

# Reportable conduct investigation

Public statement – September 2024

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In April 2024, in my role as ACT Ombudsman, I commenced an investigation under s 17K of the Ombudsman Act 1989 (the Ombudsman Act) as a result of concerns raised during our oversight of reportable conduct allegations investigated by Barnardos Australia (Barnardos).

The ACT Reportable Conduct Scheme (the Scheme) was developed in response to the findings of the Royal Commission into Institutional Responses into Child Sexual Abuse. The Scheme commenced on 1 July 2017 and is administered by my Office. My Office has the role of overseeing how designated entities prevent and respond to allegations of misconduct by an employee or volunteer against children, as defined in the Ombudsman Act.

My Office investigates in private, however I have decided to make this public statement because the issues discovered, lessons learned and some of the recommendations may be beneficial to the community and other entities covered by the scheme. To protect the privacy of the involved parties, I will not provide details of the persons subject of the allegations (PSOAs), alleged victims (AVs), or number and nature of the allegations in this statement.

My Office conducted an investigation into Barnardos' handling of this matter and provided a comprehensive report on our findings to Barnardos. I would like to thank Barnardos for their cooperation during this investigation, and I welcome the positive response to the report and findings.

In response to my s 17K investigation draft report, Barnardos advised my Office it is committed to a continuous improvement culture and looks for opportunities to evolve in its processes that keep children safe. Barnardos expressed its commitment to maintaining the safety and wellbeing of children, young people and their carers, and is committed to actively taking action to review its internal processes and investigator support.

My Office acknowledges that reportable conduct can be a difficult subject to navigate, particularly in the out of home care sector where children can often be dealing with significant trauma and carers can struggle to respond to challenging behaviours. It is understandable that in such environments, entities tasked with reportable conduct investigations will experience difficult and demanding situations. We acknowledge the

challenging circumstances Barnardos encountered in investigating the reportable conduct allegations subject to this investigation.

Notwithstanding this, Barnardos and the other entities covered by the Scheme are required to conduct thorough, unbiased and professional investigations, following the principles of procedural fairness and evidence-based decision making. A thorough and well conducted reportable conduct investigation provides protection for AVs, other children and young people, PSOs and entities.

Our investigation found a number of flaws with Barnardos' investigation of this reportable conduct matter. Notably, we found that:

- Barnardos' investigation was not timely or procedurally fair to the relevant parties.
- Barnardos did not conduct thorough and robust interviews.
- Barnardos did not test the evidence it was presented with.
- The limited information gathered led to a poor analysis.
- The reasons Barnardos provided for the findings appear to show an unfair bias.

Due to the conflicting accounts between the PSOs and AVs and the lack of diligence in collecting and corroborating the evidence where such confirmation may have existed, we concluded that most of the findings made were not reasonably open for Barnardos to make.

The errors identified within Barnardos' reportable conduct investigation compromised the quality of the evidence gathered and ultimately led to an unsatisfactory outcome for all parties involved.

As a result of our investigation, we made 5 recommendations to improve Barnardos' future handling of reportable conduct allegations. In addition, we made one recommendation related to the reportable conduct allegations the subject of our investigation.

Barnardos accepted 5 of the 6 recommendations contained in the draft report related to the deficits in the investigation and improvements for future investigations. Barnardos undertook to improve its timeliness and investigation planning as well as its procedural fairness processes. Barnardos will assess its training program to amend any shortfalls and advised it is committed to reviewing internal processes to identify ongoing improvements in its operations.

Despite accepting 5 recommendations on improving its investigation processes in the future, Barnardos did not accept recommendation 6. Recommendation 6 was to replace its findings for findings my Office deemed more appropriate and open to

Barnardos to make, given the flawed investigation. Barnardos' reasoning for not changing the findings included 'the intended and non-intended consequences and implication of substituting findings.

This Office requires that an entity make its findings based on its investigation. It is my view that, in Barnardos accepting its investigation was flawed, it should also accept that the findings made based on that investigation are also flawed. While my Office acknowledges there may be consequences that flow for Barnardos because of my recommendations, such considerations should not be the driver for good decision making. My Office will record the findings made by Barnardos, however we will also note our disagreement with those findings.

Barnardos has assured my Office that its comprehensive suite of practice improvements will ensure future investigation findings will be supported by an improved investigation, analysis and interpretation process.

The report completed by my Office aimed to provide guidance and clarity to Barnardos to assist it to conduct thorough, robust and timely investigations in the future. I encourage all designated entities to consider the recommendations outlined in the attached documents and consider whether their own practices and procedures could be improved.

**Iain Anderson**  
**ACT Ombudsman**

# Section 17K of the *Ombudsman Act 1989* – Recommendations

## Recommendation 1

We recommend that, when conducting an investigation into reportable conduct allegations, Barnardos should:

- Take proactive measures to engage with AVs early in the process to reduce delay and take responsibility for gathering sufficient information around the allegations including providing opportunities for capturing additional allegations.
- Assess and investigate all allegations of reportable conduct. If a reportable conduct investigation is deemed not warranted, make a record of this decision.
- Ensure investigation plans are updated/ revised when additional allegations are reported during an open reportable conduct investigation.



Barnardos **accepted** this recommendation.

## Recommendation 2

We recommend that Barnardos should submit s 17G notifications within the legislated timeframe and provide our Office with the investigation plans at the time of the s 17G notification.



Barnardos **accepted** this recommendation.

## Recommendation 3

We recommend that Barnardos should advise PSOAs of a reportable conduct investigation as soon as practicable and conduct thorough and efficient investigations without undue delay, for the safety and welfare of all involved.



Barnardos **accepted** this recommendation.

## Recommendation 4

We recommend Barnardos develops and implements investigatory procedures and guidance addressing the shortfalls outlined in this report which incorporates relevant parts of the Ombudsman's Reportable Conduct Practice Guidance.



Barnardos **accepted** this recommendation.

## Recommendation 5

We recommend Barnardos provides training on conscious and unconscious bias and develops guidance for staff on being open minded during investigations.



Barnardos **accepted** this recommendation and noted significant progress had been made.

## Recommendation 6

We recommend Barnardos substitutes the findings prescribed by our Office for the reportable conduct allegation(s) subject to this report.



Barnardos **did not accept** this recommendation.