



Reportable Conduct Policy and Procedures

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| National Quality Standard | Quality Areas 2: Children’s Health and Safety; Related Areas: 4,5,7 |

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Policy Statement

Heritage Early Childhood Centre (Heritage) plays an important role in the provision of services to the community. It recognises that its employees are in a position of trust and responsibility and have a significant influence on their relationships with children, families, colleagues, and the community. As a result, professional conduct and accountability is vital. Heritage is committed to providing a safe environment that supports the emotional and physical wellbeing of all enrolled children, families, and employees. All Heritage employees (including students on practicum, family volunteers and others engaged to provide services to enrolled children), are expected to maintain the highest standards of honesty, integrity, and mutual respect in all dealings with children and the Heritage community as set out in the Heritage Philosophy and Heritage Code of Conduct/Ethics. In addition, the service incorporates the [National Principles for Child Safe Organisations](#) into its' risk management strategies and embeds child protection, safety and wellbeing into every aspect of the service.¹

The Heritage Reportable Conduct Policy and Procedures have been developed to assist employees to maintain high professional standards and to ensure compliance with the ACT Reportable Conduct Scheme, introduced by the ACT Government in July 2017. The scheme is designed to oversee how organisations prevent and respond to allegations of employment-related child abuse and misconduct. It covers a broader range of conduct compared to the types of child abuse which must be reported to the ACT Regulatory Authority (CECA) and Child and Youth Protection Services (CYPS) and does not interfere with reporting obligations to these authorities. If it is suspected that criminal conduct has occurred, it must be reported to police in the first instance.²

Specifically, the scheme requires employers who work with children, including early education and care services, to report to the ACT Ombudsman on becoming aware of any allegation or conviction against any employee of child abuse or misconduct towards children, whether in their professional or private capacity. All employees are covered, whether or not the employee provides services directly to children. Volunteers and contractors are employees if they are engaged to provide services to children.

This policy and procedures document aims to define Reportable Conduct and describe the behaviours that may be investigated and reported to the ACT Ombudsman as potentially Reportable Conduct. It outlines the professional standards expected of Heritage employees to minimise the risk of Reportable Conduct occurring and to assist the Management Committee, Director, and employees to understand where professional boundaries lie. Procedures are detailed for identifying, investigating and reporting suspected Reportable Conduct.

This policy meets the *Education and Care Services National Law 2010* and *National Regulations 2011* including the requirement for services to have policies and procedures in relation to a code of conduct for staff, providing a child safe environment, and interactions with children (National Regulation 168). In addition, the service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury (National Law Section 167). It also supports the service to meet or exceed the National Quality Standard, Quality Area 4 that requires management, educators, and staff to be collaborative, respectful, and ethical, and guided by professional standards in their practice, interactions, and relationships.

Scope

This policy applies to the Heritage Management Committee, Director, educators, all other employees, family volunteers, and students on practicum. It also applies to contractors and all other adults engaged to provide services, programs or activities to enrolled children at Heritage.

¹ Refer to: Child Safe Environment Policy and Procedures; Child Protection Policy and Procedures

² Refer to: Complaints and Grievance Management Policy (Staff or non-staff); Staff Underperformance and Misconduct Policy; Child Protection Policy and Procedures



Policy Aims

- To promote desirable and appropriate behaviours by all management and employees across the service that reflect the Heritage Philosophy and Heritage Code of Conduct/Ethics.
- To assist management to fulfil its duty of care and legislative responsibilities to prevent exposing children to harmful, abusive, neglectful, or exploitative conduct by any employee.
- To ensure Heritage is compliant with the ACT Reportable Conduct Scheme.
- To assist Heritage Management to identify Reportable Conduct.
- To assist employees to understand and identify professional boundaries.
- To ensure Heritage has in place systems, policies, and procedures for preventing, recording, responding to and investigating allegations or convictions against Heritage employees involving potentially Reportable Conduct.
- To ensure this policy and related procedures are regularly reviewed and meet all legislative requirements and current best practice standards for the early childhood education and care profession.

Definitions

In relation to this policy:

Assault: An incident where a person causes injury, pain, discomfort, or damage to another person. It may be physical or verbal and includes insult and deprivation of liberty.

Bullying: When a person or a group of people behaves unreasonably and repeatedly towards another person or group, such as behaving in a way that is harassing, intimidating, overbearing, or physically or emotionally threatening, and the behaviour creates a risk to emotional wellbeing, health, or safety.

Child Abuse: Under the *ACT Children and Young People Act 2008*, child abuse is defined as types of maltreatment that endanger a child/young person's safety, wellbeing, and development. Child abuse can be a single incident or a chronic pattern of behaviour over time and may be intentional or unintentional.³

Common Law: The part of the law that is derived from custom and judicial precedent rather than statutes.

