

## Public Statement about a reportable conduct investigation

October 2018

In 2018, I commenced an investigation into the response of the Education Directorate (the Directorate) to an allegation of reportable conduct about a teacher and their interactions with a student.

Given the sensitive nature of reportable conduct matters, we will not provide any further details on the nature of the allegation, other than to note the Directorate had informed ACT Policing of the allegation and after an investigation, ACT Policing did not proceed to criminal charges.

The ACT Reportable Conduct Scheme (the scheme) was introduced on 1 July 2017 to improve organisation-related child protection. My Office has the role of overseeing how organisations prevent and respond to allegations of misconduct by an employee or volunteer against children. The scheme also provides for information relating to child safety to be shared between relevant government agencies, professional registration bodies and organisations covered by the scheme. This investigation was the first use of my powers under s 17K of the *Ombudsman Act 1989* (the Act) to investigate an organisation's response to a reportable conduct allegation.

We have conducted a thorough investigation of this matter and have provided a comprehensive report on our findings to the Directorate. I welcome the Directorate's positive response to our report, which is as follows:

*The Education Directorate is committed to the safety and wellbeing of children and young people, and to the effective implementation of the reportable conduct scheme.*

*The Directorate welcomes the Ombudsman's report, which examines one of the first reportable conduct allegations managed by the Directorate after the reportable conduct scheme was introduced in July 2017.*

*The Directorate accepts all recommendations and notes that implementation of each recommendation is already under way. The Directorate will continue to work with the Ombudsman's office on this important scheme.*

*The Directorate will also continue to work to share learnings with other agencies, recognising that the Ombudsman has decided to release this public statement because the issues and recommendations may be equally of benefit to other organisations covered by the scheme.*

My Office investigates in private, but I have decided to make this public statement about the investigation, because although our investigation was specific to the actions of the Education Directorate, some of the issues we discovered, and some of the recommendations set out below, may be equally of benefit to other organisations covered by the scheme.

### ***The interplay between reportable conduct and workplace relations***

Many employment relationships are governed by some form of industrial agreement. Many of these include provision for how allegations of employee misconduct are to be investigated. An Enterprise Bargaining Agreement governs these matters for employees of the Directorate.

Employee misconduct investigations and processes to respond to allegations of reportable conduct are different. The former is focused on the duties and rights of an employee, while the latter is ultimately about the safety of children.

Done well, a single process can fulfil both purposes. However, just because a workplace investigation complies with the governing industrial framework, it does not mean it will necessarily be satisfactory as a response to an allegation of reportable conduct.

Of most importance is that allegations of reportable conduct should be responded to in a way which does not limit the ability to share information. Information sharing could be limited by ceasing a reportable conduct investigation prior to it being completed, or by agreeing not to disclose information to relevant agencies.

Sharing child safety information—such as findings made at the conclusion of an investigation—with relevant employment regulators helps ensure that appropriate decisions can be made about any future risk to children that a person might pose, and therefore the appropriateness to work in that field. For teachers working in the ACT, the relevant regulators are the Office of the Commissioner for Fair Trading, which administers the Working with Vulnerable People (WWVP) scheme, and the Teacher Quality Institute (TQI), the regulatory body responsible for teacher registration.

An incomplete investigation, or an agreement not to disclose information, can limit the quality and the extent of information available to these regulators when making decisions about appropriateness to teach.

In this matter, my Office subsequently provided relevant information to WWVP and TQI that was not provided by the Directorate, which has been, and will continue to be, used to inform their assessments and decision-making.

While information was subsequently shared by this Office, I am of the view that it is the responsibility of the employer to share such information, rather than to rely on others doing so. All organisations covered by the scheme may wish to consider whether any changes to policies or processes are required to ensure their decision-makers consider the implications for the gathering and dissemination of information before ceasing an investigation before it is complete, or before agreeing not to disclose information.

### ***Knowledge and understanding of reportable conduct***

I do not doubt the Directorate's firm commitment to the scheme and the principles of child safety, which was reiterated during the course of this investigation. I note, too, that the incident that was subject to this investigation was identified, and appropriately reported, early in the life of the scheme.

