

ACT Ombudsman Practice Guide No. 3

Risk Management Following an Allegation of Reportable Conduct Against an Employee

The ACT has introduced a reportable conduct scheme to oversee how organisations prevent and respond to allegations of child abuse and misconduct. The scheme commenced on 1 July 2017.¹ This practice guide provides an overview of risk management issues when an allegation of reportable conduct is made against an employee² of an employer³ considered under the scheme.

What is risk management?

Risk management means identifying the potential for an incident or harm to occur and taking steps to reduce the likelihood or severity of its occurrence. Employers need to assess the risks in their organisation to children and employees for whom they have responsibility.

Each employment setting carries unique risks. Similarly, children and employees have individual vulnerabilities. Recognising and acknowledging the risks in employment situations is the first step towards effective risk management. Employers should have a risk management plan in place that includes procedures to ensure that children are provided with a safe environment.

Risk assessment after an allegation is made

The head of entity is responsible for assessing the risk that an employee poses to a child or group of children once an allegation is made. The employer must assess the risk during the response to, or investigation of, the allegation. When a final decision is made regarding what action, if any, needs to be taken the employer must also address that risk.

An employer's child protection policy should include:

- information about how a risk assessment is conducted
- some of the steps that might be taken to reduce risk immediately following an allegation, during the response to, or investigation of an allegation and at the conclusion of the response or investigation
- clarification that any decision to take action on the basis of a risk assessment should not influence the findings of a response or investigation

¹ The [Reportable Conduct and Information Sharing Legislation Amendment Act 2016](#) updated the [Ombudsman Act 1989](#) (the Act) when the scheme commenced.

² Under s 17D of the Act, an 'employee' is engaged to provide services to the entity under a contract of employment or is engaged by the entity to provide services to children other than under a contract (this includes a volunteer or contractor).

³ The word 'employer' is substituted for the term 'designated entity.' See s 17D in the Act for the definition of 'designated entities.'

- guidance that until the response to, or investigation of, an allegation is completed and a finding made, any action, such as moving an employee to alternate duties is not considered as an indication that the alleged conduct did occur
- instruction that records should be kept by the employer as to why any action was or was not taken in response to a risk assessment.

Initial risk assessment

After an allegation of reportable conduct is made against an employee, one of the first steps an employer should consider is to conduct a risk assessment. This document should be provided by the employer to the Ombudsman when a *s 17G Notification* form is submitted.⁴

The purpose of the initial risk assessment is to identify and minimise risk to:

- the child/ren who are the subject of the allegation
- other children with whom the employee may have contact
- the employee against whom the allegation was made
- the proper investigation of, or response to, the allegation.

When an allegation is first made, the employer may have limited information to inform the risk assessment. For example, the allegation may have been made anonymously or only included few details. For these reasons, it is important that the employer review this initial risk assessment as further information becomes available.

When making decisions about appropriate action to address identified risks, the employer must consider both the needs of the child or children involved and the employee against whom the allegation is made.

Risk to children

The employer's immediate response to an allegation should consider how to ensure the safety of the child who is the alleged victim or other children at risk. Employers should consider the following issues:

- does the child require protective intervention? Depending on the level of risk identified, a report may need to be made to the Child and Youth Protection Services (CYPS). Advice should be obtained as to whether CYPS will respond to the matter and this should inform the risk assessment
- would the allegation, if true, be a criminal offence? If so, the employer should contact ACT Policing. The employer should ask whether the police will respond to the matter and whether the employer should proceed with a response/investigation
- whether action should be taken to prevent further reportable conduct
- are there other risks to the child? For example, is there a concern of possible self-harm?

⁴For more information on *the s 17G Notification* see our website: ombudsman.act.gov.au. The *s 17G Notification* must be filed within 30 days of the employer (head of entity) becoming aware of the allegation. Employers are encouraged to contact the Ombudsman as soon as possible after becoming aware of the allegation for early consultation.

the child's daily routine should remain unchanged where possible. Exceptions might be where the child is considered to be at risk of victimisation by peers or employees as a result of the allegations or where it is difficult to ensure a child's safety because of the employer's inability to directly supervise the child and employee. For example, in out of home care situations a change to a child's normal routine may be necessary

- support for other children involved.

