

BSV REPORTABLE CONDUCT GUIDELINES

The Reportable Conduct Scheme aims to ensure those who should not work with children do not work with children

Following the Betrayal of Trust Report the Victorian Government passed legislation in February 2017 to introduce a Reportable Conduct Scheme (Scheme) in Victoria, which complements the Child Safe Standards and other child safety measures.

The organisation responsible for the Scheme is the Commission for Children and Young People (CCYP).

BSV along with all Religious bodies are included in Phase 2: 1 January 2018 (schedule 4). BSV is obligated to have in place a Statement of Commitment to Child Safety, and a Child Safe Policy as to how BSV will respond if a complaint or an incident occurs concerning child safety or reportable conduct.

A Snapshot of a Head of Organisations Obligations under Reportable Conduct

Whilst a head of organisation (BSV President) is responsible for ensuring their organisation complies with the Scheme, the Commission does not expect heads to carry out their responsibilities alone. They can get help from people within their organisation to fulfill their obligations under the Scheme. This may include creating and developing systems, sending approved notifications to the Commission, and conducting investigations on their behalf. Whilst the President can seek internal assistance it is ultimately their responsibility to ensure the Commission is notified.

What does the head of an organisation need to have in place?

Section 16K of the *Child Wellbeing and Safety Act 2005* requires the BSV President to:

- Take a preventative approach to keeping children safe
- Have a system in place to enable anyone to notify their concern or allegation that conduct in line with reportable conduct may have occurred
- Have a system in place to allow other people to report to the Commission if the reportable allegation concerns the head of the organisation/President. At BSV the Vice President would then be responsible for the report
- Have investigation processes clearly defined and developed

Notify: The President has a responsibility to report allegations to the CCYP within **3 business days** of becoming aware of the allegation. Notify all allegations of conduct that may involve reportable conduct by a Sangha member, lay volunteers, contractors, BSV members or visitors etc. no matter where it occurs.

Investigate

- BSV must investigate an allegation – subject to police clearance on criminal matters. A Victoria Police investigation takes priority over reportable conduct investigations. You must not commence or continue an investigation if Victoria Police is investigating. When you receive confirmation from the Police that their investigation is completed you may proceed
- BSV must advise the Commission who is undertaking the investigation
- BSV must manage the risks to children

Update

- **Within 30 calendar days** BSV must provide detailed information about the reportable allegation and any action you have taken

Outcomes

- BSV must notify the Commission of the investigation findings and any disciplinary action the head of entity has taken (or the reason no action was taken)

What does the Commission do with the allegations it receives?

The Commission will carefully consider each allegation and may decide to:

- Give the organisation responding to the allegation support and guidance
- Check that the organisation is handling the allegation in a timely manner
- Refer a substantial allegation to Working With Children Check or a professional accreditation body

Who can an allegation be made about under the Scheme

A reportable allegation can be made about any person over 18 years who is an employee, religious leader, volunteer, contractor or office holder of an organisation covered by the Scheme.

Allegations can be made about the conduct of people even if

- They do not have direct contact with children
- The conduct occurred outside of their work

There is a need to be clear about the roles and responsibilities of all volunteers at BSV and to undertake child related employment screening such as the Working with Childrens Check.

What makes something a reportable allegation

Reportable allegations involve a child under 18 years at the time of the alleged conduct.

The allegation fits the definition of a reportable allegation concerning reportable conduct

- 1) It occurred when the volunteer was engaged by BSV regardless if they have left
- 2) It is historical or occurred prior to being at BSV
- 3) BSV became aware of a reportable allegation after the volunteer has left

5 types of Reportable Conduct listed in the *Child Wellbeing and Safety Act 2005 (Vic)*

- Sexual offence (against with or in the presence of a child)
- Sexual misconduct (against with or in the presence of a child)
- Physical violence (against with or in the presence of a child)
- Behavior that is likely to cause significant emotional or psychological harm
- Significant neglect

Sexual offences in Victoria

Certain sexual behaviours against, with or in the presence of a child are reportable

- Sexual assault
- Indecent acts
- Possession of child abuse material
- “Grooming” a child in order to commit a sexual offence

A person does not need to be charged with or found guilty of a sexual offence for their behavior to be reportable conduct.

Not only the President but any person can report to the CCYP. The CCYP are there for advice and guidance.

Example of reportable conduct

A volunteer was found to have child pornography on their home computer.

Examples of sexually explicit comments and other sexually overt behaviour

- Sexualised behavior including exhibitionism
- Inappropriate conversation of a sexual nature
- Comments that expresses a desire to act in a sexual manner
- Unwarranted and inappropriate touching
- Inappropriate personal correspondence and communications including emails, social media
- Exposing children to sexual behavior of others including pornography
- Watching children undress for no sound reason

Crossing professional boundaries

Behaviour that can be reasonably construed as involving an inappropriate and overtly personal or intimate relationship with; conduct towards; or focus on; a child or young person, or in a group of children or young persons.

