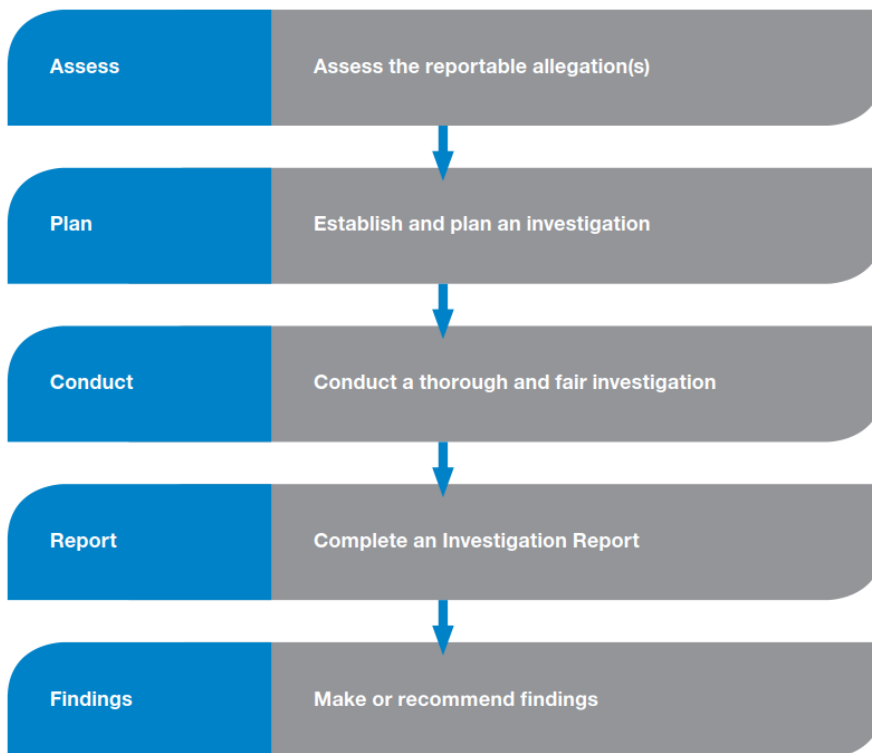


The Commission does not approve, accredit or recommend independent investigators or investigation bodies. Organisations who choose to use an independent investigator should undertake their own inquiries to make sure the investigator has the right qualifications and/or experience before appointing them to conduct an investigation. Where an investigation raises a question of law, further legal or professional advice should be sought by the organisation.

## Process of an investigation

Figure 2 outlines the main steps of an investigation. Each step will be explained more below.

Figure 2. Investigation process



# Conducting an investigation

## 1. Assessing the reportable allegation

### What are reportable allegations?

A 'reportable allegation' means any information that leads a person to form a 'reasonable belief' that a person has committed reportable conduct. The Act sets out the five types of reportable conduct, which are:

sexual offences (against, with or in the presence of, a child)  
sexual misconduct (against, with or in the presence of, a child)  
physical violence (against, with or in the presence of, a child)  
behaviour that is likely to cause significant emotional or psychological harm  
significant neglect.

For more information about each of the above types of reportable conduct refer to the Commission's [Information Sheet 2 – 'What is Reportable Conduct?'](#) found on the [Reportable Conduct Scheme information sheets](#) web page.

If a matter contains more than one reportable allegation, it is important to consider each allegation separately. For example, a child may make the following allegation:

*'My teacher hit me hard on the head at lunchtime and called me names and told me he hates me. I don't want to go back to school anymore.'*

This statement includes three allegations:

1. The child has alleged that the teacher hit the child 'hard on the head' which is an allegation of physical violence.
2. The child has alleged that the teacher 'called' the child 'names', which is an allegation that may cause significant emotional or psychological harm.

The child has alleged that the teacher told the child that the teacher 'hates' the child, which is a comment that, if true, may also cause significant emotional or psychological harm.

The purpose of separating the allegations is to ensure that the investigator considers each of the allegations and makes separate findings. This is important because, on the evidence in any given situation, one allegation may be substantiated but another allegation not.

It is also important for investigators to separate allegations of reportable conduct from allegations of worker or volunteer misconduct. This is because some types of worker or volunteer misconduct that are investigated for workplace disciplinary reasons do not involve reportable conduct. The investigation can consider both reportable allegations and allegations of worker or volunteer misconduct at the same time, but it is important that the final report clearly addresses each allegation as either a reportable allegation, or worker or volunteer misconduct.

### Other reporting requirements

It is important to remember that, depending on the situation, the head of an organisation might have more reporting obligations than just notifying the Commission of allegations of reportable conduct.

For example, if an allegation involves reportable conduct that might be criminal (including family violence), the matter should be **immediately reported** to Victoria Police in addition to the Commission being notified. Notifying the Commission alone does not mean that you have satisfied your obligation under the law to report criminal child abuse to police.

In addition, if an allegation raises concerns that a child is in need of protection, the matter should also be reported to the Department of Health and Human Services (DHHS). If you are a mandatory reporter (someone who has a legal obligation to report a suspicion of child abuse to DHHS), notifying the Commission alone does not mean that you have satisfied your obligations under the law to make a mandatory report to DHHS. You must still make a report to DHHS.

There are a range of other reporting requirements that apply to specific organisations such as those within the education, healthcare and early years sectors. Organisations should check with their regulators if they are unsure of their other reporting requirements.



If an allegation might involve criminal conduct and has been reported to Victoria Police, an investigator **must not** start their own investigation until and unless Police have told the investigator that they can start their reportable conduct investigation.

If an investigator has already started their investigation and then learns that Police are investigating the same matter, the investigator must put the investigation on hold straight away and discuss the matter with Police. The investigation must not continue until and unless Police tell the investigator that they can restart their investigation.



If an investigator or the head of an organisation is not sure what to do, they should contact the Commission or Victoria Police for help.

### **If Victoria Police are investigating**

It is important to remember that there will be times when investigations will need to be undertaken into allegations that involve possible criminal conduct. Even if these allegations have already been investigated by police, the organisation will still need to conduct their own investigation under the scheme. It is important to remember that the scheme uses a different standard of proof to criminal investigations. The standard of proof, the '*balance of probabilities*', is [explained more](#) on page 19.

## **2. Establishing an investigation**

### **Terms of Reference**

It is important to establish a focus and a clear purpose of an investigation in order to achieve the best results. The purpose must be relevant, realistic, achievable and within the investigator's power. The Terms of Reference for an investigation should set out the proposed scope of the investigation while taking into consideration any matters that will limit the ability of the investigator to achieve those objectives, for example, if witnesses are unavailable.

The Terms of Reference is a document that is agreed upon by the head of the organisation that is engaging the investigator and the investigator to ensure the investigation is going to meet the needs of the organisation.

The Terms of Reference should be broad enough to allow the investigator to reach a view about the organisation's policies for responding to reportable allegations as well as the alleged reportable conduct itself. This will ensure that any policy or systemic failure that might have caused children to be unsafe is identified and recommendations made to resolve these problems.

An [example Terms of Reference](#) is on page 34.



### **Determine the powers of the investigator**

An investigator's powers will be what the head of the organisation allows them to do, or have access to, within the organisation. How thorough and detailed an investigation will be is influenced by the powers available to an investigator. This might include the documents or files they can look at, the staff they are allowed to interview, or where they are allowed to go within the organisation.

Investigators must be aware of whether the head of the organisation has granted them the power to:

- visit the organisation and take photographs
- ask other workers or volunteers who might be witnesses to participate in an interview or to provide a statement
- obtain information from people about policies, procedures and practices
- access relevant records
- collect evidence including documentary evidence.

The powers of the investigator, together with what they are being asked to do, should be formally documented in the Terms of Reference so that both the head of the organisation and the investigator are clear about how the investigation will be undertaken.

### **Planning an investigation**

The key to a good investigation is planning. Planning can help to ensure that:

- the investigation is carried out methodically and in a professional way
- resources are used effectively and additional resources can be sought if required
- sources of relevant evidence are not overlooked and opportunities for people to remove, destroy or alter evidence are minimised
- alleged victims are not re-traumatised
- all relevant witnesses are identified and thought is given to which witnesses need to be interviewed and when. If a relevant witness is not going to be interviewed then the reason for this decision should be clearly recorded
- witnesses are interviewed separately
- the subject of allegation is given procedural fairness.

### **Developing an Investigation Plan**

The primary planning tool available to an investigator is the Investigation Plan.

An Investigation Plan should be prepared before any investigation commences. An investigation plan should identify what questions need to be answered, what evidence is needed to answer those questions, and the best way to obtain that evidence. This will include thinking about the witnesses who need to be interviewed.

If an investigator is aware that another organisation might have been involved in investigating the same or a related matter, it might be helpful to contact the Commission to discuss whether any relevant information can be shared.

A [template Investigation Plan](#) is provided on page 23. An example of [how an Investigation Plan could be completed](#) is on page 27.

## Conflicts of interest

It is important to ensure that an investigator does not have a conflict of interest that could give rise to a perception of bias, or actual bias, in the way they investigate reportable allegations.

There are three different types of conflict of interest:

- an actual conflict of interest, where a conflict of interest actually exists
- a potential conflict of interest, where a conflict of interest could happen in the future and steps should be taken to stop that from happening
- a perceived conflict of interest, where a reasonable person might think that an investigator could be influenced by a personal interest, regardless of whether the investigator is actually being influenced or not.

[Table 1](#) sets out examples of these different types of conflicts of interest, together with suggestions on how these conflicts can be managed.

