



School Law Update:

Is your school ready to implement critical new 'reportable conduct' laws from 1 July 2017?

New legislation: **Is your school ready to implement critical new 'reportable conduct' laws from 1 July 2017?**

Legislation has been passed by the Victorian government amending the *Child Wellbeing and Safety Act 2005 (Vic)*, to introduce a "reportable conduct" scheme to regulate how schools, including religious entities such as parishes that control schools, identify, investigate and respond to child safety allegations made against employees.

When do the reportable conduct laws commence operation?

The reportable conduct laws will apply to all Victorian registered schools (government and non-government) from 1 July 2017 and will be overseen and regulated by the Commission for Children and Young People ("Commission").



What is reportable conduct?

The reportable conduct laws, created by the same legislation that introduced the Child Safe Standards, will require mandatory identification, investigation and reporting by schools of all allegations of “reportable conduct” or misconduct towards children committed by employees, contractors and volunteers in schools.

The term “reportable conduct” (i.e. what schools must identify, investigate and report) includes any information that leads a person to form a “reasonable belief” that an employee of the school has committed any of the conduct below (or has committed misconduct which may involve any of the following):

- **a sexual offence** committed against, with or in the presence of, a child, whether or not a criminal proceeding in relation to the offence has been commenced or concluded; or
- **sexual misconduct**, committed against, with or in the presence of, a child; or
- **physical violence** committed against, with or in the presence of, a child; or
- any behaviour that causes **significant emotional or psychological harm** to a child; or
- **significant neglect** of a child.

The conduct to be identified, investigated and reported by schools is not limited to sexual abuse, but covers a broad category of behaviours that could amount to emotional or physical harm, which could conceivably cover bullying of students by employees or other conduct crossing professional boundaries.



What is the scope of the reportable conduct scheme?

Schools will need to identify, investigate and report all allegations of reportable conduct against a child at the school (being a person under the age of 18 years), whether the employee who allegedly committed the conduct works with children or not, and even if the alleged conduct has been committed outside school hours.

It appears that a parish priest will also fall within the definition of an "employee" for the purposes of the reportable conduct scheme, capturing a large number of Catholic schools in Victoria under the control of a local parish or canonical administrators.

What do schools have to do if an allegation is made?

Allegations of reportable conduct can be made to the school by anyone, including parents. As soon as practicable after a school Principal becomes aware of a reportable allegation against an employee the school must:

- Investigate the reportable allegations (which can include engaging an independent investigator on the school's behalf, such as a lawyer);
- Inform the Commission of the identity of the investigator;
- If requested by the Commission, provide information or documents relating to the reportable allegations or the investigation;
- Once the investigation has concluded, schools must provide the Commission with a copy of the findings of the investigation and the reasons for those findings and details of any disciplinary action the school proposes to take in relation to the employee;
- Comply with any other powers exercised by the Commission under the reportable conduct scheme, including right of entry and production of documents.



How should schools investigate allegations of reportable conduct?

Schools will need to ensure appropriately trained and qualified persons can be appointed swiftly to conduct investigations into reportable conduct given that rules of natural justice must apply and investigation findings must be provided to the Commission. The new laws allow for the outsourcing of investigations to “independent investigators” with appropriate qualifications, training and experience, which would include lawyers.

Schools are strongly encouraged to review internal competencies and resources relating to investigative processes and seek legal advice to avoid flawed investigations that may expose the school, its governing body, or the Principal to legal risk.

When should schools appoint an independent investigator?

Factors that will influence whether schools should appoint a lawyer as an independent investigator of reportable conduct allegations include:

- The competency of internal staff, including the need to ensure the rules of natural justice are afforded to employees under investigation and the requirement to ensure the correct standard of proof is applied;
- Adherence to the rules relating to the admissibility of evidence when weighing up different types of evidence and making findings as to whether reportable conduct may have occurred;
- Knowledge of the legal principles expected of Courts and Tribunals when investigators undertake workplace investigations;
- Internal resources and the ability to undertake a swift investigation in a timely manner;
- The need to ensure independence and impartiality in the investigation process;
- Whether the school requires legal advice arising from the findings of the investigation or the maintenance of legal privilege over the advice and the investigation report.

All of the above factors will also be relevant to any unfair dismissal process, if an employee is ultimately dismissed for committing reportable conduct. Therefore, it is crucial that the initial investigation is undertaken correctly and in accordance with contemporary judicial expectations.

Notifications to the Commission for Children and Young People

School Principals must notify the Commission within 3 business days of becoming aware of reportable allegations and provide detailed information about the allegations (such as proposed disciplinary action to be taken), not later than 30 days after becoming aware of the reportable allegations.

It is a criminal offence for a Principal to fail to comply, without reasonable excuse, with the notification requirements under the scheme.

Victorian Institute of Teaching

The reportable conduct scheme makes amendments to the *Education and Training Reform Act 2006 (Vic)*, allowing the Victorian Institute of Teaching to consider findings of reportable conduct when determining a teacher's suitability to teach.

Complimentary briefings for schools

Our Melbourne partner and head of our education industry, Paul O'Halloran, has conducted and advised on many workplace and child protection related investigations for schools, childcare providers and religious entities.

Schools are encouraged to contact him for information about upcoming complimentary briefings to be held on the new reportable conduct scheme and best practice investigation tips.



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