Duty of Care: A common law concept that refers to the responsibilities of organisations to provide people with an adequate level of protection against harm and all reasonably foreseeable risk of injury.

Employee: Defined under the ACT Reportable Conduct Scheme as a person under a contract of employment with an employer, whether or not the employee provides services directly to children. Volunteers and contractors to an employer under the scheme are also considered as employees, but only if they are engaged to provide services to children.

Ethical Conduct: In the early childhood setting, ethical behaviour refers to acting in the best interests of all children and is based on mutual trust and open communication with families. It involves educators thinking about everyday actions and decision making, both individually and collectively, and responding with respect to all concerned.⁴

Misconduct: In relation to this policy, Misconduct means deliberately neglecting duties or conduct that contravenes the Heritage Code of Conduct/Ethics or Staff Underperformance and Misconduct Policy.

Neglect: Neglect of a child involves the actions or inactions (omissions) of an employee who has the responsibility to care for a child. It refers to a failure to provide a child with the basic needs for his or her physical/emotional/psychological and intellectual development. Such actions may be intentional or unintentional.

Notifiable Complaint: The Approved Provider is required to notify the ACT Regulatory Authority (CECA) within 24 hours of a complaint/grievance being lodged where an allegation is made that a ['Serious Incident'](#) has occurred or is occurring or the *Education and Care Services National Law 2010 or Regulations 2011* have been contravened.

Reportable Conduct: Defined under the ACT Reportable Conduct Scheme as child-related misconduct, either allegations, offences, or convictions (see below), engaged in by an employee (see below), whether or not in the course of employment, and regardless of a child's consent.

³ Refer to: Child Protection Policy and Procedures

⁴ Refer to: Heritage Code of Conduct/Ethics



Reportable Allegation: An express assertion that Reportable Conduct has occurred. It may take the form of an assertion, statement or declaration made with or without proof.

Reportable Offence or Conviction: A conviction/finding of guilt relating to an employee:

- For an offence, under a territory, State or Commonwealth law, involving Reportable Conduct; and
- Entered against the person before or after the commencement of the Reportable Conduct and Information Sharing Legislation Amendment Act 2016, section 3.
- Some common law convictions may also be reportable if related to similar conduct].

Respect: Valuing the rights, religious beliefs, and practices of other individuals. Refraining from actions and behaviour that constitute harassment or discrimination.

Serious Incident: Heritage utilises the definition under [National Regulation 12](#).

Supervisory Neglect: A form of neglect whereby inadequate supervision leads to or has the potential to lead to harm to the child and may lead to a finding of Reportable Conduct or Misconduct and disciplinary action.

Rationale and Legislative Background

Heritage recognises it has a duty of care to take all reasonably practicable steps to provide the Heritage community with a safe and healthy environment that supports the emotional and physical wellbeing of all employees and children ([Work Health and Safety Act, 2011 \(ACT\)](#)) In addition, this policy has been developed to comply with the:

- [Education and Care Services National Law Act 2010 \(ACT\)](#)
- [Education and Care Services National Regulations 2011 \(ACT\)](#)
- [National Quality Standard for Early Childhood Education and Care](#)
- [Ombudsman Act 1989 \(Reportable Conduct, Division 2.2A\)](#)
- [Children and Young People Act 2008](#)
- [Human Rights Act 2004 \(ACT\)](#)
- [Human Rights Commission Act 2005 \(ACT\)](#)
- [Discrimination Act 1991 \(ACT\)](#)
- [United Nations Convention on the Rights of the Child \(1991\)](#)
- [National Principles for Child Safe Organisations](#)
- The Heritage Philosophy Statement; and Heritage Code of Conduct/Ethics

| Relevant Education and Care National Law | |
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| S 162 | Offence to operate unless responsible person is present |
| S 165 | Offence to inadequately supervise children |
| S 166 | Offence to use inappropriate discipline |
| S 167 | Offence relating to protection of children from harm and hazards |
| S 174 | Offence to fail to notify certain information to Regulatory Authority |
| Relevant Education and Care National Regulations | |
| R 12 | Meaning of a serious incident |
| R 84 | Awareness of child protection law |
| R 155 | Interactions with children: Reasonable steps are taken to ensure that the education and care service provides education and care to children in a way that: <ol style="list-style-type: none"> encourages the children to express themselves and their opinions. allows the children to undertake experiences that develop self-reliance and self-esteem. maintains at all times the dignity and rights of each child. gives each child positive guidance and encouragement toward acceptable behaviour. has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child. |
| R 156 | Relationships in groups |
| R 122 | Educators must be working directly with children to be included in ratios |