Risk to an employee and to the workplace

When an allegation is received, the employer should consider the following issues:

- is appropriate support for the employee who is the subject of the allegation provided, including counselling
- should the employee remain in the current position pending response or an investigation or be moved to another area or stood down? Factors to consider when making this decision include:
 - the nature and seriousness of the allegations
 - the vulnerability of the child/ren the employee is in contact with in the workplace. For example, the age of the child/ren, their communication skills and the impact of any disabilities
 - the nature of the work done by the employee and their level of interaction with children
 - the level of supervision available for the employee
 - the availability of support for the employee on a day-to-day basis if their duties are changed. For example, if they are managing children with challenging behaviours
 - the employee's disciplinary history
 - other possible risks to the employee and to the investigation or response
- if the employee remains in the workplace, what duties will they undertake and who will monitor and assess the risks associated with the employee

If CYPS and/or ACT Policing are involved, check with them as to whether it is advisable for the employer to take action or whether it will interfere with their investigations. It may also be appropriate to discuss any proposed changes to the employee's duties.

Maintaining confidentiality

Employers should ensure that confidentiality is maintained after receiving an allegation against an employee by:

- advising all parties of the need for confidentiality during the response to, or investigation of, an allegation
- having systems in place to deal with any breaches of confidentiality. This may include a process for reporting any breaches to the employer and the appropriate employer response if media becomes aware of an allegation against an employee.

Ongoing risk management

When gathering information about an allegation, employers should manage any new risks that emerge. Employers should ensure that, on the basis of their ongoing risk assessment, appropriate support is provided for:

- the child/ren who are the subject of the allegation
- the employee who is the subject of the allegation and
- other relevant parties (this may include parents or carers of the child, other children or other employees affected by the allegation, for example, a witness to the alleged conduct).

It is also important to:

- ensure that the employee who is the subject of the allegation is treated fairly and afforded procedural fairness
- address actual or potential conflicts of interest.

Risk management at the conclusion of a response to, or investigation of, an allegation

At the completion of an investigation, a finding should be made in relation to the allegation and an employer should decide what action, if any, is required in relation to the employee, child/ren involved and any other parties.

The employer should conduct a review of the response to, or investigation of, an allegation to ensure that they consider all relevant risk to the employer's entire operations (not limited to the allegation). This might include looking at environmental factors and work practices that result in situations that pose risk to children such as unsupervised access to children by employees. Employers then have the opportunity to minimise any further risks to children. Such measures may include:

- training for one or more employees
- changing work practices in certain situations
- changes to the physical environment
- reviewing the child protection policy
- other responses as appropriate.

Examples

An example risk assessment template is provided at the end of this practice guide for employers to consider when developing a risk assessment process.

Contact

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

Further information:

Telephone: 02 6276 3770

Email: act@ombudsman.gov.au

Website: ombudsman.act.gov.au

ACT Ombudsman Risk Analysis Practice Guide (Example—organisations may use alternative templates)

| Person/People/Organisation Impacted | Risk | Likelihood (see chart below) | Consequences/ Impact (see chart below) | Risk Rating (see chart below) | Risk Mitigation Strategy |
|--|------|------------------------------|--|-------------------------------|--------------------------|
| Risk to the child/ren involved | | | | | |
| Risk to other children or vulnerable people in the workplace | | | | | |
| Risk to the employee who is the subject of the allegation | | | | | |
| Risk to other employees | | | | | |
| Risk to confidentiality | | | | | |
| Risk to the employer/ workplace/community | | | | | |
| Risk to the investigation process | | | | | |
| Other risks | | | | | |

Qualitative Risk Rating Matrix (template only)

| Risk Rating Matrix | Likelihood | | | | |
|--------------------|------------|----------|----------|-----------|----------------|
| | Rare | Unlikely | Possible | Likely | Almost Certain |
| Consequences | | | | | |
| Severe | High | High | High | Very High | Very High |
| Major | Medium | Medium | High | High | Very High |
| Moderate | Medium | Medium | Medium | High | High |
| Minor | Low | Low | Medium | Medium | High |
| Negligible | Low | Low | Low | Medium | Medium |