

## REPORTABLE CONDUCT AND RISK MANAGEMENT

Division / Section	Organisational	Version	2.0
Process Owner	Kate Crawford	Date of issue	06/09/2017
Document Author	Ed Purrer	Scheduled review date	01/07/2019

### 1. Scope

This document applies to all Woden Community Services (WCS) workers and volunteers who provide services to children and young people under the age of 18 years.

This document does not interfere with current reporting obligations to ACT Policing or Children and Youth Protective Services (CYPS). If employers suspect criminal conduct has occurred, they should report to police in the first instance.

Please also refer to WCS Child Protection and Risk Management policy and procedure.

### 2. Purpose / Policy Statement

WCS takes its obligations for reportable offences seriously as it supports the prevention of and response to allegations of child abuse and misconduct. Broadly, reportable conduct covers allegations or convictions of child abuse or misconduct toward children (see definition section in Risk Identification for more).

Reportable conduct covers a broader range of conduct compared to the types of child abuse which must be reported to Children and Youth Protection Services (CYPS). This means employers may become aware of an allegation or conviction that is reportable to the Ombudsman, but is not conduct which must be mandatorily reported to CYPS.

Likewise, an employer may need to report conduct to CYPS, but if the alleged behaviour did not involve an employee (e.g. the allegation is against a parent, family member or service user), there is no requirement to report to the ACT Ombudsman.

This policy provides workers with the process required to meet their obligations when they become aware of reportable conduct. The policy is in keeping with the ACT Ombudsman's "Reportable Conduct Scheme" which came into effect on 1 July 2017.

### 3. Procedure

#### 3.1 Risk Identification

With the introduction of the ACT Ombudsman's "Reportable Conduct Scheme" in July 2017, WCS has an obligation to notify the Ombudsman of Reportable Conduct. Reporting reportable conduct does not interfere with existing reporting obligations to other entities (i.e. ACT Policing, CYPS, Access Canberra, Teacher Quality Institute, Children's Education and Care Assurance, Human Rights Commission, Australian Health Practitioner Regulation Agency etc.) as required and must still occur.

Reportable conduct covers allegations, offences or convictions of child abuse or misconduct toward children by a WCS employee, including:

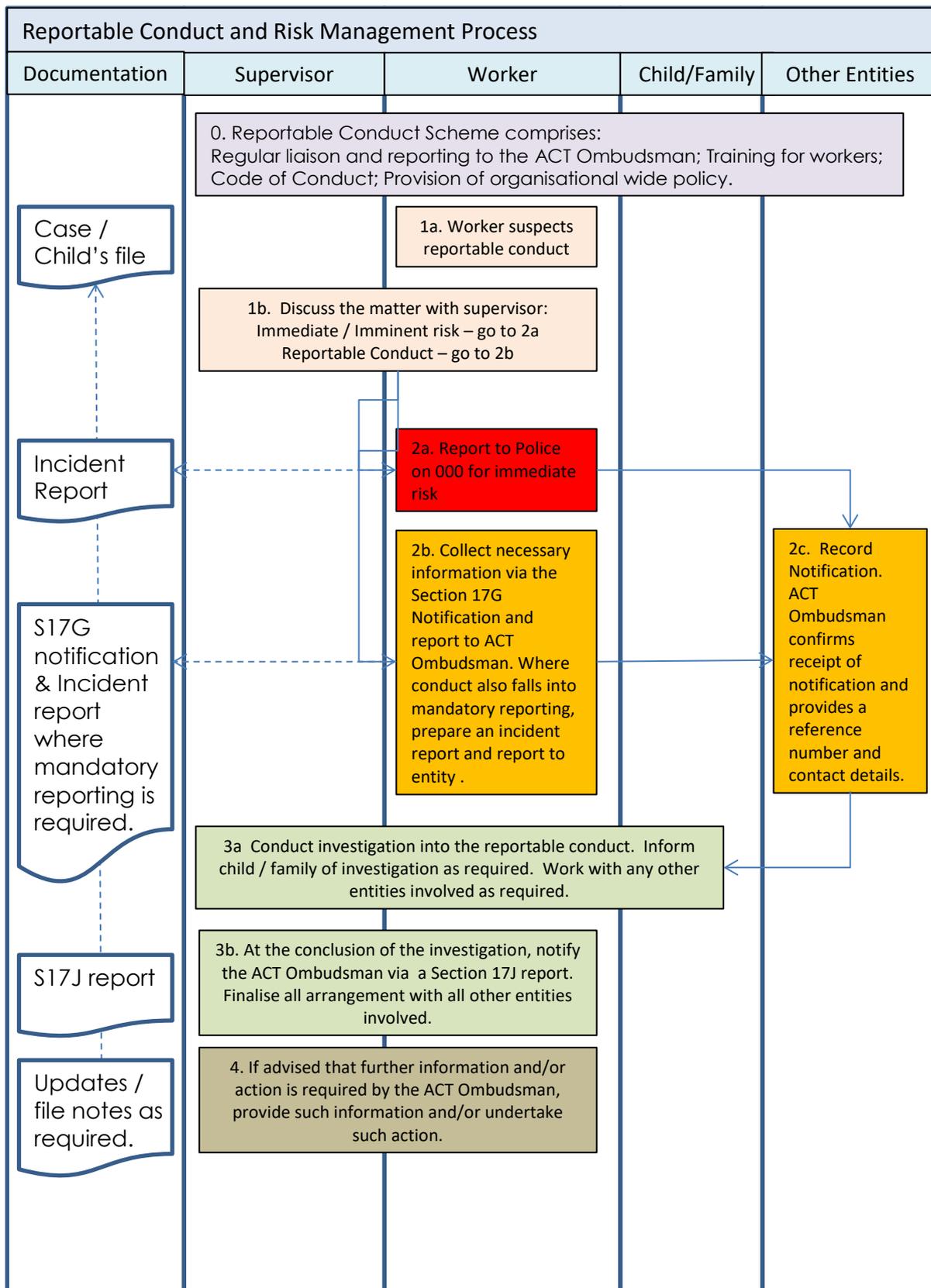
- ill-treatment of a child
- neglect
- psychological harm
- misconduct of a sexual nature
- sexual or physical offences and convictions where a child is a victim or is present