Table 1. Examples of how to manage conflicts of interest

Type of conflict of interest	Example	Actions
Actual conflict of interest	An investigator is responsible for investigating an allegation of reportable conduct made against a member of the investigator's family.	The investigator should not conduct the investigation.
Potential conflict of interest	An investigator is responsible for conducting an investigation into a reportable allegation when the alleged victim and the investigator's child are on the same football team.	The investigator should report the potential conflict of interest to the head of the organisation and steps should be put in place to manage the potential conflict of interest or the investigator should not conduct the investigation.
Perceived conflict of interest	An investigator is asked to investigate a reportable allegation when there is a rumour that the investigator doesn't like the subject of the allegation.	The investigator should report the perceived conflict of interest to the head of the organisation and steps should be put in place to manage the perceived conflict of interest or the investigator should not conduct the investigation.

For investigators, it is important to ensure that any actual, potential or perceived conflict of interest is immediately disclosed to the head of the organisation. Where there is an actual conflict of interest, the investigator should not be appointed to conduct the investigation.

Steps can be taken to manage any potential or perceived conflicts of interest to reduce the risk of bias. If no appropriate steps can be taken to satisfactorily manage a potential or perceived conflict of interest to minimise the risk of bias, then the investigator should not be appointed to conduct the investigation.

## Letter of allegation

A letter of allegation is a document written by an appropriate person within the organisation (with the head of the organisation's approval) that clearly tells the subject of allegation the details of the reportable allegations made against them.

Organisations should provide a letter of allegation to the subject of a reportable allegation so that there is a record of the information that has been provided to them. This also ensures that the subject of the allegation is clear about what has been alleged against them and is a step in providing procedural fairness to the subject of allegation.

The Act does not require that a letter of allegation be provided at a particular time in the investigation. Heads of organisations should not delay the notifications or updates that they are required to provide to the Commission in order to prepare or finalise a letter of allegation.

The head of the organisation should discuss the provision of the letter of allegation with the investigator, who will be able to provide advice about whether a particular investigation needs a different approach. Organisations are encouraged to obtain their own independent legal advice in relation to any other legal obligations that might exist beyond the Act (for example, if there are investigation requirements that apply to a worker that are set out in an award, enterprise agreement or workplace policy).

When a letter of allegation is provided it should clearly set out each allegation and contain enough information for the subject of allegation to be able to understand exactly what the allegations are so that they can respond to them. For example, in the case of a Foster Carer who is alleged to have physically assaulted a child, the letter of allegation should contain detailed information about the reportable allegation including:

the name and age of the child who is the alleged victim

the details of the reportable allegation

when the reportable conduct is alleged to have occurred, including the date and time if it is known

where the reportable allegation is said to have occurred, including a description of the physical location or the address if it is known.

The letter of allegation should also advise the subject of allegation that a substantiated finding of reportable conduct can be reported by the Commission to the Working with Children Check Unit which may trigger a re-assessment of the subject of allegation's Working with Children Check.

The Commission can be contacted for help in deciding what the separate reportable allegations are. This might assist when there is more than one allegation or when there is more than one date, more than one location and/or more than one victim.

## When to provide a letter of allegation

Careful consideration should be given to the best timing of a letter of allegation. While the subject of allegation is entitled to know the details of a reportable allegation and be provided with an opportunity to respond, the subject of allegation might not be told about the allegation or the investigation until the evidence has been collected, including witness statements, documentation and any physical evidence.



Alerting the subject of allegation too early in the investigation may put the investigation at risk if there is some chance for evidence to be damaged or altered, or witnesses to be pressured to change their story.

The letter of allegation should inform the subject of allegation that they are entitled to nominate any person whom they consider should be interviewed as part of the investigation.

The subject of an allegation should also be told that they will be given an opportunity to tell their side of the story, to respond to evidence the investigator identifies and to have a support person of their choosing present in any interview. The subject of an allegation should be invited to respond either in writing or by way of an interview. Some workers might also have a right to consult with or have a union representative or lawyer present with them during any investigation meeting, depending on the organisation's workplace policies, or any applicable workplace award, enterprise agreement or individual employment contract.



Investigators should keep in mind that the requirements of procedural fairness mean that the allegations must, at an appropriate time before any adverse findings are made, be put to the subject of allegation.

An [example letter of allegation](#) is on page 32.

### 3. Conducting a thorough investigation

#### Gathering evidence

There are a number of different types of evidence that might be relevant to an investigation. Sometimes evidence can be difficult to obtain, for example in situations where time has passed since the reportable conduct allegedly occurred and witnesses are hard to locate. In these cases investigators should make reasonable efforts to gather relevant evidence and these efforts should be explained in the final report.

#### Types of evidence

In an investigation into a reportable allegation, the main sources of evidence are likely to be one or all of the below types:

**Physical evidence**, including documentary evidence such as emails or photos; or records such as rosters or incident reports; or objects such as mobile phones or computers

**Site inspections**, which may lead to an investigator taking photographs of locations or making a diagram

**Direct evidence** from the alleged victim, the alleged victim's parents or carers, from witnesses about what they saw, heard or did as well as from the subject of allegation themselves

**Expert evidence**, including technical or specialist advice from, for example, a doctor, psychologist or a computer expert.

#### Collecting evidence

Evidence collected should be relevant to the investigation, reliable and probative (providing proof of something), so that it can help to establish whether the reportable allegations amount to reportable conduct, that is, whether it is more likely than not that the reportable allegations either occurred, or did not occur.

An investigator should ensure the evidence gathered is the best available and is stored and documented properly so that, where applicable, it will be able to be relied on in any future legal proceedings that may arise (see 'Storing evidence' below).

The investigator should regularly refer back to the Investigation Plan as a reminder of what allegations the investigator is considering, and therefore what evidence is needed to substantiate those allegations.

As outlined above, the investigator should keep in mind their powers when it comes to collecting evidence. All evidence that is collected should be clearly documented.

## Storing evidence

Investigators should ensure that original documents and other evidence collected during the investigation are stored securely in their original condition.

It is helpful to record how the evidence was collected and who has handled the evidence before it came into the investigator's possession.

It is good practice to place each piece of evidence in a resealable bag or envelope with a label stating what the evidence is, where it was gathered (including the date and time), and who provided the evidence to the investigator.



If you are unsure about how to handle the evidence collected, you can contact the Commission for advice.

## Conducting interviews

All relevant witnesses should be identified and, where possible, interviewed. In some cases the evidence of only one witness may be enough to prove or disprove an allegation; however, gathering additional evidence that supports the evidence already collected is good practice because it gives greater support to the findings ultimately made. The Commission also expects that both the alleged victim and the subject of allegation will be interviewed unless there is a good reason not to. The reason why the alleged victim or subject of allegation was not interviewed should be documented and included in the investigation report.

Preparation is the key to good interviewing. Planning an interview, and having an understanding of what information a particular witness might give, will enable the investigator to plan the order they want to ask their questions in and keep the interview on track.

It may be helpful to arrange interviews with witnesses 'off site' if appropriate. This will avoid other people, including the subject of allegation, observing or overhearing what the witnesses are saying. Often witnesses can be fearful of telling an investigator everything they know when an interview is conducted within the workplace.

If it is not possible to record an interview, or if the witness does not agree to the interview being recorded, the investigator should take very detailed notes of the discussion. The notes of the discussion should be written word for word as much as possible and should include the name, position title and professional address of the witness if appropriate. The date, time and place where the interview occurred should also be recorded.

## Interviewing a child

In most reportable conduct investigations, the alleged victim of the reportable allegation will be a child or children. There is also the chance that another child or children witnessed the reportable allegation that is being investigated.



A child involved in an investigation into a reportable allegation, whether they are the alleged victim or a witness, should be interviewed unless there is a good reason why this should not occur.

The approach to interviewing a child is different to interviewing an adult and requires careful thought and planning. Depending on the reportable allegation, it may be desirable for the investigator to seek help from someone with specific and appropriate training and expertise to interview the child. It is very important that an investigator gives a child who is an alleged victim or a witness the opportunity to tell their story, where it is appropriate, being mindful to avoid causing any further trauma to the child.

In thinking about how to interview a child, the investigator should consider a range of factors including:

- if the child has been interviewed already
- the age and developmental stage of the child
- the child's level of maturity
- ensuring cultural safety and [facilitating the child's participation and inclusion](#) (see page 14)
- the nature of the reportable allegation
- how the reportable allegation might have impacted upon the child
- whether the child has a disability and what that means, if anything, for the interview
- support for the child.

When interviewing the alleged victim, it is important to try to gather evidence about the reportable allegation as well as any impact the alleged reportable conduct has had on the victim. This is especially important when investigating conduct that has caused significant emotional or psychological harm.

If it is appropriate to interview a child and it is not possible to have the interview conducted by a specialist, the following checklist is intended to provide some basic guidance to assist investigators.

**Do:**

- Learn the relevant background first.
- Respect the rights of the child.
- Build a rapport with the child before questioning the child about the reportable allegation.
- Explain the purpose of the interview to the child.
- Understand the developmental stage of the child.
- Use appropriate language when speaking to the child.
- Ask simple and clear questions.
- Ask one question at a time.
- Limit the number of people present.
- Allow the child an appropriate support person.
- Minimise distractions and interruptions.
- Keep interviews as brief as practicable.

**Don't:**

- Ask leading questions (questions that suggest the answer).
- Touch the child.
- Intimidate the child.
- Make the child feel bad about what they are disclosing.
- Ask more than one question at a time.
- Interview the child more times than is absolutely necessary.



An investigator should consider seeking expert advice about how and when to interview a child, both to avoid causing harm to the child and also to ensure that the best evidence possible can be gathered from the child.