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| R 123 | Educator to child ratios |
| R 158 | Children's attendance record to be kept by approved provider |
| R 165 | Record of visitors |
| R 168 | <p>Policies and procedures are required in relation to the following:</p> <p>(h) providing a child safe environment;</p> <p>(i) staffing, including:</p> <p style="padding-left: 40px;">(i) A code of conduct for staff members; and</p> <p style="padding-left: 40px;">(j) Interactions with children, including the matters set out in r155 and 156</p> |
| R 170 | Policies and procedures to be followed |
| R 171 | Policies and procedures to be kept available |
| R 172 | Notification of change to policies or procedures |
| R 173 | Prescribed Information to be displayed: 2(b) the name and telephone number of the person at the education and care service to whom complaints may be addressed. |
| R 175 | <p>Prescribed information to be notified to Regulatory Authority</p> <p>(d) any incident where the approved provider reasonably believes that physical/sexual abuse of a child/ren has occurred/is occurring while being educated and cared for by the service.</p> <p>(e) allegations that physical/sexual abuse of a child/ren has occurred or is occurring while the child is or the children are being educated and cared for by service (other than notified under section 174(2)(b) of the Law).</p> |
| R 176 | Times to notify certain information to Regulatory Authority |
| Relevant National Quality Standards | |
| QA 2 | <p>Children's Health and Safety: Standard 2.2: Safety: Each child is protected:</p> <p>Element 2.2.1 Supervision. At all times, reasonable precautions and adequate supervision ensure children are protected from harm and hazard.</p> <p>Element 2.2.3: Child protection: Management, educators and staff are aware of their roles and responsibilities to identify and respond to every child at risk of abuse/neglect.</p> |
| QA 4 | <p>Staffing Arrangements: Standard 4.2: Professionalism: Management, educators and staff are collaborative, respectful and ethical.</p> <p>Element 4.2.2: Professional standards. Professional standards guide practice, interactions and relationships.</p> |
| QA 5 | <p>Relationships with Children: Standard 5.1: Relationships between educators and children. Respectful and equitable relationships are maintained with each child.</p> <p>Element 5.1.1: Positive educator to child interactions. Responsive and meaningful interactions build trusting relationships which engage and support each child to feel secure, confident and included.</p> <p>Element 5.1.2: The dignity and rights of the child. The dignity and rights of every child are maintained.</p> |
| QA 7 | <p>Governance and Leadership: Standard 7.1. Governance. Governance supports the operation of a quality service.</p> <p>Element 7.1.1 Service philosophy and purpose. A statement of philosophy guides all aspects of the service's operations.</p> <p>Element 7.1.2. Management Systems. Systems are in place to manage risk and enable the effective management and operation of a quality service.</p> <p>Element 7.1.3 Roles and Responsibilities: Are clearly defined, and understood, and support effective decision making and operation of the service.</p> <p>Standard 7.2. Leadership. Effective leadership builds and promotes a positive organisational culture and professional learning community.</p> |



Summary of Key Roles and Responsibilities

| Role | Responsible for ensuring: |
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| Management Committee | <ul style="list-style-type: none"> • Every reasonable precaution is taken to ensure all children being educated and cared for at Heritage are protected from harm and any hazard likely to cause injury (National Law, Section 167). • The service culture encourages respectful interactions at all times. • Systems, policies, and procedures are in place that ensure a safe service environment for children. • A Reportable Conduct Policy and Procedures document is in place that is up to date and easily accessible to families and educators at all times. • There is a process in place to ensure all service policies and procedures are regularly updated to reflect current legislative requirements, government guidelines and best practice recommendations from recognised authorities.⁵ • The Reportable Conduct Policy and Procedures document clearly defines the roles and responsibilities of the Nominated Supervisor, educators, families, and others in the Heritage community. • The Reportable Conduct Policy and Procedures sets out the procedures for identifying, recording, responding to and investigating allegations or convictions involving potentially Reportable Conduct against employees. • Appropriate and up to date professional standards for employees, including a Code of Conduct/Ethics, are developed and enforced in collaboration with the Director and Heritage community. • The relevant Complaints and Grievance Management Policy (staff/non-staff) or Staff Underperformance and Misconduct Policy is activated on notification of a breach of professional standards. • Any allegation or conviction of Reportable Conduct against an employee is investigated, and appropriate action taken that is procedurally fair. • The Director is supported to undertake a Risk Assessment on becoming aware of an allegation or conviction of Reportable Conduct against a Heritage employee to identify whether children are at risk. • The Director is supported to notify the relevant authorities as required within the required timeframes (refer to: Reporting Procedures). |
| Director/ Nominated Supervisor | <ul style="list-style-type: none"> • Every precaution is taken to ensure children being educated and cared for at Heritage are protected from harm and any hazard likely to cause injury (National Law: Section 167). • The service culture encourages respectful interactions at all times. • Up to date systems, policies and procedures are in place that ensure a safe service environment for children. • Working with the Management Committee to ensure there are systems, policies and procedures in place for identifying, recording, responding to and investigating allegations or convictions involving potentially Reportable Conduct against Heritage employees. • Developing practices and procedures in consultation with the Management Committee to ensure that parents/guardians on duty, or other adults participating in the program, are not placed in a situation where they are left alone with a child.⁶ • Up to date professional standards for employees are developed and enforced at all times, including a Code of Conduct/Ethics, in collaboration with the Management Committee and Heritage community. • Heritage employees are advised on induction that the Heritage Code of Conduct/Ethics is to be read in the Educator Handbook, signed off as understood, and filed with their employment record, and that they must comply with its instructions. |