- inappropriate discipline or offences relating to protecting children from harm in accordance with the provisions of the *Education and Care Services National Law (ACT) Act 2011*.

This procedure assists WCS to prevent and respond to allegations of child abuse and misconduct against its employees, and to fulfil its reporting requirements to the ACT Ombudsman.

If any employee suspects or believes on reasonable grounds that a child or young person is experiencing abuse or neglect, or wishes to discuss concerns about a child or young person, should speak to their supervisor and follow the Child Protection and Risk Management policy.

### 3.2 Process Steps



Task No	Task Step Details	Responsible Person
0	<p><b>Reportable Conduct Scheme</b></p> <p>Effective 1 July 2017, the Reportable Conduct Scheme requires employers to report reportable conduct to the ACT Ombudsman. Reportable conduct covers a broader range of conduct compared to the types of child abuse which must be reported to the ACT Child and Youth Protection Service (CYPS). This means employers may become aware of an allegation or conviction that is reportable to the Ombudsman but is not conduct which must be mandatorily reported to CYPS. Likewise, an employer may need to report conduct to CYPS, but if the alleged behaviour did not involve an employee (for example, the allegation is against a parent or client/service user), there is no requirement to report to the ACT Ombudsman.</p> <p>Please note, it is only a requirement to report reportable conduct for instances occurring from 1 July 2017 onwards. No “backward” reporting for conduct occurring prior to 1 July 2017 is required.</p> <p>WCS is committed to fulfilling its requirements under the reportable conduct scheme, and is committed to working with the Ombudsman and any other entity to fulfil these requirements.</p>	
1	<p><b>Identification of reportable conduct</b></p> <p>1a When determining potential reportable conduct, workers may refer to the ACT Ombudsman's Practice Guide Number 5 titled “Employer Responsibilities” (available from <a href="http://www.ombudsman.act.gov.au/__data/assets/pdf_file/0025/43873/RCS-ACT-Ombudsman-Practice-Guide-No.-5-Employer-responsibilities.pdf">http://www.ombudsman.act.gov.au/__data/assets/pdf_file/0025/43873/RCS-ACT-Ombudsman-Practice-Guide-No.-5-Employer-responsibilities.pdf</a>)</p> <p>1b A worker who identifies reportable conduct must immediately discuss it with their supervisor or manager to determine the appropriate path.</p> <p>When a complaint or allegation is made about an employee, the employer should consider whether it constitutes an allegation of reportable conduct (a reportable allegation or a reportable conviction). For reportable conduct, employers covered by the scheme need to report allegations, offences or convictions relating to child abuse or child-related misconduct by an employee to the Ombudsman. It does not matter whether or not the employee engaged in the conduct in the course of employment or whether a child consents to the conduct.</p> <p>A <u>reportable allegation</u> refers to an express assertion that reportable conduct has happened or may have happened (including a statement or declaration with or without proof). For an allegation to be notifiable to the Ombudsman, the following components are necessary:</p> <ul style="list-style-type: none"> <li>the person who is the subject of the allegation must be a current employee of a designated entity or have been an employee at the time the employer became aware of the allegation.</li> <li>the employee must be identified or identifiable either by name or by other information including their description, work schedules and locations of the entity)</li> <li>the allegation must contain a description of behaviour that may constitute reportable conduct, and the child or young person who was alleged to have been involved in reportable conduct by an employee, must have been under 18 years at the time of the alleged incident or conduct.</li> </ul> <p>A <u>reportable conviction</u> is defined as a conviction, or finding of guilt, under a Territory law or a State or Commonwealth law, involving reportable conduct; and entered against the person before or after the commencement of the Act. Some common law convictions may also be reportable if related to similar conduct. More information is available in the ACT Ombudsman Practice Guide No 2: Identifying Reportable Conduct which is available on the Ombudsman's website at <a href="http://ombudsman.act.gov.au">ombudsman.act.gov.au</a>.</p>	<p><b>Worker</b></p> <p><b>Supervisor / Manager</b></p>

