



Guidance document: What conduct must be reported to the Ombudsman?

*Under the Ombudsman Act 1974 (NSW) (**Ombudsman Act**), the head of a designated government or non-government agency is required to report any reportable allegations or reportable convictions of employees to the NSW Ombudsman.*

This document provides some guidance as to what constitutes a reportable allegations and reportable convictions.

Overview

The Ombudsman Act requires that heads of agencies must notify the NSW Ombudsman of any reportable allegation or reportable conviction against an employee of the agency of which the head of agency becomes aware.

1. A **reportable allegation** means an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.
2. A **reportable conviction** means a conviction in NSW or elsewhere, of an offence involving reportable conduct. It includes a finding of guilt even if the court did not proceed to a conviction.

“Reportable conduct” includes:

1. any sexual offence, or sexual misconduct, committed against, with or in the presence of a child;
2. any physical assault of a child;
3. any ill-treatment of a child;
4. any neglect of a child; and
5. any behaviour that causes psychological harm to a child,

regardless of whether the child has given consent.

In order to be reportable, the conduct must have been undertaken by an employee. The Ombudsman Act defines “employee” broadly to include:

1. employees;
2. volunteers; and
3. priests and religious brothers and sisters.

Specific descriptions

<p>What constitutes a "sexual offence"?</p>	<p>All sexual offences against a child are reportable crimes.</p> <p>For further information on sexual offences, see Guidance document: What constitutes a reportable crime?</p>
<p>What constitutes "sexual misconduct"?</p>	<p>The term "sexual misconduct" includes conduct of a sexual nature that may not necessarily constitute a criminal offence.</p> <ol style="list-style-type: none">1. crossing professional boundaries; and2. sexually explicit comments and other overtly sexual behaviour. <p>An individual will cross professional boundaries if their behaviour can be reasonably construed as involving an inappropriate or overly personal or intimate relationship with, focus on or conduct towards a child.</p> <p>Comforting a distressed child will not usually be considered crossing professional boundaries.</p> <p>Sexually explicit comments and other overtly sexual behaviour can include:</p> <ol style="list-style-type: none">1. sexualised behaviour with or towards a child, including sexual exhibitionism;2. inappropriate conversations of a sexual nature;3. comments that express a desire to behave in a sexual manner, including through correspondence and communications;4. inappropriate touching involving a child;5. exposure of children to the sexual behaviour of others, including through pornography; and6. watching children undress unless appropriate in the circumstances.
<p>What constitutes "physical assault"?</p>	<p>Physical assault in this context has the same description as in Guidance document: What constitutes a reportable crime?</p> <p>The following do not constitute physical assault:</p> <ol style="list-style-type: none">1. exercising appropriate control over a child;2. disarming a child or young person seeking to harm themselves or others or destroy property;3. separating children who are fighting;4. moving a child out of harm's way or touching them to attract

	<p>their attention; and</p> <p>5. self-defence or the defence of others.</p>
<p>What constitutes “ill-treatment”?</p>	<p>Ill-treatment occurs when a person treats a child in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner.</p> <p>This may include:</p> <ol style="list-style-type: none"> 1. unreasonable or inappropriate punishment of a child; 2. a pattern of seriously inappropriate, degrading comments or behaviour towards a child; and 3. making excessive and/or degrading demands of a child. <p>Raising your voice to attract attention will not be considered ill-treatment.</p>
<p>What constitutes “neglect”?</p>	<p>Neglect occurs when a child is harmed by the failure of a person who cares for the child to provide basic physical and emotional necessities of life including food, shelter, clothing or medical attention.</p> <p>Although this would rarely arise in a parish or agency context, a failure to keep a child safe from harm by providing adequate supervision or exposure to harmful situations, eg outdoors, may in some circumstances be neglect if the child does suffer a foreseeable injury.</p> <p>While unclear, it has also been suggested by the NSW Ombudsman that a failure to report that a child is in danger of suffering sexual abuse, physical abuse or ill treatment may, if that harm does eventuate, constitute neglect.</p>
<p>What constitutes “behaviour that causes psychological harm”?</p>	<p>This refers to conduct that is obviously or very clearly unreasonable and results in significant emotional harm or trauma to a child. In order to be reportable, there must be evidence of the psychological harm and the harm needs to be shown to have been caused by the conduct of an employee.</p>

Related documents

1. Protocol: Reporting inappropriate employee conduct to the NSW Ombudsman
2. Flowchart: Reporting child protection concerns
3. Fact sheet: What conduct must be reported to the NSW Ombudsman?
4. Guidance document: What constitutes a reportable crime?
5. Table of reportable crimes
6. Fact sheet: What is a reportable crime?