

ACT Ombudsman Guide No.10

Addressing Child Protection Issues in a Code of Conduct

This practice guide has been developed to assist employers to draft or review their code of conduct and to make changes where needed to ensure child protection issues are addressed.

Purpose of a code of conduct

Codes of conduct can establish a common understanding of the standards of behaviour expected of all employees of a designated entity.

Codes of conduct can also assist employers to prevent, identify and respond to misconduct by employees. In the child protection context, an employer's code of conduct should clarify the conduct that is reasonable and not reasonable for the purposes of the discipline, management or care of children. The code of conduct should also contain information about what will happen if an employee breaches it.

The Ombudsman may require employers¹ or their delegates to provide information about their policies and practices for preventing reportable conduct by employees and for handling allegations of reportable conduct.² A code of conduct would form part of an employer's policies.

Codes of conduct should be reviewed regularly and updated as required.

Codes of conduct and child protection

A code of conduct is one way employers develop practices to help prevent exposing children to harmful, abusive, neglectful or exploitative conduct by any employee.

Employers should have a code of conduct that reflects the employer's practices, professional standards and the services it provides to children.³ The code should also assist employees to understand and identify when professional boundaries are being crossed, which is a known characteristic of the sexual grooming of children.

Employers should also take steps to ensure that their employees are aware of and understand any code that applies to them.

Employers may, depending on their size and the service they provide, have either a single code of conduct for employees or multiple codes of conduct for specific services.

¹ For purposes of this practice guide, the term employer is used to replace the term 'designated entity.' The term designated entity is defined in the *Ombudsman Act 1989* (the Act) at s 17EA.

² S 17F of the Act.

³ For purposes of this guide and the scheme, a child is a person under the age of 18 years old.

What is reportable conduct?

Employers are responsible for training employees about what reportable conduct is and that employees should report allegations. It does not matter whether or not the employee engaged in the conduct in the course of employment or whether a child consents to the conduct. Reportable conduct⁴ includes:

- sexual offences and convictions where a child is a victim or is present
- offences against the person, including physical offences and convictions, where a child is a victim or is present
- conviction, or finding of guilt, under a territory law or a state or Commonwealth law, involving reportable conduct
- inappropriate discipline or offences relating to protecting of children from harm in accordance with the provisions of the *Education and Care Service National Law*
- ill-treatment of a child (including emotional abuse, hostile use of force/physical contact and restrictive intervention)
- neglect
- psychological harm
- misconduct of a sexual nature.

Employers must notify the Ombudsman of conduct including allegations⁵ and offences or convictions relating to any of the above. Each of these categories is considered below. A reportable conviction⁶ is defined as a conviction, or finding of guilt, under a territory law or a State or Commonwealth law, involving reportable conduct and entered against the person before or after the commencement of the Act. Some common law convictions may also be reportable if related to similar conduct.

To further understand the definition of reportable conduct, see the *ACT Ombudsman Practice Guide No. 2: Identifying Reportable Conduct* which is available on our website.

Guide to relevant issues for codes of conduct

The following is a guide to assist employers to develop a code of conduct sensitive to the safety and well-being of children. The listed issues are not prescriptive or exhaustive but may assist employers to consider how to address reportable conduct. The code of conduct should include information on the employer's position on the following issues:

Alcohol – clear advice should be given regarding not providing children with alcohol and about the consumption of alcohol whilst an employee is on duty* and is responsible for children. This advice should address the employer's expectations regarding activities outside the usual workplace such as field trips or overnight camps. Being on duty while under the influence of alcohol could create safety and other risks and could be grounds for disciplinary action.

*This requirement may be different for foster or kinship carers. Entities providing this service need to clarify their expectations.

⁴ S 17E of the Act.

⁵ An allegation is the express assertion that reportable conduct has occurred.

⁶ S_17D of the Act.

Allegation – should be defined in the code and employers may consider including that an allegation is an express assertion that reportable conduct has occurred and can take the form of an assertion, statement or declaration made with or without proof.

Appropriate language – what are the employer’s expectations about language used by employees in the workplace? This may include how children are described or characterised, and how they are spoken to. Employees should be made aware that they are in a position of authority over children, and that the way they speak to or refer to children can have a profound impact on a child’s wellbeing and perception of safety.

Communications devices – how are an employer’s communication devices (including such things as telephones, mobile phones, PCs, laptops, tablets, USBs and fax/printers), to be used by employees? What is the employer’s position on employees using personal devices such as phones to communicate with children and/or clients? What is the employer’s position with regard to employees accessing the Internet? Does the employer make clear prohibitions on employees accessing websites in the workplace which host adult pornography, child pornography or otherwise inappropriate images/representations of children in the workplace? What is the employer’s position on employees using social networking sites or other social media to contact or communicate with children and clients in the course of work activities and outside of work?