Task No	Task Step Details	Responsible Person
<p>2</p> <p>2a</p> <p>2b</p>	<p><b>Reporting Process</b></p> <p>a. For imminent threats to safety, contact 000 Police. Complete an incident report. Also consider if this constitutes a reportable conduct or mandatory and complete the steps in 2b.</p> <p>b. For reportable conduct, complete a S17G notification. Please note this must be completed as soon as the conduct has become evident, and the notification report must be received by the Ombudsman's office no later than 30 days from the date of notification of the conduct.</p> <p>Where the conduct requires mandatory reporting, employees and supervisors must complete all requirements for mandatory reporting. Please refer to the "WCS Child Protection and Risk Management Policy" and undertake all necessary actions.</p> <p>c. For reportable conduct, the ACT Ombudsman will write to WCS acknowledging receipt of the S17G notification and will include a reference number and contact details. The Ombudsman will work with WCS as required during the investigation, and appropriately share information with other agencies as required. Ombudsman staff may also observe interviews conducted by, or on behalf of, WCS and may confer with the people conducting the investigation about its conduct and progress. If asked, the investigators must provide the Ombudsman with any information relating to the investigation.</p> <p>Where the conduct included mandatory reporting, employees and supervisors must work with other notified entities. Please refer to the "WCS Child Protection and Risk Management Policy" and undertake all necessary actions.</p>	<p><b>Worker</b></p> <p><b>Worker / Supervisor</b></p> <p><b>ACT Ombudsman Office</b></p> <p><b>Worker / Supervisor</b></p>
<p>3</p> <p>3a</p> <p>3b</p>	<p><b>The Investigation Process</b></p> <p>As WCS has a duty of care to the child regardless of the actions of CYPs, an internal risk management process is conducted to provide WCS workers with potential controls to protect the child / young person.</p> <p>WCS is committed to ensuring a thorough, timely and professional investigation is conducted whenever a complaint is received. WCS has completed an investigation process to assist employees undertaking investigation to fulfil their obligations during investigations. Please refer to the "WCS Reporting and Investigation Procedure" for guidance and assistance when conducting investigations, including when investigating reportable conduct.</p> <p><b>Concluding the Investigation</b></p> <p>The supervisor will document all of the information gathered during the investigation, then analyse and weigh the evidence to support any conclusions. A reportable conduct investigation should apply the 'balance of probabilities' as the standard or proof. This means that findings should be based on whether it is more likely than not that reportable conduct has occurred.</p> <p>The supervisor will complete a draft S17J final report for consideration of the decision maker (the Director or delegate) leaving the "findings" options available for the decision maker to select. The Supervisor may advise what their finding recommendation is to the decision maker.</p> <p>The employer (decision maker) should then identify the finding/s best supported by the available evidence and propose any recommendations arising from the investigation. The supervisor will provide the final report (S17J form) to the Director,</p>	<p><b>Supervisor</b></p> <p><b>Supervisor</b></p>

Task No	Task Step Details	Responsible Person
	<p>WCS or their delegate to make a decision on the matter. When a decision maker considers an allegation of reportable conduct, the finding in the matter may be:</p> <ul style="list-style-type: none"> <li>• sustained</li> <li>• not sustained – insufficient evidence</li> <li>• not sustained — lack of weight</li> <li>• false (inquiries show that the conduct was not reportable)</li> <li>• not reportable conduct.</li> </ul> <p>The decision maker will review the S17J final report, determine the suitable finding, and cause to have the final report forwarded to the Ombudsman.</p> <p>Further information about the final finding can be found at The ACT Ombudsman Practice Guide No. 6: Making a finding for further guidance available at <a href="http://www.ombudsman.act.gov.au/__data/assets/pdf_file/0027/43875/RCS-ACT-Ombudsman-Practice-Guide-No.-6-Making-a-finding-of-reportable-conduct.pdf">http://www.ombudsman.act.gov.au/__data/assets/pdf_file/0027/43875/RCS-ACT-Ombudsman-Practice-Guide-No.-6-Making-a-finding-of-reportable-conduct.pdf</a></p>	<b>Decision Maker</b>
4 4a	<p><b>Follow up and further reporting</b></p> <p>The Ombudsman may request further information and/or reports, or ask WCS to undertake further activities in relation to the reportable conduct. In these cases, the supervisor will undertake activities to provide any further information and undertake any further action as requested by the Ombudsman.</p>	<b>Supervisor</b>

### 3.3 Procedure Monitoring

This procedure will be monitored through regular review of reporting to the Ombudsman across all services.