## **Promoting inclusion and participation of all witnesses**

It is important that an investigator gives thought to how they can promote the inclusion and participation of all people who are relevant to the investigation of a reportable allegation. This will help the investigation as it will enable the investigator to gather the best possible evidence from witnesses by making sure that they feel safe, respected and heard when asked to tell their story.

### *Ensuring cultural safety*

An important part of promoting the inclusion and participation of witnesses who are Aboriginal and/or Torres Strait Islander, or from culturally or linguistically diverse backgrounds, is to give thought to how to ensure that witnesses feel culturally safe. Cultural safety refers to the need to create an environment where there is no challenge or denial to a person's identity, who they are and what they need.

A safe and culturally responsive environment is one that acknowledges, respects, and accommodates diversity, and where people feel safe and secure in their identity, culture and community. In a practical sense, investigators can facilitate cultural safety by:

- being respectful and flexible in their attitudes towards people from cultures other than their own, and recognising their own, often unconscious, cultural bias
- working to develop trust and rapport with the witness
- recognising and avoiding stereotypes.

### *Facilitating an inclusive, safe environment for all witnesses*

Investigators should also give consideration to how they can create a safe and respectful environment to facilitate the inclusion and participation of witnesses who:

- identify as same-sex attracted, intersex and gender diverse, or
- are people with disability.

When an investigator is giving thought to how they can create a safe and respectful environment for a member of one of the above communities, it is important to be mindful of the following:

- people who identify with each of the above communities should be treated as individuals rather than as a homogenous group

- investigators should reflect on any unconscious bias about the person who is to be interviewed and how this bias may impact upon the understanding or assumptions the investigator might make about the witnesses' needs or capabilities.

Another way to promote inclusion and participation of all witnesses is to consider whether a witness might require or benefit from some additional support or help to tell their story. This assistance might be in the form of a familiar support person who can attend an interview with the witness, or in the case of a witness with disability, they might need to use an assisted communication device or require an individualised communication approach. An investigator should seek the views of the witness's carer, guardian or advocate (when they have one).

Wherever possible, the views of specialist service providers should be sought in relation to any of the above communities to ensure that the witness is interviewed in an appropriate, respectful and safe way.

## **Investigations involving family violence**

Physical violence committed against, with or in the presence of a child is a form of reportable conduct. Similarly, exposure to family violence perpetrated by one parent against another can cause significant psychological or emotional harm to children, which is another form of

reportable conduct. This means that there will be times when an investigator is required to investigate a reportable allegation that relates to family violence committed within the home.

Family violence is extremely serious and often involves criminal behaviour. If the matter has not previously been reported to police it should be reported immediately and no further action taken until and unless police advise that the reportable conduct investigation can proceed.

Family violence is complex by nature and there is often a continuing threat to the safety or to the lives of all affected family members, including children, and sometimes to extended family members. An investigation, if not appropriately and safely managed, could result in an increased risk to those family members.

It is also possible that the reportable allegation being investigated may already have been investigated by Victoria Police. In this case, it is recommended that the investigator contact the police investigator as the police investigator may be able to provide some information or advice relevant to the reportable conduct investigation.

Victoria Police is also part of the Victorian Integrated Family Violence Service System and it works closely with other government bodies as well as non-government organisations to improve the safety of all victims of family violence. Victoria Police may be able to alert specialist services that are already engaged with the family, so that these services can provide the family with additional assistance and support during the investigation. Police will also be able to provide advice to the investigator about how the investigation can be undertaken in a safe manner and how any risks can be appropriately managed.

It is important that the investigator remains patient and doesn't make assumptions when investigating reportable allegations that relate to, or involve, family violence. While this is relevant to any investigation, some perpetrators of family violence can be so charismatic that people often don't believe they are capable of committing family violence. In some cases, this could lead to an investigator developing an unconscious bias in favour of the subject of allegation. It is also important that investigators are aware of the risk of undue influence, power imbalances and/or possible manipulation by the subject of allegation. Investigators should not lose sight of the need to maximise the safety and support of those involved when investigating these matters.

If the alleged conduct being investigated has not previously been reported to police, the family may not have been referred to support services. For further information about various support services and the role of police in response to family violence incidents, refer to the [Victoria Police website](http://www.police.vic.gov.au) [www.police.vic.gov.au](http://www.police.vic.gov.au) and search for 'family violence publications'.

### **Order of interviews**

The first interview is often with the person who notified the head of the organisation of the reportable allegation. This interview is generally undertaken as part of an investigator's initial inquiries to better understand what is alleged to have happened and to plan how the investigation should be undertaken. All other interviews should be conducted without delay to reduce the chance that people will start to forget the details of the incident. This is particularly relevant to the alleged victim and witnesses who are children.

The order in which the remaining witnesses are interviewed will depend on the importance of their evidence, their connection with the subject of the allegation and their availability. It is helpful not to have a lot of time between witness interviews. Avoiding delays between one witness interview and the next will minimise the opportunity for the witnesses to discuss their evidence, which could cause a witness to become confused about what they remember, or create an opportunity for one witness to influence another witness.



Where possible, the person who is the subject of allegation should be interviewed last so that the important evidence that has been collected can be explained to them and they can be given an opportunity to provide their response to all of the evidence.

### **Record keeping**

Organisations should be aware of legal, contractual, professional and other obligations to document allegations of reportable conduct and maintain proper records.

An investigator should document all information about the investigation including everything they did and why. The investigator should also make records of all of the evidence collected. All records should be stored securely and organisations should be aware of their obligations around how long they need to keep those records.

Organisations' policies in relation to reportable allegations should identify the workers or volunteers who are permitted to access and share investigation records, the reasons for and circumstances under which they can be accessed, and who has responsibility for looking after the records and keeping them secure.

Any policies regarding reportable allegations should note that records might need to be shared with other organisations, such as regulatory bodies or law enforcement agencies.

Individuals whose personal information is contained in a record, including that of victims and the subject of an allegation, may also have a right to access such records under relevant legislation or policy (for example, the relevant freedom of information or privacy legislation).

Investigations into reportable allegations might also include the provision of medical or other health records, where more stringent disclosure and document retention obligations will apply.

### **Inspecting a site**

If an investigator makes a site inspection as part of an investigation (that is, the investigator visits the organisation or place where the reportable allegation is alleged to have happened), the investigator should be clear about why he or she is undertaking the site visit and what evidence or other information the investigator is seeking. The investigator should take detailed notes of their visit and may think about taking photographs.

### **Procedural fairness**

The Act provides that a worker or volunteer who is the subject of a reportable allegation is entitled to receive natural justice in investigations into their alleged conduct. Natural justice is often called procedural fairness.

It is important that the procedures an investigator applies when conducting an investigation are '*fair*' and '*reasonable*'. This will usually include ensuring that, before any findings are made or any disciplinary action is subsequently considered, the subject of allegation:

- is provided with a letter of allegation prior to any interview being undertaken
- is put on notice of the nature and scope of the allegations
- is provided with an opportunity to have a support person (or, if entitled through an award, enterprise agreement, individual employment contract or workplace policy, a lawyer or union representative) present with them
- is provided with an opportunity to respond to the allegations and any relevant evidence that has been obtained during the course of an investigation
- is made aware of the consequences of the investigation in the event that any adverse findings are made
- has a reasonable opportunity to respond to the relevant evidence

has a reasonable opportunity to give their side of the story  
has the responses that they have provided considered by the investigator, organisation or head of the organisation before any final decision is made.

Procedural fairness does not require that a subject of allegation must be notified that a reportable allegation has been made about them straightaway. For example:

the subject of allegation does not need to be told about allegations when the Commission is first notified or that are plainly false (for example, the subject of allegation was on holidays at the time the alleged incident occurred)

careful consideration must be given to when the subject of allegation should be told about an allegation in order to ensure the investigation is not compromised but remains procedurally fair.

The subject of allegation should be given a reasonable opportunity to tell their side of the story. They might want to do this in person or they might want to put it in writing, for example in a letter responding to the letter of allegation.

It will be important for the investigator to think about whether they will be able to make a fair decision based on all of the relevant evidence if the subject of allegation only wants to give their response in writing and not in person. This is important because investigations into reportable allegations might involve credibility assessments. For example, where only the alleged victim and the subject of the reportable allegation witnessed the relevant events and had different recollections of events, credibility assessments may only be appropriately made by an investigator in person. In this example, an assessment of credibility may need to be undertaken where an investigator is to make a determination as to whose evidence is preferred (that is, between the person who is the subject of the reportable allegation and the alleged victim).

Where a response is only provided in writing, the investigator will also not have a chance to ask the subject of allegation any questions to make sure there is no misunderstanding or to clarify their evidence unless those further queries are addressed in writing.

During a reportable conduct investigation, the subject of allegation may choose, but is not required, to give information or documents that support their version of events.



Organisations should comply with the requirements of procedural fairness when investigating an allegation and determining outcomes. By observing procedural fairness, an organisation manages risk properly, ensures that it responds in a manner that is fair to everyone involved and minimises the chance that its decisions might be challenged.

## **Confidentiality**

The details of any investigation into a reportable allegation should be kept confidential unless there is a good reason not to do so. All persons involved in an investigation into a reportable allegation should be told that the investigation must be kept confidential except to the extent that there is a need to inform those who have a need to know (for example, to manage any ongoing risks to children, to obtain legal advice or for a child to speak with their parent, guardian, etc.).

By keeping the identity of the person making the reportable allegation and the child who is the alleged victim confidential, the organisation will minimise the risk of any harm to children or distress to the people involved in an investigation.

Another important reason to keep information about the investigation confidential is to protect the integrity of the investigation. If a potential witness considers that they are unable

to trust the investigator not to tell others what they have said, they may be reluctant to come forward with relevant evidence.