⁵ Refer to: Policy Development and Review Policy and Procedures

⁶ Refer to: Child Protection Policy and Procedures



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| | <ul style="list-style-type: none"> • All employees are educated about the Reportable Conduct Scheme and made aware of the contents of this policy on employment at the service. • The Management Committee is informed in the event a breach of the professional standards set out in this policy or child-related misconduct by an employee that may be Reportable Conduct. • The relevant Complaints and Grievance Management Policy (staff/non-staff) or Staff Underperformance and Misconduct Policy is activated as required on notification of a breach of professional standards. • Employees are educated about and aware of their responsibility to notify the Director as soon as possible, of any concern, allegation or convictions that may potentially be Reportable Conduct involving an employee, of which they become aware. • A Risk Assessment is undertaken on becoming aware of an allegation or conviction of Reportable Conduct against a Heritage employee to identify whether children are at risk. • The relevant authorities are notified as required, including ACT Policing, the ACT Ombudsman, CYPS and CECA (refer to: Reporting Obligations). |
| <p>Educators</p> | <ul style="list-style-type: none"> • Service policies and procedures are understood and adhered to at all times to ensure a safe service environment for children. • The service culture that encourages respectful and positive interactions is upheld and supported. • Heritage Code of Conduct/Ethics Acknowledgement in the Educator Handbook is read and signed on induction. • Professional standards as set out in this policy are adhered to at all times. • The Director or Management Committee is promptly notified of any concerns about staff interactions, including allegations about themselves, with children, both in work-related activities and outside of work.⁷ <ul style="list-style-type: none"> ◦ In such circumstances, and where it is safe to do so, employees may take steps to intervene to ensure the safety and wellbeing of children. • Guidance is provided to parents/guardians and volunteers through positive role modelling and, when appropriate, clear, and respectful directions. • Parents/guardians or other adults participating in the program, are not placed in a situation where they are left alone with a child, unless they are the child’s parent/guardian. • Police are contacted in an emergency situation where it is believed that there is an immediate risk (e.g. when violence has been threatened or perpetrated). |
| <p>Families</p> | <ul style="list-style-type: none"> • They read the Family Handbook, Heritage Philosophy and Code of Conduct/Ethics. • They abide by the Education and Care National Law and Regulations. • They are familiar with and comply with all Heritage policies and procedures, as far as practicable.⁸ |
| <p>Regular Family Volunteers & Students</p> | <ul style="list-style-type: none"> • They read the Relief Educator Handbook, Heritage Philosophy and Code of Conduct/Ethics. • They abide by the Education and Care National Law and Regulations. • They are familiar with and comply with all Heritage policies and procedures, as far as practicable, available in the Members Area of the website. • They are familiar with this policy and its procedures when providing education and care services to enrolled children at the service. |

⁷ Refer to: Staff Complaints and Grievance Management Policy and Procedures

⁸ Refer to: Non-Compliance Policy and Procedures



Strategies and Procedures

Professional Standards at Heritage

- Professional standards minimise the risk of Reportable Conduct occurring at the service and assist Heritage Management and employees to understand where professional boundaries lie.
- Educators are trained regarding the professional standards expected of them while on duty and educating and caring for children at the service, and those behaviours that may be investigated as potentially Reportable Conduct.
- The Director must activate the relevant Complaints and Grievance Management Policy (staff or non-staff), or Staff Underperformance and Misconduct Policy as required on notification of a breach of professional standards.

