

INFORMATION SHEET

Undertaking Inclusive Investigations

This information sheet gives a general overview as to how to ensure children are able to make disclosures freely in relation to reportable conduct, to give them an opportunity to be heard during the investigation and to ensure that their best interests are always the paramount consideration. This sheet is to be read in conjunction with Information Sheet 2, Information Sheet 3 and Information Sheet 5 which provide guidance as to the scope of the Reportable Conduct Scheme and key aspects of conducting an investigation.

When a child makes a disclosure of reportable conduct

In some instances, your organisation will receive a disclosure directly from a child.

The Department of Communities and the Australian Institute of Family Studies publish guidance on responding to disclosures by children that is applicable to disclosures under the Reportable Conduct Scheme¹. Responding to a child's disclosure requires you to:

- **Listen** – listen in a suitable environment whilst being calm and patient and allowing the child to use their own words;

- **Reassure** – reassure the child that it was OK to disclose and that they are going to be safe; and
- **Respect** – show respect for their bravery and strength without making promises you can't keep².

Particular caution should be taken listening to a child making a disclosure to avoid quizzing the child or asking leading questions. Seeking further information is better done by people experienced in interviewing children, usually Police Officers or officers of the Department of Communities.

What should my initial actions be?



If an allegation is under investigation by the WA Police Force or the Department of Communities, you MUST consult with that agency about what steps your organisation takes in relation to the allegation.

If you receive a disclosure of conduct covered by the Reportable Conduct Scheme, there are some immediate steps to ensure the best

¹ Department of Communities, Mandatory reporting information sheet 5: responding to disclosures, March 2023, Government of Western Australia, <<https://www.wa.gov.au/system/files/2023-03/Mandatory-Reporting-Information-Sheet-5-Responding-to-Disclosures.pdf>>; Australian Institute of Family Studies, Responding to children and young people's disclosures of abuse, March 2015, Australian Government, <<https://aifs.gov.au/resources/practice-guides/responding-children-and-young-peoples-disclosures-abuse>>.

² Australian Institute of Family Studies, Poster: Responding to children and young people's disclosures of abuse, August 2022, Australian Government, <<https://aifs.gov.au/sites/default/files/2022-08/disclosure-infographic.pdf>>.

interests of the child are the paramount consideration.

Addressing immediate risk

In cases where a child is at immediate risk of serious harm from an employee, the organisation has a duty to take immediate and decisive action to prevent harm to the child. That may mean taking immediate steps to cease and prevent further contact between the employee and the child who is the alleged victim of reportable conduct or any other children. It may also involve securing evidence in your organisation's possession which may assist future investigations.

The actions and the reasons for taking immediate action of this type should be documented at the earliest opportunity. See Information [Sheet 6 – Risk management](#) following a reportable allegation

Initial Investigations

If the conduct is reported to the WA Police Force, following any action required to ensure the safety of the child and prevent any harm to the child, you should not take any investigative action in response to the reportable allegation without first confirming whether or not the WA Police Force will conduct inquiries or an investigation.

If the WA Police Force is conducting inquiries, you should consult with the Police Officer in charge of the investigation about any action you propose to take, including risk management action. This is to ensure that any police investigation is not compromised.

If the head of an organisation has concerns that risks to children in their organisation are not being safely managed while a WA Police Force investigation is underway, it is important to alert the WA Police Force to these concerns and they the head of an organisation may also raise these concerns with the Ombudsman.

In undertaking an investigation, you should have regard to the skills and experience of any investigator you appoint, given the nature and sensitivities of this type of investigation. For further information, please see Information [Sheet 8 – Reportable Conduct Investigations: An Overview](#).

Reporting obligations

After the immediate prevention of harm to a child is secured, and reports are made to the WA Police Force or the Department of Communities, the organisation may need to make other reports.

It will be necessary to notify the Ombudsman of reportable allegations and reportable convictions.

There are also a range of reporting requirements that may apply to organisations. Depending on the situation, the head of an organisation will still need to consider whether other reports may need to be made (both mandatory and non-mandatory).

If you are required to report an allegation to a regulatory body (in addition to the WA Police Force) you should consult that body before commencing an investigation so as to ensure their investigation is not compromised and that appropriate steps are taken to manage risks.

How can an organisation collect evidence for an investigation?