Physical Violence

Physical violence includes an act that causes injury or pain. Examples of physical violence can include:

- Hitting kicking punching
- Pushing shoving grabbing throwing shaking
- Using inappropriate restraint excessive force

What is Not physical violence

- Reasonable steps taken to protect a child from immediate harm
- Medical aid example administering first aid

Examples of emotional or psychological harm may include

- Exposure to violence or threats of violence
- Self destructive behavior
- Persistent hostility rejection
- Humiliation or belittling
- Scapegoating

Behaviour not likely to cause significant emotional or psychological harm - Not reportable

- Reasonable steps to protect a child from harm
- Time out by a person with disciplinary responsibility in line with organisational policy
- Medical first aid treatment in good faith

Example of psychological harm

- Constantly shouting at a child or saying you are stupid
- Noticing a child becoming withdrawn and cowering in front of a volunteer. Parent reports nightmares about the volunteer

Types of Neglect

- Supervisory neglect placing the child at risk of physical harm, sexual abuse, other criminal behavior toward the child
- Physical neglect failing to provide basic physical needs
- Medical neglect failure to provide for appropriate medical care for a child or acknowledge the seriousness of an illness or condition or deliberately withholding appropriate care
- **Failure to report**

Example of neglect

A Teens Group volunteer ignores the dietary guidelines in relation to a nut allergy and continues to give the child peanut butter causing health problems

What is a Serious Reportable Conduct that may amount to potential criminal conduct?

- Serious allegations against a volunteer may require a simultaneous response from other agencies such as Victoria Police and DHS – reasonable belief does not have to be proven

- BSV has 3 days to report to the CCYP and 30 days to investigate an allegation and to report

Failure to protect and failure to disclose

Criminal offences related to failure to protect a child from sexual offences and failure to disclose sexual offences committed against a child under the age of 16 years

Failure by a person in authority to protect a child from a sexual offence -
Crimes Act 1958 (Vic) s 490

Failure to disclose by a person over 18 years who has information that leads the person to form a reasonable belief that a sexual offence has been committed against a child under the age of 16 years (by a person over 18 years) ***Crimes Act 1958 (Vic) s 327***

In 2014 in response to the Betrayal of Trust Inquiry, Victoria inserted a specific provision for failing to disclose a child sexual offence for children under 16 years

Challenges in correctly identifying potential criminal conduct

- Assaults relating in physical injury are usually easy to identify
- With child related volunteer allegations there is a significant additional challenge. Each organisation has to make the correct call early on as to how much evidence they should collect and how they should collect it (its tricky too much could prejudice the case)
- When in doubt contact the CCYP and follow the policy guidelines
- Allegations of family violence which may involve a police response do not necessarily meet the threshold for criminal conduct
- If a child witnesses domestic violence it is reportable

Definition of grooming

Grooming is defined as a pattern of **consistent** behavior aimed at engaging a child as a precursor to unlawful sexual activity. It is about gaining the trust of, and time alone with a child, and can involve some behaviours that may be considered normal or acceptable when viewed in isolation (difficult to prove).

Offences under *Crimes Act 1958 (Vic) s 49M*

- Person A commits an offence if over 18 years and A communicates by words or conduct (whether or not a response is made to the communication)
- B a child under 16 years or
- Another person C under whose care supervision or authority B is and
- A intends that the communication facilitates B engaging or being involved in the commission of a sexual offence by A or by another person 18 +

Identifying grooming strategies

- Persuading a child that a special relationship exists example favours, overstep rules asking the child to keep the relationship to themselves
- Testing of boundaries, undressing in front of the child, sitting on lap, talking about sex, accidental touching, telling the child person things and getting them to reciprocate
- Inappropriately extending a relationship outside volunteering time or BSV
- Inappropriate personal communication emails web texts etc. that explore sexual feelings or intimate personal feelings with a child

Note that sometimes a person may look like they are grooming but it is in fact only inappropriate behavior with no intent.

Historical allegations

- It does not matter when the allegation happened or when in the scope of volunteering
- If recruiting and BSV finds out about inappropriate conduct BSV still has to report
- If the person resigns BSV still has to report
- Specific challenges may include contacting witnesses, memory recall and destruction of records. Or reluctance of other organisations to assist due to the age of the matter
- The only escape from reportable conduct is Death

How to make it easier to decide if reportable

- Check your assumptions
- Clarify the information where possible but do not go too far with the questioning
- Seek more details if you can
- Be clear about your rationale
- Consult with others
- Err on the side of reporting for more serious allegations, even when information is limited

Initial response to reportable allegation

- Recognise that a reportable conduct allegation has been made
- Clarify the allegation
- Assess and manage risks
- Identify reporting responsibilities
- Manage appropriately any disclosure of information
- Provide support to volunteer and alleged victim