| Area of Responsibility | Educators are Responsible for: |
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| Code of Conduct/Ethics | <ul style="list-style-type: none"> Adhering to the Heritage Code of Conduct/Ethics and applying the principles of mutual respect, fairness and equity in all interactions with other members of the Heritage community. |
| Policies and Procedures | <ul style="list-style-type: none"> Being familiar with and complying with all Heritage policies and procedures. |
| Legal Obligations | <ul style="list-style-type: none"> Understanding and complying with legal obligations in relation to: <ul style="list-style-type: none"> Discrimination, harassment and bullying. Negligence. Mandatory reporting of child abuse. Respecting privacy and confidentiality. |
| Work Health and Safety | <ul style="list-style-type: none"> All reasonably practicable steps are taken to ensure their own health, safety and wellbeing and that of enrolled children so they can play and learn in a safe environment. Keeping potentially dangerous products and equipment stored out of reach and/or within a locked or supervised environment. |
| Medication | <ul style="list-style-type: none"> Understanding and complying with the legal obligation to provide safe administration and storage of medication. |
| Adequate Supervision | <ul style="list-style-type: none"> Never leaving a child unsupervised. Providing adequate supervision at all times including positioning themselves so they can see and hear all areas available to the children and be actively supervising and engaging with the children at all times, so they are able respond to children’s individual needs. <u>As far as practicable, not leaving any child alone with any educator out of sight, or with an unqualified staff member, a student or volunteer or any other adult that is not the child’s parent/guardian or family member.</u> Releasing children only to authorised persons as per the child’s Enrolment Form. Being aware of children with medical conditions and looking out for signs and symptoms of illness. |
| Positive Role Modelling of Appropriate Behaviour | <ul style="list-style-type: none"> Using appropriate, respectful and inclusive actions and language at all times. Understanding they are in a position of authority over children and the way they behave towards and speak/refer to children can have a profound impact on a child’s wellbeing and perception of safety. |
| Appropriate Physical Contact | <ul style="list-style-type: none"> Ensuring physical contact with children is at all times appropriate in the circumstances. Children may seek comfort from educators, require assistance with tasks, or guidance with their behaviour requiring physical comfort. Educators must: <ul style="list-style-type: none"> Compassionately and appropriately respond to each child’s individual needs. Guide children’s behaviour gently, positively, and respectfully. |



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| | <ul style="list-style-type: none"> ○ Inform children if physical contact is required for any purpose and ask them if they are comfortable with this interaction. ○ Encourage and assist children to learn self-reliance and life skills by allowing them to attend to their own needs where developmentally appropriate. ○ Encourage/assist children to undertake activities of a personal nature for themselves e.g., toileting/changing clothes. ○ Ensure all interactions with children are undertaken in full view of other adults. |
| <p>Tobacco, Drugs and Alcohol</p> | <ul style="list-style-type: none"> ● Respecting the legal requirement that the Heritage environment must be free from the use of tobacco, illicit drugs and alcohol while providing education and services to children, including on excursions/off-site activities a (r82). Note: This applies only when the premises are being used to provide education and care services to children. ● Any alcohol, tobacco or drugs kept on the Heritage premises must be out of reach of children, in accordance with the requirement to take reasonable precautions to protect children from harm and hazards (National Law Section 167). ● Educators must uphold their duty of care not to expose children to dangerous products, and never give or provide children with alcohol, illegal drugs, tobacco or tobacco products or expose them to any harmful by-products, such as second-hand smoke (National Law Section 167). Providing illegal drugs, restricted substances or alcohol to children constitutes “supervisory neglect” and is a criminal offence. ● The Director, staff members, students and volunteers at the service must not be affected by alcohol or drugs (including prescription medication) that may impair their capacity to supervise or provide education and care to children at the service (r83). Note: The use of prescription medication does not mean that educators, staff or volunteers who require prescription medication must be excluded, rather that consideration must be given to whether that medication adversely affects the person’s capacity to provide education and care to children. ● Where an employee has concerns relating to the fitness of another employee to be supervising children due to the effects of drugs and/or alcohol, these concerns should be reported to the Director or the Responsible Person in Charge immediately. ● Educators must respect the ANU Smoke Free Policy that prohibits all smoking (including electronic cigarettes) and the use of tobacco products, subject to exceptions, anywhere on the ANU campus, including buildings, properties, grounds. There are a limited number of Designated Outdoor Smoking Areas. |
| <p>Heritage Property and Communication Devices</p> | <ul style="list-style-type: none"> ● All Heritage property including communication devices such as telephones, cameras, mobile phones, computers, laptops, and tablets must be used appropriately for work-related purposes only unless authorised by Heritage Management. <p>Internet Usage</p> <ul style="list-style-type: none"> ● Employees may only access the internet from Heritage communication devices for work-related purposes unless authorised by management. ● Employees may never access websites in the workplace which host adult pornography, child pornography or otherwise inappropriate images/representations of children. ● Enrolled children may not have access to social media sites while at the service. <p>Social Media Usage</p> <ul style="list-style-type: none"> ● Employees must abide by the Heritage Social Media Policy guidelines and protect the privacy, confidentiality and interests of the service, employees, children, families and other Heritage supporting agencies at all times. |



