

## ACT Ombudsman Practice Guide No.3 Risk Management following an allegation of Reportable Conduct against an employee

The Reportable Conduct Scheme is intended to oversee how organisations prevent and respond to allegations of child abuse and misconduct.<sup>1</sup> This practice guide provides an overview of risk management issues when an allegation of reportable conduct is made against an employee<sup>2</sup> of an organisation<sup>3</sup> 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. Organisations need to assess the risks to children and employees for whom they have responsibility.

Each organisational setting carries unique risks. Similarly, children and employees have individual vulnerabilities. Recognising and acknowledging the risks in these situations is the first step towards effective risk management. Organisations 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<sup>4</sup> is responsible for assessing the risk that an employee poses to a child or group of children once an allegation is made. The organisation 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 organisation must also address that risk.

An organisation'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.

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<sup>1</sup> See the [Ombudsman Act 1989](#) (the Act).

<sup>2</sup> Under 17D of the Act, the definition of employee includes all employees of a designated entity, whether or not they provide services to children. Contractors and volunteers are also employees but only if they provide services to children (except for religious bodies where all contractors and volunteers are considered employees). It also includes employees engaged by another organisation to provide services to children on behalf of the organisation covered by the scheme.

<sup>3</sup> The word 'organisation' is substituted for the term 'designated entity.' See s 17EA in the Act for the definition of 'designated entities.'

<sup>4</sup> Section 17D of the Act

- 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 organisation 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 organisation should consider is to conduct a risk assessment. This document should be provided by the organisation to the Ombudsman when a *s 17G Notification* form is submitted.<sup>5</sup>

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 organisation 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 organisation review this initial risk assessment as further information becomes available.

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

## Risk to children

The organisation'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. Organisations 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 organisation should contact ACT Policing. The organisation should ask whether the police will respond to the matter and whether the organisation 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? 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, community members or employees as a result of the allegations or where it is difficult to ensure a child's safety because of the organisation'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.

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<sup>5</sup>For more information see *the s 17G Notification*.

## Risk to an employee and to the workplace or community

When an allegation is received, the organisation 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 organisation. 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 organisation, 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 organisation 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

Organisations 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 organisation and the appropriate organisation response if media becomes aware of an allegation against an employee.

## Ongoing risk management

When gathering information about an allegation, organisations should manage any new risks that emerge.

Organisations 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 organisation should decide what action, if any, is required in relation to the employee, child/ren involved and any other parties.

The organisation should conduct a review of the response to, or investigation of, an allegation to ensure that they consider all relevant risk to the organisation'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. Organisations then have the opportunity to minimise any further risks to children. Such measures may include:

- training for one or more employees
- changing 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 organisations to consider when developing a risk assessment process.

## Contact

We encourage early contact with the Ombudsman. We may be contacted using the telephone number on our website or email address below.

**Email:** [act@ombudsman.gov.au](mailto:act@ombudsman.gov.au)

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More information is available at [ombudsman.act.gov.au](http://ombudsman.act.gov.au)

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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 organisation/ 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