*This requirement may be different for foster or kinship carers. Entities providing this service need to clarify their expectations

Drugs – clear advice should be given regarding employees not giving or providing children with illegal drugs and not using or possessing illegal drugs whilst an employee is on duty and is responsible for children. This could include activities outside the usual workplace such as excursions or overnight camps. Being on duty under the influence of illegal drugs could create safety and other risks and would be grounds for disciplinary action. Clear advice should also be given to employees about not giving or providing children with tobacco or tobacco products or exposing them to any harmful by-products, such as second-hand smoke.

*This requirement may be different for foster or kinship carers. Entities providing this service need to clarify their expectations.

Gifts – sometimes during the course of their work employees may be given gifts or may want to give a gift to a child. Employees should know the rules about the provision or receipt of gifts or benefits, particularly what is appropriate and inappropriate to give or receive as a gift. Any gift given to children, even when approved, should be considered for its appropriateness and whether it may adversely impact on that child or any other children.

Ill-treatment – the code of conduct should define ill-treatment and make a clear statement that the alleged ill-treatment of a child is potentially reportable conduct. The types of ill-treatment that can arise should also be stipulated.

Medication – employees must know the procedures for providing prescribed or other medication to a child. The code of conduct could include information concerning the safe storage of medications to ensure that children do not have access to medications that are not prescribed or recommended for them, that up to date records of administration of medications must be kept by employees, and that prescribed dosages only are to be given, unless directed otherwise because of extraordinary medical circumstances. An employer’s position on clients possessing and self-administering certain medications (such as for asthma episodes) also needs to be stated.

Neglect – the code of conduct should define neglect and make a clear statement that the alleged neglect of a child is potentially reportable conduct. The types of neglect that can arise should also be stipulated.

Out of hours client contact – employers should specify what is acceptable behaviour in relation to contact with clients or their families. Direct contact, telephone and contact through electronic devices should be considered. Proscribed out of hours contact between staff and client families should be clearly defined. For instance, should staff be allowed to visit client families at their homes or to socialise with them? Can staff ‘friend’ children or their families on social networking sites or share online activities with them? The nature of an employee’s work may provide some guidance.

Out of hours work – a code of conduct should clearly explain what is acceptable, or alternately, unacceptable secondary employment for staff (particularly when it results from their primary employment). For instance, mentoring, tutoring, or caring for children who are existing clients or known because of association with existing clients, should be carefully considered.

Physical contact with children – the code of conduct should define physical assault and inappropriate use of physical force in relation to children. Entities should specify situations where physical contact with children is either appropriate, not recommended or prohibited. Appropriate physical contact should also be explained. This is particularly important because children may seek physical contact from an employee and they need to effectively respond to a child’s needs without breaching the employer’s related policies.

Psychological harm of children – the code of conduct should define behaviour that causes psychological harm to a child and make a clear statement that any such allegation is potentially reportable conduct.

Restraint – clearly state what is acceptable and what is not acceptable in relation to the restraint of children. The code of conduct may refer to the need for individual behaviour/education plans to be negotiated in relation to particular children.

Sexual offences, misconduct and other personal relations with children – the code of conduct should refer to sexual offences and sexual misconduct in relation to children, and make a clear statement that any such allegation, offence or conviction is reportable conduct. The advice should be flexible enough to address unusual circumstances, such as where there is a pre-existing relationship between an employee and young person of compatible ages.

Sometimes, employers may become aware of the possibility of a child having an unusual attachment to a staff member, or even a ‘crush’ on an employee. The code of conduct should clearly identify what should occur in these situations, to ensure that such interactions are effectively and sensitively managed. Where an employee is showing unusual interest or preoccupation with a child, early intervention to clarify the reasons for this, as well as to identify any risks to the child, are important. Such conduct should never be minimised, rationalised or overlooked, but may have a reasonable explanation.

Responsibilities of employees to report any child-related concerns

Within an employer's code of conduct, employees should be made aware that any identified concerns about staff interactions, including allegations about themselves, with children, both in work-related activities and outside of work, are to be reported promptly to specified personnel in the entity. In such circumstances, and where it is safe to do so, employees should take steps to intervene to ensure the safety and wellbeing of children. This responsibility extends to reporting to their employer any concerns, complaints or convictions made against themselves.

Employees should be advised that a code of conduct is to be read and signed off as understood and that they will comply with its instructions. Serious breaches of a code of conduct, or less serious, persistent breaches, could be grounds for disciplinary action or dismissal. Employees should also be made aware of any policies, procedures and guidelines that support, inform or otherwise relate to the code of conduct.

Contact

We encourage early contact with the Ombudsman. You can contact us using the details below.

Telephone: 02 6276 3770

Email: act@ombudsman.gov.au

More information is available at ombudsman.act.gov.au

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