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| | <p>Camera Usage</p> <ul style="list-style-type: none"> • Employees must only use the Heritage camera to take photographs or video while on duty at the service or on excursions and ensure these images are used only for the purpose of completing the Day Book or child evaluations. • Photos and videos must never be shared through employees’ personal social media sites. <p>Personal Mobile</p> <ul style="list-style-type: none"> • Employees must not use their personal mobile phones to communicate with enrolled families during work hours or for work-related activities, unless in an emergency. • Educators must have their personal mobile phones turned off and stored in their lockers during working hours, except on excursions, when they may be requested to take them. • Room Leaders may have their personal mobile phones on their person and turn them on during an emergency). • Personal phone calls by educators must be limited to lunch breaks and other authorised breaks except in the event of an emergency. <p>Child Protection</p> <ul style="list-style-type: none"> • Employees must never use location-based apps while working with enrolled children or post details on any social media regarding excursions or upcoming social outings. |
| <p>Outside of Hours Contact</p> | <ul style="list-style-type: none"> • Contact between employees and enrolled families outside of Heritage hours, including via social media platforms such as Facebook, is not recommended and must be carefully considered for appropriateness, in order to maintain a professional relationship. • Employees are encouraged to set their Facebook profiles to ‘private’ and not to ‘friend’ enrolled families. Exceptions may include if they are already close friends with an enrolled child’s parents outside of Heritage or becomes Facebook friends once the child is no longer in their care. • Where employees choose to socialise with families in their homes outside of work hours, they must maintain a professional approach and at all times respect the privacy and confidentiality of others in the Heritage community and keep work-related discussions to the work-place. • Where employees choose to accept secondary employment from enrolled families, eg, mentoring, tutoring, or caring for enrolled children out of hours, they must maintain a professional approach and at all times respect the privacy and confidentiality of others in the Heritage community and keep work-related discussions to the work-place. • Where there are unusual circumstances, these guidelines may not apply such as where there is a pre-existing relationship between an employee and young person or their family. |
| <p>Gifts</p> | <ul style="list-style-type: none"> • Any gift received or given to children by employees must be considered appropriateness and whether it may adversely impact on that child or any other enrolled children or person in the Heritage community (e.g., gift giving may be considered appropriate if an educator is invited to attend a party out of hours. However, this is not recommended). • Inappropriately giving gifts, such as expensive gifts can be interpreted as sexual grooming behaviour in the form of persuading a child or group of children that they have a 'special' relationship. |

Refer also to: Policies and Procedures Manual available on Heritage Website.

Identifying Reportable Conduct

- Reportable Conduct covers a broader range of conduct compared to the types of child abuse which must be reported to the ACT Regulatory Authority (CECA) and Child and Youth Protection Services (CYPS). For example, Heritage may become aware of an allegation or conviction that is reportable to the ACT Ombudsman that is not deemed to be conduct that must be mandatorily reported to CECA or CYPS.
- If unsure whether a matter needs to be reported to the ACT Ombudsman, Heritage Management must contact the Ombudsman for clarification **at the earliest opportunity** by phone or email. Ph: 02 6276 3770 **Email:** act@ombudsman.gov.au
- The following tables provide guidelines for identifying Reportable Conduct.
 - Table 1: Summary of Guidelines: Identifying Reportable Conduct (over-page).
 - Table 2: Detailed Guidelines: Identifying Reportable Conduct by Category (Appendix 1).

Table 1: Summary of Guidelines: Identifying Reportable Conduct

| Type of Conduct | Guidelines for Identification |
|--|---|
| Reportable Conduct | <p>Any child-related misconduct, either allegations, offences or convictions engaged in by an employee, whether or not in the course of employment, and regardless of a child’s consent. It includes:</p> <ul style="list-style-type: none"> • Sexual offences and convictions where a child is a victim or is present. • Offences against the person, including physical assault offences and convictions, where a child is a victim or is present. • Conviction, or finding of guilt, under a territory law or a state or Commonwealth law, involving Reportable Conduct. • Offences against the Education and Care Service National Law s166 and s167 (inappropriate discipline or offences relating to protecting children from harm). • Ill-treatment of a child (emotional abuse, hostile use of force/physical contact, restrictive intervention). • Neglect (supervisory, carer, abandonment, failure to protect from abuse, reckless acts and emotional). • Psychological harm. • Misconduct of a sexual nature (crossing professional boundaries, sexually explicit comments/other overtly sexual behaviour, and grooming behaviour). <p>Refer to: Appendix 1: Detailed Guide to Identifying Reportable Conduct.</p> |
| Reportable Allegation | <ul style="list-style-type: none"> • An express assertion that Reportable Conduct has happened or may have happened (including a statement/declaration with or without proof). For a complaint/allegation to be notifiable to the Ombudsman: <ul style="list-style-type: none"> ○ The person must be a current employee or have been an employee at the time the employer became aware of the allegation. ○ The employee must be identified/identifiable (name or description, work schedules and location of the employer). ○ The complaint allegation must contain a description of behaviour that may constitute Reportable Conduct, and the child must have been under 18 years at the time of the alleged incident or conduct. |
| Reportable Conviction/Finding of Guilt Relating to an Employee | <ul style="list-style-type: none"> • On becoming aware of a conviction/finding of guilt relating to an employee, to be reportable to the Ombudsman, it must be: <ul style="list-style-type: none"> ○ An offence, 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 Reportable Conduct and Information Sharing Legislation Amendment Act 2016, section 3. Note: Some common law convictions may also be reportable if related to similar conduct. |
| Reportable Conduct does NOT include | <ul style="list-style-type: none"> • Reasonable discipline, management or care of a child taking into account the characteristics of the child and relevant codes of conduct or professional standard that at the time applied to the discipline, management or care of the child. |