## 4 References

ACT Ombudsman. (n.d). *Reportable Conduct Scheme*.  
<http://www.ombudsman.act.gov.au/reportable-conduct-scheme.htm> accessed September 2017

Child Safety Australia. (n.d.). *Child abuse and neglect*.  
<http://www.childsafetyaustralia.com.au/community/childabuse/childabuse.htm> accessed September 2017

Department of Communities - Child Safety Services. (2012). *Child safety services*.  
<http://www.communities.qld.gov.au/childsafety/about-us/contact-us/child-safety-service-services> accessed September 2017

Inappropriate discipline or offences relating to protecting children from harm Education and Care Services National Law (ACT) Act 2011 accessed September 2017.

## 5 Definitions and abbreviations

Term	Definition
Designated Entity	See "Employer" below
Employee	All employees under contract to an employer in the scheme, whether or not they provide services directly to children, are covered under the scheme. Volunteers and contractors are also considered as employees in the scheme but only if they are engaged to provide services to children.

	<p>Conduct occurring in either a professional or personal capacity is reportable for anyone defined as an employee under the scheme. For example, conduct by an employee, while volunteering in a personal capacity, can be considered by an employer who falls under the reportable conduct scheme.</p> <p>This includes allegations outside of work in people's personal lives if we become aware of it.</p>
Employer	<p>Employers covered by the scheme are referred to as 'designated entities' and include:</p> <ul style="list-style-type: none"> <li>• all ACT directorates</li> <li>• health service providers</li> <li>• out of home care, kinship and foster care</li> <li>• residential care organisations</li> <li>• government and non-government schools</li> <li>• child care services</li> <li>• education and care service providers, such as outside school hours care.</li> </ul> <p>WCS is an employer (designated entity) under the Reportable Conduct Scheme.</p>
Reportable Conduct	<p>Reportable conduct is allegations, offences or convictions relating to child abuse or misconduct, including:</p> <ul style="list-style-type: none"> <li>• sexual offences and convictions where a child is a victim or is present</li> <li>• offences against the person, including physical offences and convictions, where a child is a victim or is present</li> <li>• conviction, or finding of guilt, under a territory law or a state or Commonwealth law, involving reportable conduct</li> <li>• offences against the <i>Education and Care Services National Law (ACT) Act 2011</i> (inappropriate discipline or offences relating to protecting children from harm)</li> <li>• ill-treatment of a child (including emotional abuse, hostile use of force/physical contact, neglect and inappropriate, restrictive intervention)</li> <li>• psychological harm</li> <li>• misconduct of a sexual nature.</li> </ul> <p>Reportable conduct includes allegations, offences and convictions relating to any of the above and involving a child.</p>
Worker	See "Employee" above

## 6 Enablers

### Practice Guides and Resources

- An Introduction to the ACT Reportable Conduct Scheme
- An Introduction to the ACT Reportable Conduct Scheme for Employees
- s 17G Notification

- ACT Ombudsman Practice Guides:
  - No. 1 - How the ACT Ombudsman responds to notifications and reports
  - No. 2 - Identifying Reportable Conduct
  - No. 3 - Risk management following an allegation of reportable conduct against an employee
  - No. 4 - Planning and conducting an investigation
  - No. 5 - Employer responsibilities
  - No. 6 - Making a finding of reportable conduct
  - No. 7 - 17J final report
  - No. 9 - How the ACT Ombudsman assesses an employer's response/investigation
  - No. 10 - Addressing child protection issues in a code of conduct
- Ombudsmen Act 1989 (as amended) [http://www.legislation.act.gov.au/a/alt\\_a1989-45co/current/pdf/alt\\_a1989-45co.pdf](http://www.legislation.act.gov.au/a/alt_a1989-45co/current/pdf/alt_a1989-45co.pdf)

## 7 Document control

<b>Version</b>	<b>Author</b>	<b>Description of changes</b>	<b>Approved by/date</b>
0.1	E. Purrer	First issue of content	K. West 11/09/2017
0.2	S. Henderson	Cross reference with WCS Child Protection P&P	K. West 31/05/2018