Where evidence obtained in an investigation is kept confidential, there is less risk of contamination of the evidence. In other words, there is less chance of witnesses discussing the evidence and either confusing each other, or else one witness encouraging another to change their story. For this reason, any witnesses interviewed in the course of an investigation must be asked not to discuss the case with other witnesses or anyone else.

Before interviewing any witnesses, investigators should check whether they have discussed the case with anyone else and record the response.

It is also likely that the organisation will have its own confidentiality or privacy policy with which an investigator will need to comply.

In some cases an organisation may wish to, or be required to, disclose some information about the reportable allegation, for example where a view is formed that a child is in need of protection, or parents are concerned about the safety of their children. Organisations may also wish to disclose some information relating to the investigation or the findings once the matter has been completed. This might be to help the organisation manage future risks to children. Before disclosing any information about an investigation or findings, organisations should consider getting their own advice regarding their legal obligations under the Act as well as other privacy laws.

### **Managing risks during the investigation**

When an allegation has been made, the investigator should assess the risks associated with the allegation and speak to the head of the organisation about any measures needed to reduce risk. Managing risks involves assessing the safety of all children (not just the alleged victim) and other affected people, and deciding what actions should be taken to ensure their safety and wellbeing. Some factors that should be considered in any risk assessment include:

- the nature and seriousness of the reportable allegation
- the vulnerability of the children affected
- the position of the subject of allegation within the organisation and the nature of the work they do
- whether the subject of allegation has unsupervised access to children.

A risk assessment may also involve deciding what action (if any) should be taken with respect to the subject of allegation while the investigation is being carried out. The head of the organisation should take action that is needed to keep children and other staff safe. This could include supervising the subject of allegation, stopping them from having direct contact with children, or in very serious cases, suspending them or taking other similar action to remove them from the workplace. If the head of the organisation is considering taking immediate action against the subject of allegation, they should consider the need for advice about their obligations under other workplace laws, awards or enterprise agreements.

The head of the organisation should also keep the subject of allegation's welfare and wellbeing in mind when making decisions as far as that is appropriate. While the safety and wellbeing of children is the most important consideration in the context of investigations into reportable allegations, organisations should consider the welfare of the subject of allegation and other witnesses as far as appropriate in the circumstances.

## 4. Assessing the evidence

### Standard of proof

A reportable conduct investigation should apply the '*balance of probabilities*' as the standard of proof. This means that an investigator should consider whether it is *more likely than not* that reportable conduct has occurred.

This may involve comparing conflicting versions of events given by different witnesses in order to decide which version is the more probable. In determining what is more likely than not to have happened, investigators do not need to undertake a mathematical or mechanical assessment of probabilities. Rather, a person conducting an investigation and making findings should actually be persuaded, based on the available evidence, that reportable conduct has occurred before making such a finding.

### Assessing the evidence

When assessing the evidence, a decision-maker must make an evaluation of the strength or weight of the evidence. The more weight that can be placed on a piece of evidence, the more persuasive it is.

In order to determine how much weight to place on a piece of evidence, the decision-maker should consider:

How reliable is the evidence?

Is there another piece of evidence that either supports or contradicts the evidence in question?

How plausible is the evidence in all of the circumstances – does it have a '*ring of truth*' about it?

What is the source of the evidence? Is the evidence objective, such as CCTV footage, or is it just a rumour?

Do relevant witnesses give consistent accounts?

Was the person who is the subject of the allegation given an opportunity to comment on the evidence and were they given an opportunity to tell their side of the story?

A decision-maker should base their findings on evidence of weight and not on suspicion, rumours or hunches.

## 5. Finalising an investigation

### Preparing a report

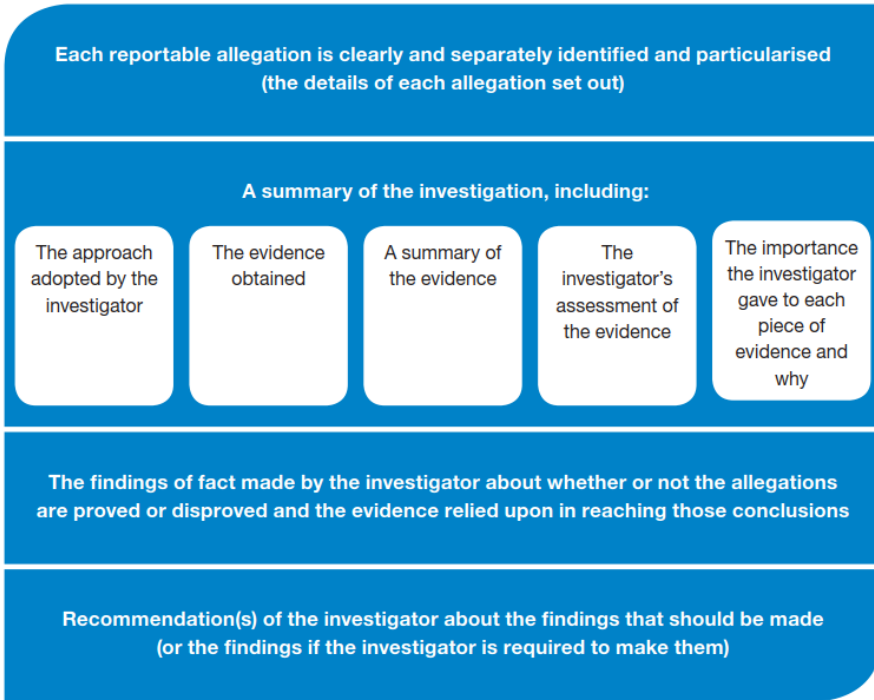
Depending on the Terms of Reference, an investigator might be required to make findings or they might be required to make recommendations to assist the decision-maker to make findings.

Regardless of who will make the findings, when an investigator finishes an investigation, a report must be prepared for the head of the organisation.

The information contained in the report should allow any reader to understand how the investigation has been conducted and see that the investigation has made fair findings based on the evidence obtained during the investigation. The evidence should be set out in such a way that it clearly explains to a reader how and why the investigator reached his or her conclusions.

An investigation report should reflect the terms of reference and should set out, as a minimum, the inclusions as shown in [Figure 3](#).

Figure 3. Investigation report inclusions



An [example Investigation Report](#) is provided on page 36.

## 6. Making or recommending findings

As outlined above, some investigations might require the investigator to make findings while other investigations will require the investigator to make a recommendation to help another decision-maker within the organisation to make the findings. This is something that should be included in the investigator's letter of engagement or other scoping document.

In making findings or recommendations about findings, the investigator needs to understand the different types of findings used by the Commission under the scheme.

If a decision-maker other than the investigator will be making the findings, it is important that the decision-maker reviews all of the evidence as well as the assessment the investigator made of that evidence. The decision-maker must make sure they agree with the conclusions reached by the investigator before adopting them. However, the decision-maker should not depart from the recommendation of the investigator unless there is good reason to do so based on the evidence.

### Types of findings

The investigator makes findings as to whether the allegations are substantiated or not on 'the balance of probabilities'. The available findings are set out and summarised in [Table 2](#). For more information about each of the findings refer to the Commission's [Information Sheet 8 – Investigation findings](#), which can be found on the Commission's [Reportable Conduct Scheme information sheets](#) web page.

Table 2. Types of findings and their definitions

<b>Finding</b>	<b>Definition</b>
<b>Substantiated</b>	The alleged reportable conduct occurred on the balance of probabilities
<b>Unsubstantiated – insufficient evidence</b>	There was significant strong evidence that supports the allegation, but the evidence falls short of being able to make a substantiated finding
<b>Unsubstantiated – lack of evidence of weight</b>	A lack of evidence made it too difficult to fully investigate an allegation despite the investigator’s reasonable efforts
<b>Unfounded</b>	A positive finding, on the basis of being more likely than not, that the alleged reportable conduct did not occur
<b>Conduct outside the scheme</b>	The conduct as alleged occurred, but in all of the circumstances was found not to be reportable conduct for the purposes of the Act

## Resources



Organisations and regulators that are required to comply with the Reportable Conduct Scheme should contact the Commission for further guidance:

Telephone: 03 8601 5281

Email: [contact@ccyp.vic.gov.au](mailto:contact@ccyp.vic.gov.au)

Information is also available on the Commission's website at [www.ccyp.vic.gov.au](http://www.ccyp.vic.gov.au)

### Example: Blank Investigation Plan

#### Matter details

Subject of allegation details:

RCS reference number:

Organisation contact:

Contact title/position:

Organisation address:

Organisation phone number(s):

Secure email:

Investigator:

#### Investigation overview

How did the information come to the attention of the organisation?

Who are the people involved? Who is the alleged victim? Who is the subject of an allegation? Who are each of the relevant witnesses that are known at this time?

Have any initial inquiries been carried out by the organisation – what was learned?

Why is the investigation being conducted?

What details are known at this time?

#### Allegations

##### *Allegation 1*

Each allegation should be separate (dates/victim/location, etc.). For example:

On **[date]** or between **[date]** and **[date]** it has been alleged by **[name of discloser]** that **[name of the subject of the allegation]** may have engaged in the following conduct:

***[name of the subject of the allegation] approached [name of alleged victim] and said words to the effect of [insert words alleged to have been used] about [insert name of alleged victim] in the presence of [insert names of children who may have witnessed the allegation].***

It is alleged that the above factual allegations may constitute reportable conduct because the behaviour could cause significant emotional or psychological harm to a child.

### *Allegation 2*

Complete if another allegation was made.

#### **Subject of the allegation**

Name:

Address:

Phone number:

Position held:

Email address:

Time in position:

#### **Risks**

##### *Identify and evaluate*

Identify the context of the investigation and identify any risks; that is, what are the risks and why are they risks?

