

ACT Ombudsman Practice Guide No.1

How the ACT Ombudsman Responds to Notifications and Reports

This practice guide provides information about what you can expect when the ACT Ombudsman responds to notifications and reports from employers under the ACT Reportable Conduct Scheme.¹

Filing a notification

Employers² covered by the reportable conduct scheme must notify the Ombudsman about reportable allegations and convictions against employees. It does not matter if the allegations or convictions arose in the course of an employee's professional or private capacity.

The Ombudsman encourages employers to contact us as soon as possible after becoming aware of a reportable conduct allegation or conviction, either by telephone or email. The s 17G Notification must be filed within 30 days of an employer becoming aware of a reportable allegation. (See ombudsman.act.gov.au for more information: s 17G Notification and *The ACT Ombudsman Practice Guide No. 5: Employer Responsibilities*).

The Ombudsman will provide employers with written confirmation that the s 17G Notification was received and request any further information that our office may require prior to a final report being provided.

All employees under a contract of employment with an employer in the scheme are covered by the scheme. It does not matter whether or not the employee provides services directly to children. This means that some employees under the scheme will not work directly with children. Volunteers and contractors³ to an employer under the scheme are also considered as employees but only if they are **engaged to provide services to children**. This includes employees engaged by another organisation to provide services to children on behalf of the employer covered by the scheme, for example, through labour hire or subcontracting arrangements.

Conduct occurring in either a professional or personal capacity is reportable for anyone under the scheme.

The reportable conduct scheme is allegation⁴ based. If an allegation is made that reportable conduct has occurred or may have occurred, it must be notified to the Ombudsman. (See *The ACT Ombudsman Practice Guide No. 2: Identifying Reportable Conduct* on our website.)

¹ The scheme is established in the [Ombudsman Act 1989](#) (the Act).

² See s 17EA for the definition of 'designated entity' in the Act.

³ For purposes of this practice guide, all references to employees should be read as including all types of employment relationships covered under s 17D of the Act

⁴ Allegation refers to an express assertions that reportable conduct has happened or may have happened (including a statement or declaration with or without proof).

Documentation to include with a notification

The employer must notify whether or not they propose to take any action relating to the employee based on the allegation or conviction and the reasons for these decisions. Normally, an initial risk analysis should be completed prior to filing an *s 17G Notification*. If that is the case, the risk analysis should be provided to the Ombudsman. Likewise, any investigation plans that have been drafted should be provided with the *s 17G Notification*.

If any relevant employees have been made aware of the allegations, and have made written submissions to the employer before an *s 17G Notification* is submitted, **the employer must also provide** these. These written submissions may include circumstances raised by the employee about the allegation or conviction which the employee has asked to be considered when deciding appropriate action.

Response by the Ombudsman to an investigation

Employer's investigation

After an *s 17G Notification* is provided, employers will continue their response / investigation under the oversight of the Ombudsman. The Ombudsman will ask for updates as to the progress of an investigation and may confer with the people conducting the investigation about the nature, conduct or progress of the investigation. This may include requests for relevant documents and information to be provided to the Ombudsman. In some cases, the Ombudsman may decide to attend any interviews conducted by or on behalf of the employer.

The Ombudsman can monitor the progress of a response or investigation⁵ conducted by, or for an employer in response to a reportable allegation or conviction.

In some circumstances the Ombudsman may share this information with ACT policing and other key organisations for health, safety and wellbeing of children.⁶

Ombudsman investigation

The Ombudsman may, on its own initiative or in response to a complaint, choose to conduct an investigation⁷ into:

- any reportable conduct allegation or conviction against an employee of an employer considered under the scheme, or
- the response of the employer into a reportable conduct allegation or reportable conduct conviction.

This means that people can complain to the Ombudsman about a reportable conduct investigation and the Ombudsman may investigate those complaints. This investigation may occur regardless of whether the employer has notified the Ombudsman about the conduct. If the Ombudsman decides to conduct an investigation, the employer will receive written notice of the investigation.

In some circumstances, the Ombudsman may require an employer to either not commence an investigation or to suspend an investigation while the Ombudsman investigation progresses.

⁵ See s 17I of the Act.

⁶ See s 34A of the Act.

⁷ See s 17K of the Act.

When the Ombudsman concludes the investigation, or asks the entity to resume the investigation, the employer will receive written notice that the investigation has ended. The Ombudsman will prepare a report and may also make recommendations as appropriate to the employer or to any person or body as a result of the investigation.

What happens when an employer's investigation concludes?

Once the employer is satisfied that the investigation into the allegations against the employee has been concluded, they must, as soon as possible, provide the Ombudsman with a final report⁸ including:

- any report prepared by or for them relating to the investigation, as well as copies of all the statements and other documents that form the basis of that report
- any comments they may want to make about the report
- advice as to what action has been taken, or is proposed to be taken in relation to the reportable allegation or conviction under investigation.

After receiving this material, the Ombudsman may ask for more information either from the employer or the person who carried out the investigation for them. The employer will usually be part of any conversation held with an outside investigator acting on their behalf.

After considering the material provided by the employer, the Ombudsman will decide whether the reportable allegation, offence or conviction was properly investigated and if appropriate action was taken as a result of the investigation. Whether an investigation was procedurally fair will be part of these considerations. (See *The ACT Ombudsman Practice Guide No. 9: How the ACT Ombudsman Assesses an Employer's Response/Investigation* on our website.)

The Ombudsman will provide written acknowledgement to the employer that the matter is completed.

Contact

We encourage early contact with the Ombudsman. You can telephone us prior to submitting an *s 17G Notification*. We may be contacted using the details below.

Telephone: 02 5119 5520

Email: act@ombudsman.gov.au

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

Please note: This document is intended as a guide only. For this reason, the information should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. To the maximum extent permitted by the law, the ACT Ombudsman is not liable to you for any loss or damage suffered as a result of reliance on this document. For the most up-to-date versions of cited Acts, please refer to legislation.act.gov.au.

⁸ An example template for providing this information is in the s 17J Final Report found on the ACT Ombudsman website.