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| | <ul style="list-style-type: none"> • Conduct held to be trivial or negligible conduct after being investigated and recorded as part of workplace procedures. • Conduct prescribed by regulation. |
| Behaviour NOT considered Reportable Conduct | <ul style="list-style-type: none"> • Touching a child to attract the child’s attention, guide a child, or comfort a distressed child. • When a teacher raises his or her voice to attract attention or restore order in a classroom. • When there is accidental contact with a child. • To disarm a child seeking to harm themselves or others. • To separate children who are fighting. • To restrain a child from hurting themselves or others or damaging property. • To provide self-defence or the defence of others. |

Reporting Obligations

Employees must:

- Notify Heritage Management as soon as possible, of any concern, breach of professional standards, allegation or convictions that may potentially be Reportable Conduct involving an employee, of which they become aware.

The Director must:

On becoming aware of an allegation or allegation or conviction against a Heritage employee that involves suspected Reportable Conduct:

1. Contact [ACT Policing](#) immediately if a criminal offence is suspected.
2. Contact [Child and Youth Protection Service](#) without delay where child abuse/neglect is suspected.
3. [Contact CECA as required](#) on becoming aware of a serious incident or notifiable complaint⁹ or when physical/sexual abuse is suspected.¹⁰
4. In consultation with the Heritage Management Committee, contact the ACT Ombudsman as soon as possible, and **within 30 days** by phone or email: **Ph:** 02 5199 5520 **Email:** act@ombudsman.gov.au
5. Undertake a risk assessment as soon as possible to identify whether any children are at risk from the employee’s conduct.
6. Investigate the allegation or conviction of Reportable Conduct, in collaboration with the Management Committee, and take appropriate action that is procedurally fair.
7. Report to the Ombudsman at the conclusion of investigation.

If unsure whether a matter needs to be reported to the ACT Ombudsman, contact the authority for clarification at the earliest opportunity.

Procedure when the same information is required by CECA and the ACT Ombudsman

- A copy of the CECA notification can be forwarded to the Ombudsman’s office as a substitute for the required notification (s17G Notification).
- Where CECA investigate a Reportable Conduct matter, Heritage may decide not to investigate internally and may rely on the investigation conducted by CECA.
- In this circumstance, the findings of the CECA investigation can be provided by Heritage to the Ombudsman to meet reporting obligations under section 17J of the Ombudsman Act.

Refer to:

- Reportable Conduct Reporting Process Flow-Chart, page 14.
- Table of Step-by-Step Reporting Procedures and Guidelines, page 15.

⁹ Refer to: Definitions

¹⁰ Refer to: Child Protection Policy and Procedures



Summary of Reportable Conduct Reporting Process

Allegation Made

Director/Responsible Person in Charge must:

Determine if an allegation of Reportable Conduct has been received (Appendix 1).

Undertake a risk assessment of the employee as required (Attachment 1).

Contact Ombudsman for information as needed.

Refer to: Practice Guides, 2, 3, and 5 in References.



s17G Notification to Ombudsman

Director or Responsible Person in Charge must:

Email s17G notification form to Ombudsman within 30 days of being made aware of allegation.

Include relevant documentation including risk assessment (Attachment 1) and investigation plan (Attachment 2).

Note: Where the same information is required by CECA and the ACT Ombudsman, see procedure on previous page.



Ombudsman Assesses s17G Notification

Ombudsman may ask for further information.

Refer to: Practice Guide 1 in References.



Oversight and/or Monitoring of the Investigation

Service to carry out the investigation with oversight from the Ombudsman.

Ombudsman must be notified of any changes in circumstances.

Ombudsman may shift to monitoring and periodically check on investigation or request documents/information or certain tasks be undertaken in a certain timeframe.



s17J Report to Ombudsman

Director or Responsible Person in Charge must:

Provide s17J Report at conclusion of investigation (Attachment 3).

Refer to: Practice Guides 6 and 7 in References.



Ombudsman Assesses s17J Report

Service to work with the Ombudsman who may ask for further information on systems, policies and procedures.

Refer to: Practice Guide 9 in References.



Case Closure

Ombudsman provides feedback.

Case Closure.

Note: The threshold for notifying an allegation to the ACT Ombudsman is lower than the threshold for making a finding that Reportable Conduct occurred at the conclusion of an investigation.