Evaluate each risk systematically and at regular intervals if required. Is there anything that can be done to remove or lessen the risks?

##### *Issues/notes*

Consider whether the investigation should be undertaken by internal or external investigators.

Make a list of possible people affected by the investigation and possible outcome

##### *Conflicts of interest*

Consideration should be given to any actual, potential or perceived conflicts of interest of the investigator.

#### **Scope of investigation**

What is the investigator being asked to do? This means that the allegations need to be clearly defined and set out and the investigator should be asked to make findings in relation to each of the allegations.

Define the limit of the investigation. What questions need to be answered so that a decision can be made about whether or not the reportable conduct happened and happened in the way that is alleged? This will form the Terms of Reference of the investigation

The Terms of Reference are agreed to prior to the investigation starting and are recorded

It is essential that the scope be limited to the allegations specified and in the context of the specific legislation or policy. If any additional allegations arise during the investigation, the Investigation Plan should be updated to deal with those new matters.

The scope of the investigation will be included in the Terms of Reference.

#### **Decision-maker**

Who is the decision-maker? This will usually be the head of the organisation.



## **Current information**

### *Source*

Name: John Smith.

Information: statement made providing evidence of [example].

Relevance (to the allegation): allegation 1, element 4.

### *Source*

Name: ASIC.

Information: historical extract of [Example Pty Ltd].

Relevance (to the allegation): allegation 1, element 2.

## **Possible witnesses**

### *Name*

Example: Ian Franklyn.

Information: possible witness to alleged incident at ABC School.

Relevance (to the allegation): was present when the incident is alleged to have occurred. May be able to provide insight into whether or not the alleged incident occurred at ABC School.

### *Name*

Example: Alex Tsiolkas.

Information: may have medical evidence of injury.

Relevance (to the allegation): may be able to assist in establishing whether the behaviour could constitute significant emotional or psychological harm to a child.

## **Possible evidence**

### *Item/document*

Example: statement from Ian Franklyn

Source: Contact, ABC School.

Relevance (to the allegation): received the complaint of reportable conduct from the child and has information that has been obtained directly from the child when the complaint was received.

### *Item/document*

Example: medical evidence of injury.

Source: Contact, Ourtown Medical Centre.

Relevance (to the allegation): may be able to provide medical evidence of injury. In order to obtain this information I will need to speak with the child's parent or guardian and ask whether they would provide their consent to obtain this information.

## **Investigation action plan**

Action:

Date/time action taken or required to be taken by:

Person to action:

Notes: is an expert opinion required? Any other notes

## Example: Completed Investigation Plan

### Matter details

Subject of allegation details: Joan Smith

RCS reference number: RCS/2017/6938

Organisation contact: Mr Alex Tsiolkas

Contact title/position: CEO

Organisation address: Excellent Child Care Victoria Pty Ltd, 1001 Collins Street, Melbourne

Organisation phone number(s): (03) 9123 4567

Secure email: ceo@excellentchildcare.com.au

Investigator: Julie Brown, Flash Investigations Pty Ltd

### Investigation overview

The Subject of Allegation (SOA), Joan Smith, is a qualified childcare worker and is employed by Excellent Child Care Victoria Pty Ltd, 1001 Collins Street, Melbourne.

On Monday 4 July 2017, Mr Alex Tsiolkas (CEO) received a report from the alleged victim's mother, Fiona Nguyen, of a reportable allegation involving her child, Sonny, at Excellent Child Care Victoria Pty Ltd, located at 1001 Collins Street, Melbourne (the details of the reportable allegation are set out at item 2 below). Alex took careful notes of his discussion with Fiona. Fiona provided Alex with a photograph of Sonny's bruised hand.

This matter was identified as an allegation of physical violence against a child, which is a reportable allegation under the Child Wellbeing and Safety Act 2005 (**the Act**). Victoria Police (**the Police**) and the Commission for Children and Young People (**Commission**) were, within 3 business days, notified of a reportable allegation under the Child Wellbeing and Safety Act 2005, pursuant to Section 16M (1)(a).

On Wednesday 5 July, 2017, the Police advised that they would not be undertaking an investigation and advised Alex that they had no objection to Excellent Child Care Victoria Pty Ltd commencing its investigation into the reportable allegation.

### Allegations

#### *Allegation 1*

**Physical violence committed against a child** and/or in the alternative **Misconduct as defined by the Quality of Care Policy:**

On Monday 4 July 2017, Sonny may have been in Joan's care.

Sonny allegedly arrived home later that day.

It is alleged that Sonny told Fiona that Joan slapped Sonny on the hand.

Fiona says that she observed bruising on Sonny's hand.

### Subject of the allegation

Name: Joan Smith

Address: 1 Anywhere Street, Anytown VIC 3999

Phone number: (03) 9123 4599

Position held: Childcare Worker

Email address: JS@anyemail.com

Time in position: 4 years

### **Risks**

Risk: alleged victim is 5 years of age.

Issues/notes: the services of an interpreter were considered, but were not required on this occasion.

Conflicts of interest: nil.

### **Scope of investigation**

The scope of the investigation is to determine if, on the balance of probabilities, the allegation of physical violence and/or the allegation of Misconduct pursuant to the Quality of Care Policy against a child by Joan Smith, as specified in Section 2 of this Investigation Plan, is substantiated or not.

### **Decision-maker**

Mr Alex Tsiolkas

CEO, Excellent Child Care Victoria Pty Ltd, 1001 Collins Street, Melbourne

(03) 9123 4567

### **Current information**

*Alex Tsiolkas*

Information: received report of allegation from Fiona Nguyen.

Relevance (to the allegation): witness and CEO of Excellent Child Care Victoria Pty Ltd.

*Fiona Nguyen*

Information: informed by son (Sonny) re allegation. Made report to Alex Tsiolkas.

Relevance (to the allegation): witness and mother of victim (Sonny Nguyen).

### **Possible witnesses**

*Sonny Nguyen*

Position: alleged victim.

Relevance:

alleged victim

can provide details of the reportable allegation.

*Fiona Nguyen*

Position: mother of alleged victim.

Relevance:

provided notification of the reportable allegation

has information regarding incident, injury and the impact on Sonny

mother of alleged victim

reported the reportable allegation to Alex Tsiolkas.

*Penny Nguyen*

Position: support person.

Relevance: provided support for alleged victim.

*Jane Collins*

Position: senior childcare worker.

Relevance:

subject of allegation reports directly to her (line manager)  
had received other complaints re the subject of allegation  
may provide information on performance and attitude towards the children  
review note in subject of allegation's file re previous complaints.

*Nicole Amorosi*

Position: childcare worker.

Relevance:

may have information relevant to the previous complaint  
may have details regarding the alleged incident  
rostered to work with the subject of allegation on the day of the alleged incident  
observed alleged incident  
stated in initial inquiries that the subject of allegation was rough with children.

*Anthony Khoury*

Position: childcare worker.

Relevance:

may have information relevant to the complaint.  
may have details regarding the alleged incident  
rostered to work with the subject of allegation on the day of the alleged incident  
observed alleged incident  
stated in initial inquiries that the subject of allegation was rough with children.

*Joan Smith*

Position: childcare worker.

Relevance: subject of allegation.

### **Possible evidence**

*Staff roster*

Source: Alex Tsiolkas, CEO

Relevance: may have information regarding subject of allegation working with alleged victim and other witnesses.

*Policies and procedures re code of conduct*

Source: Alex Tsiolkas, CEO

Relevance: will provide evidence of policies and procedures regarding appropriate contact with children.

*SOA personnel record and training record*

Source: Alex Tsiolkas, CEO

Relevance: will provide evidence of subject of allegation's personnel record and training record.

*Photographs of the scene*

Source: Alex Tsiolkas, CEO or staff member

Relevance: will show scene of alleged incident.

**Timeline**

ACTION: Contact all available witnesses and organise statement times

Date/time action taken or required to be taken by: 6 July 2017

Person to action: investigator.

Notes: 2 hours.

ACTION: Obtain policies and procedures re Code of Conduct

Date/time action taken or required to be taken by: 14 July 2017

Person to action: investigator.

Notes: 1 hours.

ACTION: Obtain SOA Personnel Record and Training Record

Date/time action taken or required to be taken by: 14 July 2017

Person to action: investigator.

Notes: 1 hours.

ACTION: Photograph scene

Date/time action taken or required to be taken by: 14 July 2017

Person to action: investigator.

Notes: 14 hours.

ACTION: Conduct witness interviews and draft statements

Date/time action taken or required to be taken by: 25–28 July 2017

Person to action: investigator.

Notes: 10–12 hours.

ACTION: Interview SOA

Date/time action taken or required to be taken by: 28 July 2017

Person to action: investigator.

Notes: 2 hours.

ACTION: Analyse evidence

Date/time action taken or required to be taken by: 29 July 2017

Person to action: investigator.

Notes: 4 hours.

ACTION: Summarise evidence

Date/time action taken or required to be taken by: 29 July 2017

Person to action: investigator.

Notes: 4 hours.

ACTION: Complete and submit Investigation Report

Date/time action taken or required to be taken by: 30 July 2017

Person to action: investigator.

Notes: 6–8 hours.

## Example: Letter of allegation

Organisations should consider whether any other laws or workplace agreements, such as awards or enterprise agreements, might be relevant to a letter of allegation.

This example letter of allegation deals only with the issue of a reportable allegation. Organisations may wish to give thought to whether their requirements mean that a letter of allegation should also make reference to potential breaches of the organisation's policies, together with any consequences that may flow as a result. If an organisation is unsure of its obligations, the Commission recommends that the organisation seeks legal advice.