Key message

Dealing with serious reportable conduct =
the combination of investigative art + investigative science

Child abuse allegations – the 3 objectives

- Protecting people
- Protecting investigations
- Protecting BSV's reputation

Core investigative principles

- Impartiality
- Avoiding conflict of interests
- Confidentiality
- Procedural fairness

Impartiality

- The role of an investigator is to uncover all relevant facts to ascertain the truth
- They should have no stake in whether an allegation is proved or otherwise and should be focused instead on ensuring the thorough and impartial gathering and assessment of evidence
- This approach is best thought of as inquisitorial. Investigators should avoid seeing themselves as an advocate, prosecutor or defender

Conflicts of interest

Sometimes conflicts of interest will be impossible to avoid. In such circumstances, it is important to

- Be transparent – acknowledge that the conflict exists
- Take steps to manage the conflict and minimise the impact (as far as practicable)

Confidentiality

Consideration in relation to some or all of the following

- The fact that an allegation or disclosure has been made
- The nature of the allegations
- The identity of the alleged victim
- The identity of any person who is the subject of allegations
- The identities of any witnesses
- Make sure that all witnesses are aware of the need to maintain confidentiality – be explicit about this
- Obtaining/securing evidence gathered by the investigator needs to be managed and must not prejudice criminal processes

Procedural fairness

It is important that the procedures used when conducting an investigation are fair and reasonable and free of bias. Before any findings are made or disciplinary action is taken, the subject of an allegation:

- Is notified of any adverse information that is credible, relevant and significant
- Has a reasonable opportunity to respond to that information and be heard

- And if adverse findings are made against them is given an opportunity to respond
- The bias rule of procedural fairness requires that a decision-maker must not be biased or be seen by an informed observer to be biased in any way
- Strategies need to be in place to protect the person who made the allegation, the witnesses who have provided information and any children involved

Procedural fairness does not require that the subject or others must be notified of allegations when the Commission is first notified or allegations that are plainly false. Consideration needs to be given as to when the subject of the allegation is first told about the allegation, in order to ensure the investigation is not compromised but remains procedurally fair.

Key steps in an investigation

If an allegation is criminal in nature, you MUST get clearance from Victoria Police before beginning your investigation

1. Understanding the issues

Think about

- The type of conduct alleged
- The seriousness of the alleged conduct
- The context in which the alleged conduct occurred
- A history of previous reportable allegations against the person
- The potential for continuing risk to children
- Is the allegation possibly criminal in nature and required to be reported to Victoria Police

2. Planning an investigation

To determine the most appropriate approach for BSV and the circumstances of the allegation, you may want to consider

- The powers necessary to investigate the allegation
- The resources and skills that are required
- The authorisation necessary to undertake the investigation
- Who will undertake the investigation and conflicts of interest
- Record keeping

3. Coordinating an investigation

- Develop an investigation plan setting out the tasks and the order the tasks will be undertaken
- Be clear about the powers you will exercise and your reasons for exercising them
- Identify areas requiring legal advice or expert advice example a medical practitioner
- Will you use an investigation log or running sheet to enter and date activities that are undertaken

Information gathering

Throughout the investigation, other allegations or concerns may be identified. If this occurs, it may add or change the allegations put to the alleged person

Information relevant to your investigation can be gained from a number of key sources.

Physical evidence

Documents such as policies, procedures, incident reports, emails, computers, mobile phones can provide vital evidence.

Direct evidence

Speaking with people including witnesses, the committee, other volunteers and the person the allegation has been made against enables the gathering of their direct observations, experience and recollections of events or actions. Particular care must be taken when it is proposed that an investigation involves children or the person who is the subject of the allegation.

Standard of proof

A reportable conduct investigation should apply the 'balance of probabilities' as the standard of proof. Was it more likely than not that the reportable conduct has occurred

- The decision-maker must base their decision on clear and cogent evidence, and not guess work, suspicion or rumour

Reporting

The investigation report needs to document the terms of reference of the investigation, together with how the investigation was undertaken, what evidence and information was obtained, what conclusions were made and if applicable any recommendations for consideration.

Welfare and support

A reportable investigation can be stressful and demanding on all people involved. Vital to the intent of keeping children safe is the need to ensure appropriate support to an alleged victim. Steps need to be taken to mitigate risks that the alleged victim is not re-traumatised by the investigation process. BSV needs to have appropriate welfare and support systems to support staff and volunteers.

Further information

Refer to the Child Safe Standards for BSV, BSV Policy for Reportable Conduct and the BSV Flowchart: Child Safe Reporting Process

Where to get Help

For clarification or guidance contact the CCYP
Mon-Fri 9am-5pm tel: 03 8601 5281, email
childsaf@ccyp.vic.gov.au or www.ccyp.vic.org.au