However, our investigation did reveal that, despite this commitment, some teachers and staff did not appear to have a clear understanding of what constitutes reportable conduct, or what to do if such conduct was observed. I acknowledge that some reportable conduct behaviours can be difficult to identify and define. In particular, it became apparent after the event that other staff had felt concerned about actions they had witnessed, but had not taken steps to raise these concerns with the Principal or the Directorate.

The Directorate has informed us it is in the process of reviewing the Teachers' Code of Professional Practice and that it is incorporating elements of the scheme in this document. This is an excellent opportunity to consider also reflecting the scheme in other relevant policies, procedures and practices.

I encourage other organisations to consider whether their own policies should be updated. My Office has developed a series of practice guides which may be of use in this process, available from our website.<sup>1</sup>

### **Recommendations**

I made seven general recommendations to the Directorate, which are outlined below along with the Directorate's response. I encourage other organisations covered by the scheme to also consider these recommendations.

#### **Recommendation 1**

The Directorate should develop and provide guidance that clarifies how a reportable conduct investigation can continue when an employee, who is the subject of investigation, separates from their employer. This should be considered as appropriate in consultation with Chief Minister, Treasury and Economic Development Directorate (CMTEDD).

#### **Directorate response**

##### Agreed and under way

Policy and guidance documentation is already in the process of being reviewed. The relevant information will be included in any new/revised reference materials. The Directorate will consult with the Chief Minister, Treasury and Economic Development Directorate about the preparation of whole-of-government guidance material and will share information prepared by the Education Directorate to inform this.

#### **Recommendation 2**

The Directorate should update its policies and guidance material to ensure decision-makers explicitly consider the implications for the gathering and sharing of information before:

- deciding not to investigate an allegation of reportable conduct
- ceasing an investigation which is underway, or
- deciding to use a deed or agreement that limits such information sharing, and exercise caution before making any such decisions in response to a reportable conduct allegation.

#### **Directorate response**

##### Agreed and under way

This information is being included in the updated policy and guidance documentation referred to in Recommendation 1.

---

<sup>1</sup> <http://www.ombudsman.act.gov.au/reportable-conduct-scheme/resource-kit>

**Recommendation 3**

The Directorate should develop and implement a formal risk assessment process and associated templates, which guide decision-making in responding to reportable conduct matters.

**Directorate response**

Agreed and under way

Further work on risk assessment procedures across the Directorate is already under way. Outcomes from this work will be used to inform best practice in relation to the development of risk assessment processes and procedures specific to reportable conduct matters. This information will be included in the updated policy and guidance documentation referred to in Recommendation 1.

**Recommendation 4**

The Directorate should review the use of the preliminary assessment toolkit and its application in reportable conduct matters and provide updated training to staff.

**Directorate response**

Agreed and under way

The development and use of appropriate templates is being reviewed as part of the updated policy and guidance documentation referred to in Recommendation 1, with consideration given to training in the use of templates where appropriate.

**Recommendation 5**

The Directorate, in its review of the Teacher's Code of Professional Practice and associated policies, should clearly articulate the expectations of appropriate professional practice in teachers' conduct with students consistent with the Reportable Conduct Scheme.

**Directorate response**

Agreed and under way

The Teachers' Code of Professional Practice is a document which outlines the standards of professional conduct and integrity expected of teachers in ACT Public Schools. The document is currently under review, with the next version to have a specific reference to reportable conduct.

**Recommendation 6**

The Directorate should amend its policies and procedures to ensure that a broader 'lessons learnt' review should be considered as part of its response to a reportable conduct allegation.

**Directorate response**

Agreed and under way

The Directorate is implementing a continuous improvement approach and include, in reportable conduct policies and procedures, regular reviews of cases to inform future best practice.

**Recommendation 7**

The Directorate should provide training regarding the prevention, identification, reporting of and response to allegations of reportable conduct.

**Directorate response**Agreed and under way

Key Directorate officers have already attended training specific to key aspects of reportable conduct, with further training occurring in September and November 2018. The Directorate is also working with the Ombudsman's Office to identify further training opportunities for other identified staff including school principals. Building the capabilities of staff in the all aspects of reportable conduct will be considered more broadly in accordance with the strategic priorities outlined in the Directorate's Annual Action Plan 2018–2019.

I thank the Education Directorate for its assistance and cooperation during this investigation.

Michael Manthorpe  
ACT Ombudsman