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### Private & Confidential

Ms Joan Smith  
1 Anywhere Street  
Anytown VIC 3999  
Wednesday 6 July 2017

Dear Ms Smith,

#### **Allegation of Reportable Conduct – Alleged Physical Violence Against a Child**

I have been notified of an incident that names you as the alleged subject of a reportable allegation.

It has been alleged that you may have committed physical violence against a child. This reportable allegation has been notified to Victoria Police and the Commission for Children and Young People.

The substance of the allegation is as follows:

on Monday 4 July 2017, Sonny Nguyen (5 years old) may have been in your care

Sonny allegedly arrived home later that day

it is alleged that Sonny told Fiona Nguyen (Sonny's mother) that you may have slapped Sonny on the hand

Fiona says that she observed bruising on Sonny's hand, and

Fiona also says that she has a photograph of Sonny's bruised hand.

#### **Physical Violence Against a Child**

If the above allegation is substantiated, your conduct may meet the definition of reportable conduct under the *Child Wellbeing and Safety Act 2005*. The Commission for Children and Young People will be advised of the finding. The Commission for Children and Young People may also advise the Working with Children Check Unit if a substantiated finding of reportable conduct is made, which could trigger a reassessment of your Working with Children Check. The Company may also have to make further notifications in accordance with the *Child Wellbeing and Safety Act 2005*; and take any appropriate action in response to the finding.

In accordance with our policies, you have the opportunity to provide a written response to the allegation by **13 July 2017**. Your response will be taken into consideration as part of our interview and investigation process. You will be invited in writing for an interview in due course, at which time you are entitled to have a support person accompany you.

If you believe that any person may have information relevant to the investigation, please let me know.

#### **Confidentiality**

To facilitate the investigation, we ask that you keep this matter confidential. This means you should not discuss or disclose any matter relating to this investigation with any person, other



than me, your representative or your support person. You should also ask them to keep this matter confidential. If you become aware of any breach of confidentiality regarding the investigation, please contact me immediately.

#### **Harassment**

It is against the Company's policies for any person to victimise, harass or retaliate against you as a result of your involvement in this matter. You should immediately contact me if you think this has occurred. Likewise, it is against our policies for you to victimise, harass or retaliate against any person or witness involved in this matter. If you do so, you may be subject to disciplinary action, up to and including termination of your employment.

#### **Next Steps**

Julie Brown (licence # 123 345 567 DF) of Flash Investigations Pty Ltd has been appointed as the Company's independent investigator. Julie will be in contact with you directly to arrange a meeting time. If you decide to bring a support person with you to the investigation meeting, I ask that you provide Julie with advance notice of who that person will be.

Once Julie has concluded her investigation, she will compile an investigation report. I will then decide what (if any) further steps may be undertaken in accordance with the Reportable Conduct Scheme.

I will be your Company contact person during the course of this investigation process. Please do not hesitate to contact me in the meantime with any questions, or if you require any additional support during this time.

Yours sincerely,

Alex Tsiolkas, CEO  
Excellent Child Care Victoria Pty Ltd  
1001 Collins Street  
Melbourne VIC 3000

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## Example: Terms of Reference

### 1. Scope of investigation

Julie Brown, Investigator, at Flash Investigations Pty Ltd (**Flash Investigations**) has been engaged by Excellent Child Care Pty Victoria Ltd (**Excellent Care**) to conduct an independent investigation in relation to the allegations.

Flash Investigations is instructed by Excellent Care to conduct a fact-finding investigation in relation to the allegations. Flash Investigations is asked to find whether the facts, as found, amount to reportable conduct as defined in the *Child Wellbeing and Safety Act 2005*.

### 2. Reportable allegations

Excellent Care employs Joan Smith as a childcare worker. It has been alleged:

On Monday 4 July 2017, Sonny Nguyen (5 years old) may have been in Ms Smith's care.

Sonny allegedly arrived home later that day after being in Ms Smith's care.

Sonny told Fiona Nguyen (Sonny's mother) that Ms Smith may have slapped Sonny on the hand.

Fiona says that she observed bruising on Sonny's hand.

Fiona also says that she has a photograph of Sonny's bruised hand.

The above facts are together referred to as the **allegations**.

### 3. Further allegations

If any further allegations arise during the investigation, Flash Investigations will advise Excellent Care. If Excellent Care considers that the additional allegations are relevant to this investigation, these Terms of Reference will be amended to include the investigation of the additional allegations. If this occurs, Ms Smith will be advised of the additional allegations and be provided with an opportunity to respond to the additional allegations before the investigation is finalised.

If Flash Investigations suspects further allegations potentially involve criminal conduct, those matters will be reported by Excellent Care to Victoria Police. The investigation will cease immediately, until and unless Victoria Police advise Flash Investigations that its investigation may continue.

### 4. Terms of engagement

The Terms of Reference are effective from 5 July 2017 and continue until the final investigation report is delivered or unless terminated by agreement of the parties being:

Alex Tsiolkas, CEO, Excellent Child Care Victoria Pty Ltd, 1001 Collins Street, Melbourne, VIC 3000

Julie Brown, Investigator, Flash Investigations Pty Ltd, 1000 Collins Street, Melbourne, VIC 3000.

### 5. Roles & responsibilities

Flash Investigations is accountable for, and will endeavour to meet, the following in the course of the investigation:

Evidence gathering by appropriate means, such as accessing relevant records and documents; arranging and carrying out interviews; obtaining signed statements from witnesses, and obtaining photographs where necessary

Assessing all evidence on the Balance of Probabilities

Preparing a final report that will make findings as outlined in the above Scope of Investigation.

Providing recommendations if appropriate.

Flash Investigations is granted permission to attend the premises of Excellent Care, speak to any staff member as required, review any files or records held by Excellent Care and otherwise do all things reasonably necessary to carry out the above investigative functions.

#### **6. Meetings/updates**

All meetings between the parties will be arranged when required throughout the course of the investigation.

An update on the progress of the investigation will be provided to Excellent Care by telephone prior to the final report being submitted.

#### **7. Confidentiality**

All participants in the investigation will be reminded by Flash Investigations that they must maintain confidentiality in relation to the allegations investigation and sign a confidentiality acknowledgement provided by Flash Investigations.

#### **8. Decision-maker**

Alex Tsiolkas (CEO, Excellent Care) will be the decision-maker in this matter. Mr Tsiolkas will consider Flash Investigations' final investigation report and determine what, if any, action is required.

#### **9. Investigation Plan**

Excellent Care confirms its instructions to proceed with the investigation plan, which is annexed to these Terms of Reference.

#### **10. Timing**

The investigation will be completed as expeditiously as possible. At this stage, and assuming witness availability and cooperation, it is anticipated that Flash Investigations will be able to provide its final investigation report to Alex Tsiolkas (CEO, Excellent Care) by 30 June 2017, in accordance with the investigation plan.

#### **11. Amendment, modification or variation**

These Terms of Reference may be amended, varied or modified in writing after consultation and agreement by both parties.

Executed as an AGREEMENT:

*[signature]*

**Alex Tsiolkas**, for and on behalf of, **Excellent Child Care Victoria Pty Limited**

5 July 2017

*[signature]*

**Julie Brown**, for and on behalf of, **Flash Investigations Pty Ltd**

5 July 2017

## Example: Investigation Report

**RCS Identification Number:** RCS/2017/6938

**Date of report:** 30 July 2017

**Subject of allegation (SOA):** Joan Smith, Childcare Worker

**Organisation or regulator:** Excellent Child Care Victoria Pty Ltd, 1001 Collins St, Melbourne, VIC 3000

Head of organisation or delegate: Alex Tsiolkas, CEO

**Investigator details (author):** Julie Brown (licence # 123 345 567 DF), Investigator, Flash Investigations, 1000 Collins St, Melbourne, VIC 3000

**Reportable allegations:** Alleged physical violence against a child:

On Monday 4 July 2017, Sonny Nguyen (5 years old) may have been in Ms Smith's care. Sonny allegedly arrived home later that day.

Sonny allegedly told Fiona Nguyen (Sonny's mother) that the subject of allegation may have slapped Sonny on the hand.

Fiona says that she observed bruising on Sonny's hand.

Fiona also says that she has a photograph of Sonny's bruised hand.

### 1. Executive summary

The Subject of Allegation (**SOA**), Joan Smith, is a qualified childcare officer and is employed by Excellent Child Care Victoria Pty Ltd, 1001 Collins Street, Melbourne.

On 4 July 2017, Sonny Nguyen's mother (**Fiona Nguyen**) reported to Alex Tsiolkas (**Tsiolkas**), Chief Executive Officer, Excellent Child Care Victoria Pty Ltd, a reportable allegation that was allegedly committed by the SOA. The reportable allegation was that the SOA had physically assaulted Sonny Nguyen by slapping him on the hand. On receipt of this report, Tsiolkas formally engaged Flash Investigations to conduct an investigation.

On 6 July 2017, contact was made with the SOA and other relevant witnesses to arrange for interviews and statements to be obtained, and a letter of allegation was sent to the SOA (copy attached), inviting the SOA to respond by 13 July 2017.

On 12 July 2017, a letter of response from the SOA was received, denying the allegation.

On 14 July 2017 at 0900 hrs, Tsiolkas provided me with the following documents:-

Quality of Care Policy

Code of Conduct, Staff Handbook

SOA Personnel File

SOA Training Record

Performance Review Note.

Statements were then obtained from the following people:

Jane Collins (employee of Excellent Child Care)

Anthony Khoury (employee of Excellent Child Care)

Nicole Amorosi (employee of Excellent Child Care)

Fiona Nguyen (mother of the alleged victim)

Sonny Nguyen (alleged victim).