Relevant information can be obtained from a range of sources, before consideration is given to whether to, and how to, engage with a child victim:

- **Physical evidence** - Documents such as policies, procedures, incident reports, records of employment, rosters and emails can provide vital evidence. Objects, such as mobile phones and computers, inspection of premises, or photographic records can also provide physical evidence.

- **Direct evidence** - Speaking with people including witnesses, organisational management, other staff members and the person the allegation has been made against enables you to gather their direct observations, experience and recollections of events or actions. Particular care must be taken when it is proposed that direct evidence will be sought from children or the person who is the subject of the allegation. Seeking evidence from children is discussed at the [Including children in the investigative process](#) section below.
- **Specialist knowledge** - Information from people with specialist knowledge, such as a medical practitioner may be relevant to an investigation.
- **Other organisations** - Seeking information from other organisations which have completed their investigative tasks and are able to make their findings or evidence they collected available to you.

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, investigations 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; and
- Recognising and avoiding stereotypes.

Facilitating an inclusive, safe environment for all witnesses

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

- Have diverse sexual orientation;
- Are from the intersex, trans and gender diverse communities;
- Are from other cultural backgrounds; or
- Are people with disability.

When an investigation 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; and
- 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 a translator or interpreter. In the case of a witness with disability, they might need to use an assisted communication device or require an individualised communication approach. An investigation should seek the views of the witness's carer, guardian or advocate (when they have one).

Including children in the investigative process

In most reportable conduct investigations, the alleged victim(s) of the reportable allegation will be a child or children. It is also quite possible that another child or children witnessed the reportable allegation that is being investigated.

It is important that a child who is an alleged victim or a witness has an opportunity to tell their story, where it is appropriate, being mindful to avoid causing any further trauma to the child. It is also important to try to gather evidence about the reportable allegation as well as the emotional impact the alleged reportable conduct has had on the victim. When considering how to include a child in an investigation, the best interests of the child should be paramount.

Creating a child inclusive investigative process does not necessarily involve interviewing (or in many cases re-interviewing) a child. Evidence shows that interviewing children about traumatic events can, itself, be traumatising. The investigator should have a focus on preventing duplication and avoiding unnecessary interview or re-interview.

Your investigation should explore whether there are alternative ways to include the child in the investigative process without conducting an interview with the child. These may include:

- Obtaining evidence from third party organisations who have already conducted an interview with a child victim;
- Seeking evidence from adults who witnessed events but not children;
- Allowing an (older) child to prepare their own written statement; or
- Seek evidence (with consent) from a health provider who has been in receipt of a disclosure.

Deciding to conduct an interview with a child

If there is no alternative way to include a child in the investigation process and the child's evidence is central to the investigation, when considering whether to interview a child, the investigation should consider a range of factors including:

- If the child has been interviewed already (**in which case the investigator should focus on seeking access to that evidence**);
- The age and developmental stage of the child;
- The child's level of maturity;
- Ensuring cultural safety;
- 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;
- The child willingness to participate in an interview;
- The views of parents or carers where appropriate; and
- Support for the child.

The approach to interviewing a child is different to interviewing an adult and requires careful thought and planning.

Depending on the nature of the reportable allegation, it will often be desirable for the investigation to seek help from someone with specific and appropriate training and expertise to interview the child. **In most instances where a child discloses a sexual offence or sexual misconduct, the conduct of any interview with that child should only be undertaken by a person highly training to interview children.**

An investigation 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.

The Ombudsman has also published Information [Sheet 8 – Reportable Conduct Investigations](#) which provides more detailed guidelines to assist organisations in planning and conducting investigations.

Including parents and carers in investigations

Unless there are sound reasons not to (and any such reasons should be clearly documented in your investigation plan), advise the parent or carers of any child who is involved that an allegation has been made and/or (depending on their age and other circumstances) seek their consent to interview their child.

For further guidance on the circumstances where you cannot disclose information to

parents or care givers, please see section 19ZH of the Parliamentary Commissioner Act 1971 and our Information [Sheet 8 – Reportable Conduct Investigations](#).

Where to get help

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

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

Acknowledgements: Ombudsman Western Australia wishes to thank the New South Wales Office of the Children’s Guardian, the Victorian Commission for Children and Young People and the ACT Ombudsman’s office for use of their publications relating to their reportable conduct schemes and their continuing advice and assistance.