On 14 July 2017, an interview with the SOA was conducted. It was put to the SOA that other witnesses observed her slap Sonny on the hand and that Sonny's mother observed bruising on his hand. The SOA denied the allegation.

On assessment of the information and evidence gained in this investigation, I am of the opinion that the personal accounts of events that have been provided to me by the witnesses and victim's mother indicate that, on the balance of probabilities, Smith slapped Sonny on the hand on 4 July 2017. It is more likely than not that his injury has occurred as a result of Smith slapping him on the hand.

I have therefore found on the balance of probabilities the allegation of reportable conduct made against Smith has been **substantiated**.

## **2. Standard of Proof**

The standard of proof required in determining the outcome for this investigation is that the allegation must be proved 'on the balance of probabilities' and on the Briginshaw test being applied. In essence, the Briginshaw test requires that, the more serious the allegation and gravity of a finding, the more comfortably satisfied, on the evidence, the decision-maker must be before making any adverse finding. This means that each allegation should be more probable than not in order for it to be made out.

## **3. Relevant Policies & Procedures**

This investigation was based on the following legislation, policy and procedure:

*Child Wellbeing and Safety Act 2005*

Excellent Child Care Victoria Pty Ltd, Quality of Care Policy

Excellent Child Care Victoria Pty Ltd, Code of Conduct, Staff Handbook

## **4. Investigation Scope**

The scope of the investigation is set out in the Terms of Reference, which have been set out in Appendix C of this report.

## **5. Background**

Excellent Child Care Victoria Pty Ltd is a day care facility located at 1001 Collins Street, Melbourne. This facility offers day care services for up to fifty (50) preschool children on a daily basis (Monday to Friday), and employs twenty (20) staff members.

All staff members are qualified in childcare, hold Working with Children Checks and are also first aid certified.

On 4 July 2017, Mr Alex Tsiolkas (CEO) received a report from Fiona Nguyen of a reportable allegation involving her child, Sonny (aged 5), which occurred at Excellent Child Care Victoria Pty Ltd, located at 1001 Collins Street, Melbourne on or about 4 July 2017. This matter was identified as a reportable allegation that may involve criminal conduct and both Victoria Police and the Commission for Children and Young People were notified.

On 5 July 2017, Victoria Police advised that they would not be undertaking an investigation and advised Tsiolkas that there would be no further police action.

On 6 July 2017, Excellent Child Care Victoria Pty Ltd engaged Ms Julie Brown (licence # 123 345 567 DF) from Flash Investigations to conduct an investigation.

## **6. Summary of Investigation**

The investigation was conducted in accordance with the following legislation, policy and procedure:-

*Child Wellbeing and Safety Act 2005*

Excellent Child Care Victoria Pty Ltd, Quality of Care Policy

Excellent Child Care Victoria Pty Ltd, Code of Conduct, Staff Handbook

On 4 July 2017, Mr Alex Tsiolkas received a report of a reportable conduct allegation from Fiona Nguyen.

On 6 July 2017, Tsiolkas sent a formal letter of allegation to the SOA and engaged Flash Investigations to undertake an investigation into the matter.

On 14 July 2017, I attended at Excellent Child Care and met with Alex Tsiolkas, who provided me with copies of the following documents:

Excellent Child Care Quality of Care Policy  
Excellent Child Care Code of Conduct  
personnel file, qualifications and training record of the SOA.

On 25 July 2017 at 1200 hrs, I obtained a signed statement from Fiona Nguyen.

On 25 July 2017 at 1235 hrs, I conducted a digitally recorded interview with the alleged victim, Sonny Nguyen. Present during this interview was his aunt, Penny Nguyen.

On 26 July 2017 at 1300 hrs, I obtained a signed statement from senior childcare officer Jane Collins.

On 26 July 2017 at 1400 hrs, I obtained a signed statement from childcare officer Anthony Khoury.

On 26 July 2017 at 1500 hrs, I obtained a signed statement from childcare officer Nicole Amorosi.

On 26 July 2017 at 1600 hrs, I met with the subject of allegation, Joan Smith, and conducted a digitally recorded interview.

## **7. Summary of Statements**

### *Interview with Fiona Nguyen*

Nguyen stated the following:

She was picking her son Sonny Nguyen up from Excellent Child Care Victoria as per her usual routine.

Sonny refused to get into the car and she tried to hurry him up. He then became upset with her.

Sonny said that Joan had slapped him on the hand and she was bad.

Sonny appeared scared.

She went to make a report to Alex Tsiolkas at the office.

When asked about what, if any, injury or marks Sonny had on his arm, she stated, 'I noticed a nasty bruise on his hand but he is adventurous and has had bruises and marks on him before'.

She was disappointed in Joan and stated, 'she is Sonny's carer'.

She provided a photograph of Sonny's bruised hand.

She gave permission for Sonny to be interviewed with his aunt Penny Nguyen as his support person.

### *Interview with Sonny Nguyen*

Present during the interview with Sonny Nguyen was his aunt, Penny Nguyen. Sonny stated the following:

He is part of the class Joan takes.

He usually enjoys Joan looking after him but once she was bad.

He stated, 'Mrs Smith can get angry sometimes with me'.  
She scared him when she slapped him really hard on the hand.

#### *Interview with Jane Collins*

Collins stated the following:

She is employed as a senior childcare officer with Excellent Child Care Victoria and has been employed in her current role for approximately four years.

Confirmed that she was working at Excellent Child Care Victoria on 4 July 2017.

That Smith reports directly to her on a daily basis.

Collins stated that she had occasion to 'chat to Joan regarding her quick temper towards the children'.

That she had been informed by other staff members in confidence 'Joan doesn't have enough patience for this job and can be rough with the children'.

She could not recall the date on which she spoke to Joan about her temper but that she had 'entered a performance review note in Joan's file'.

#### *Interview with Anthony Khoury*

Khoury stated the following:

Employed as a childcare officer at Excellent Child Care Victoria for 18 months.

Confirmed that he was working at Excellent Child Care Victoria on 4 July 2017.

He has a good working relationship with all of his colleagues but stated, 'Joan is quick to become frustrated and raises her voice unnecessarily'.

On the morning of 4 July 2017, whilst he was in a playroom with some children, he observed, 'Sonny Nguyen left to go to the toilet and he entered the classroom and I heard a slapping sound but I didn't observe anything directly'.

That when he arrived at the door he observed, 'Joan and Nicole standing there chatting, but Joan was the closest'.

That he did not observe any contact being made with Sonny.

He did not observe any injury on Sonny afterwards, but 'thought that he looked upset'.

#### *Interview with Nicole Amorosi*

Amorosi stated the following:

Employed as a childcare officer at Excellent Child Care Victoria for two years.

Confirmed that she was working at Excellent Child Care Victoria on 4 July 2017.

That she was not aware of any 'incidents', but stated that she did have 'cause for concern' regarding the conduct of Smith on 4 July 2017.

'I was having a conversation with Joan in the corridor outside the playroom when suddenly Sonny Nguyen came out looking to go to the toilet. I presume this is what he was doing because he was trying to head in that direction. Joan had her back to Sonny but appeared angry at being interrupted and she then turned around and proceeded to slap Sonny on the hand.'

Whilst she did not observe any injury, she would not have been surprised if an injury occurred as – 'Joan was forceful so I wouldn't be surprised, Sonny's only a little boy.'

Amorosi said that she would have reported the incident herself but she was tied up looking after her class that afternoon and then had to rush off after work to pick up her daughter as she had been told that her daughter was ill.

### *Interview with Joan Smith (SOA)*

Smith stated the following:

Employed as a senior childcare officer at Excellent Child Care Victoria for approximately seven years.

Confirmed that she was working at Excellent Child Care Victoria on 4 July 2017.

Knows Sonny Nguyen and described him as a 'mischievous little boy'.

That she 'would've had a lot of contact with Sonny, but nothing specific that I remember'.

When asked specifically about the allegation made against her, Smith stated, 'that's not true at all. I'm very aware of how to handle children and I would not hurt them in any way.'

'I have never been aggressive or over the top with the children and take pride in my work.'

It was put to Ms Smith that a witness observed her slap Sonny on the hand. Ms Smith stated that the witness must have been mistaken in what they thought they saw.

It was put to Ms Smith that a witness heard a slapping sound when Sonny returned to her classroom. Ms Smith stated that the sound could have been anything and she 'definitely did not slap Sonny on the hand'.

It was put to Ms Smith that Sonny exhibited bruising on his hand, which was noticed by his mother later that night. I put the photograph of Sonny's bruised hand to Ms Smith. Ms Smith stated that Sonny is highly active and he could have bruised his hand when he was playing with other children.

### **8. Findings**

Following the analysis of all evidence, including the interviews and review of all relevant documents and relevant policy, an assessment of the evidence was made in regards to the allegation and is listed below:

#### *The following evidence supports the above allegation against Joan Smith:*

Evidence was provided by witness Nicole Amorosi, who observed the SOA slap Sonny on the hand.

Evidence was provided by witness Anthony Khoury, who said he heard a slapping sound and that the victim looked upset immediately after that.

Smith maintains that 'nothing specific' occurred that week involving her engagement with any children, and more specifically, with Sonny Nguyen.

Witnesses Amorosi and Khoury provided evidence of an incident where Smith used excessive force when dealing with a child, namely Sonny Nguyen.

Line manager Collins provided evidence of having to talk to Smith regarding her temper with children and a performance note being placed on her personnel file in the week of the alleged incident.

Collins also provided evidence of Smith being 'rough with children'. This evidence was corroborated by witnesses Amorosi and Khoury.

Khoury stated, 'Joan is quick to be frustrated'.

Amorosi stated, 'I was having a conversation with Joan in the corridor outside the playroom when suddenly Sonny Nguyen came out looking to go to the toilet. I presume this is what he was doing because he was trying to head in that direction. Joan had her back to Sonny but appeared angry at being interrupted and she then turned around and proceeded to slap Sonny on the hand'.



## 9. Conclusion

### *Reportable allegation*

On Monday 4 July 2017, Sonny Nguyen (5 years old) may have been in Ms Smith's care. Sonny allegedly arrived home later that day.

Sonny allegedly told Fiona Nguyen (Sonny's mother) that the SOA may have slapped Sonny on the hand.

Fiona says that she observed bruising on Sonny's hand.

Fiona also says that she has a photograph of Sonny's bruised hand.

On the balance of probabilities, I find that all of the above allegations are **Substantiated**.

As I have made a finding that it was more likely than not that Ms Smith slapped Sonny on the hand, I also find that this allegation is **Reportable Conduct** because the act of slapping a child on the hand constitutes physical violence committed against a child.

## 10. Recommendations

This Investigation Report is to be forwarded to Alex Tsiolkas, CEO of Excellent Child Care Victoria Pty Ltd for consideration.

**Investigating Officer:** Julie Brown (licence # 123 345 567 DF)

**Company:** Flash Investigations

**Date:** 31 July 2017

## 11. Appendices

- A Letter of Allegation
- B Letter of Engagement
- C Terms of Reference (TOR)
- D Letter of Response
- E Excellent Child Care Victoria Pty Ltd – Quality of Care Policy
- F Excellent Child Care Victoria Pty Ltd – Code of Conduct, Staff Handbook
- G Personnel File – Joan Smith
- H Training Record – Joan Smith
- I Performance Review Note
- J Tape-recorded Interviews (mpg file)
- K Witness Statements
- L Witness List
- M Scene Photographs
- N Contemporaneous Notes
- O Chronology/Investigator's Log

## Appendix 11: Child Safe Standards in Victoria



COMMISSION FOR CHILDREN AND YOUNG PEOPLE

### **BEING A CHILD SAFE ORGANISATION**

Organisations that provide services or facilities for children must implement Child Safe Standards to protect them from abuse.

We all have an obligation to do the best we can to keep children safe from harm and abuse.

Victorian organisations that provide services or facilities for children are required by law to implement Child Safe Standards to protect children from harm.

Organisations and businesses that employ children to provide goods or services, whether paid or unpaid, must also implement the standards.

Children are defined in the standards as anyone under 18 years old.

### **PRINCIPLES**

Child Safe Standards aim to:

- promote the safety of children
- prevent child abuse
- ensure organisations and businesses have effective processes in place to respond to and report all allegations of child abuse.

Child Safe Standards work by:

- driving changes in organisational culture – embedding child safety in everyday thinking and practice
- providing a minimum standard of child safety across all organisations
- highlighting that we all have a role to keep children safe from abuse.

Although all children are vulnerable, some children face additional vulnerabilities. The standards provide three overarching principles for organisations to cover:

- the cultural safety of Aboriginal Children
- the cultural safety of children from culturally and/or linguistically diverse backgrounds
- the safety of children with a disability.

## THE STANDARDS

- **Child Safe Standard 1** – Organisations establish a culturally safe environment in which the diverse and unique identities and experiences of Aboriginal children and young people are respected and valued
- **Child Safe Standard 2** – Child safety and wellbeing is embedded in organisational leadership, governance and culture
- **Child Safe Standard 3** – Children and young people are empowered about their rights, participate in decisions affecting them and are taken seriously
- **Child Safe Standard 4** – Families and communities are informed, and involved in promoting child safety and wellbeing
- **Child Safe Standard 5** – Equity is upheld and diverse needs respected in policy and practice
- **Child Safe Standard 6** – People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice
- **Child Safe Standard 7** – Processes for complaints and concerns are child focused
- **Child Safe Standard 8** – Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training
- **Child Safe Standard 9** – Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed
- **Child Safe Standard 10** – Implementation of the Child Safe Standards is regularly reviewed and improved
- **Child Safe Standard 11** – Policies and procedures document how the organisation is safe for children and young people

**The Community Spirit Foundation have identified the following key processes to implement and meet the Child Safe Standards in Victoria.**

**Child Safe Standard 1 – Organisations establish a culturally safe environment in which the diverse and unique identities and experiences of Aboriginal children and young people are respected and valued**

Community Spirit Foundation is committed to providing a culturally safe environment by supporting Aboriginal children and young people to understand and express their culture.

This includes:

- ensuring all staff and volunteers receive relevant cultural training so they have an understanding of Aboriginal culture, and an appreciation for culturally sensitive issues
- identifying and addressing incidences of racism with the involvement of Aboriginal children and young people, and their families, and
- ensuring the organisation's policies, procedures, systems, processes and measures create a culturally safe and inclusive environment for Aboriginal children and young people.

**Child Safe Standard 2 – Child safety and wellbeing is embedded in organisational leadership, governance and culture**

Community Spirit Foundation is committed to this Standard and demonstrates its commitment to child safety through strong and clear governance arrangements which allows leaders to ensure child safety is a focus within their organisation, The foundation documents clearly how it will meet its duty of care and responsibilities to children.

This includes:

- having a Child Safe Policy or Statement of Commitment to Child Safety
- ensuring a child safe culture at all levels of the organisation
- making its commitment clear and well communicated to staff, volunteers, children, families and the community
- having a Code of Conduct setting out responsibilities and appropriate behavioural standards for staff and volunteers during their engagement with children and young people.
- requiring all staff and volunteers to uphold this approach.

### **Child Safe Standard 3 – Children and young people are empowered about their rights, participate in decisions affecting them and are taken seriously**

Children have unique insights into their lives, their needs and the world around them. They have a right to be heard and have their concerns and ideas taken seriously, particularly on matters that affect them – including how to keep them safe.

Community Spirit Foundation has established strategies to promote the participation and empowerment of children and to ensure that they are aware of their rights under the United Nations Convention of the Rights of the Child

In addition, Community Spirit Foundation recognise the importance of friendships and encourage support from peers, to help children and young people feel safe and be connected. Community Spirit Foundation staff and volunteers are trained to communicate with children and identify signs of harm to a child.

### **Child Safe Standard 4 – Families and communities are informed, and involved in promoting child safety and wellbeing**

Community Spirit Foundation understands the importance of ensuring families and communities are involved in decisions that impact on a child's safety and well being.

Community Spirit Foundation will communicate effectively with, and seek the input of families and community regarding decisions impacting on children and young people. This includes development and review of child safe policies and practices.

### **Child Safe Standard 5 – Equity is upheld and diverse needs respected in policy and practice**

Community Spirit Foundation must ensure that we as an organisation recognise and respond to diversity and understand that some children are more vulnerable to abuse than others.

Community Spirit Foundation organisation:

- ensure we provide support to Children and Young people and that they have access to information in ways that are culturally safe, accessible and easy to understand.

- pay particular attention to the needs of children and young people with disability, children and young people from culturally and linguistically diverse backgrounds, including Aboriginal Children, those who are unable to live at home, and lesbian, gay, bisexual, transgender and intersex children and young people.
- attend to any adjustments to provide equal protection for all children and young people.
- give particular attention to the needs of children and young people who identify as lesbian, gay, bisexual, transgender or intersex
- give particular attention to the needs of children and young people unable to live at home (for example children and young people in out of home care or custodial settings).

#### **Child Safe Standard 6 – People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice**

Community Spirit Foundation has processes for screening, supervision, training and other human resources practices that reduce the risk of child abuse by new and existing personnel. Strong human resource practices can help reduce the risk of child abuse by new or existing staff or volunteers.

Staff and volunteers are informed of Community Spirit Foundations record-keeping processes in relation to child safety and wellbeing; and information sharing and reporting obligations.

#### **Child Safe Standard 7 – Processes for complaints and concerns are child focused**

The organisation recognises its responsibility to promote and provide an environment in which children, staff and volunteers are encouraged to speak up when they are uncomfortable or concerned.

This includes:

- recognising that the safety of children is everyone's responsibility
- having a clear procedure for reporting concerns and allegations
- encouraging children to report if they feel unsafe or concerned
- making people within the organisation aware of their duty of care and legal responsibilities
- appropriately acting on concerns and complaints
- keeping and securely storing accurate records.

#### **Child Safe Standard 8 – Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training**

Community Spirit Foundation has processes to ensure the ongoing training and education of staff and volunteers and that any training is tailored for the relevant needs of those staff or volunteers taking into consideration factors specific to their roles and work with children.

#### **Child Safe Standard 9 – Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed**

CSF has implemented strategies to not only identify and reduce or remove risks of child abuse but to promote child safety and wellbeing both online and in person. That our policies and risk assessments cover not only the physical environment in which we interact with children but also includes the ever-growing and changing online environment.

Risks always exist for children and there may be some risks that are beyond your organisation's control. But you must do what is in your power to reduce the risk of children being harmed.

#### **Child Safe Standard 10 – Implementation of the Child Safe Standards is regularly reviewed and improved**

Community Spirit Foundation understand the importance of continuous improvement in child safe practices to keep children safe. As an organisation we will:

- regularly reviews, evaluates and improves our child safe practices.
- Ensure complaints, concerns and safety incidents are analysed to identify causes and systemic failures to inform continuous improvement.
- Report on the findings of relevant reviews to staff and volunteers, community and families and children and young people

#### **Child Safe Standard 11 – Policies and procedures document how the organisation is safe for children and young people**

Community Spirit Foundation has well documented and easy to understand policies and procedures that cover all 11 Child Safe Standards and that these are championed by our leaders..

Our policies are easily accessibility to not only staff and volunteers but that they are also available and able to be understood buy by children and young people.