Table of Detailed Reportable Conduct Reporting Procedure and Guidelines

| Step | Guidelines and Procedures |
|---|--|
| <p>Step 1: Notifying the ACT Ombudsman</p> | <ul style="list-style-type: none"> • The ACT Reportable Conduct scheme is allegation based. <u>If an allegation, on the face of it, suggests that Reportable Conduct has occurred or may have occurred, Heritage Management must contact the ACT Ombudsman as soon as possible.</u> <ul style="list-style-type: none"> ◦ The threshold for notifying an allegation to the ACT Ombudsman is lower than the threshold for making a finding that Reportable Conduct occurred at the conclusion of an investigation. ◦ Reportable Conduct covers a broader range of conduct (see table above) compared to the types of child abuse which must be reported to CECA and CYPS, e.g, Heritage may become aware of an allegation or conviction that is reportable to the ACT Ombudsman but is not conduct that must be mandatorily reported to CECA or CYPS.¹¹ • Heritage Management must still contact ACT Policing and/or CYPS in the first instance if it considers the possibility that a criminal offence has occurred such as sexual offences or physical assault. • Heritage is still required to notify the Ombudsman of an allegation against a Heritage employee even if CYPS and/or police are already investigating. • Conduct that is determined by the Heritage Management not to be reportable to the ACT Ombudsman must still be carefully considered when an allegation is made. A record must be made about why the conduct was considered not reportable. Heritage must maintain these records which may be audited by the Ombudsman. |
| <p>Step 2: Risk Assessment</p> | <ul style="list-style-type: none"> • On becoming aware of an allegation or conviction against a Heritage employee of child-related misconduct, Heritage Management must undertake an assessment of the risk the employee poses to a child/group of children (Refer to: Attachment 1). • This responsibility also applies during any investigation and following any final decision regarding the action to be taken. • Heritage understands this risk assessment must be provided to the ACT Ombudsman as required. |
| <p>Step 3: Formal Notification – s17G Notification</p> | <ul style="list-style-type: none"> • A formal notification using the form s17G Notification must also be made to the ACT Ombudsman within 30 days of becoming aware of the allegation/conviction via email to: act@ombudsman.gov.au. • As part of the s17G Notification, Heritage Management must notify whether or not they propose to take any action relating to the allegation or conviction, and the reasons for these decisions. • Copies of relevant material and documents should also be provided with the Notification. • Any investigation plans must also be provided (Attachment 2). • The ACT Ombudsman will provide a written confirmation that the s17G Notification has been received and request further information. • Note: Where the same information is required by CECA and the ACT Ombudsman, refer to procedure on page 13. |
| <p>Step 4: Investigation</p> | <ul style="list-style-type: none"> • Following the submission of the s17G Notification, Heritage Management must continue their investigation with oversight from the Ombudsman. • Caution must be exercised when investigating alleged employee misconduct. The more serious the alleged wrongdoing, the more care should be exercised before deciding an allegation is sustained. • The Ombudsman may ask for progress updates and may confer with the investigators including requests for relevant documents and information. • In some cases, the Ombudsman may attend interviews conducted by Heritage. The Ombudsman may share this information with ACT Policing or other child protection-related agencies. |

¹¹ Refer to: Staff Underperformance and Misconduct Policy; Complaints and Grievance Management Policy (staff or non-staff).



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| | <ul style="list-style-type: none"> • If the investigation has been completed at the point of notification, the ACT Ombudsman will assess the information that Heritage has provided and give feedback in response. • If the investigation has not been completed, the Ombudsman will ask Heritage to send the final report when the investigation has been finalised. <p>Note: Complaints regarding Heritage employee misconduct may be made directly to the Ombudsman rather than to Heritage Management. In this case:</p> <ul style="list-style-type: none"> • The Ombudsman may choose to conduct its own investigation into any Reportable Conduct allegation or the response of the employer to any Reportable Conduct allegation. In this case, Heritage Management will receive written notice of the investigation. • In some circumstances, the Ombudsman may require Heritage Management to not commence an investigation or suspend an investigation while the Ombudsman investigation is underway. • When the Ombudsman concludes an investigation, the employer will receive written notice and a report which may include recommendations as a result of the investigation. |
| <p>Step 5: Final Report – s17J Report</p> | <ul style="list-style-type: none"> • At the conclusion of the investigation by Heritage Management, the following must be provided to enable the ACT Ombudsman to determine if the investigation was carried out in a satisfactory manner and appropriate action taken: <ul style="list-style-type: none"> ◦ A completed s17J Report (or final report), including findings and recommendations must be provided to the ACT Ombudsman. ◦ Copies of all statements and documents that form the basis of the report, any comments, and advise as to what action has been taken or is proposed in relation to the reportable allegation or conviction. |
| <p>Step 6: Following the Investigation – Working with the Ombudsman</p> | <ul style="list-style-type: none"> • The Ombudsman may ask for further information and then conclude whether the reportable allegation, offence or conviction was properly investigated, procedurally fair and appropriately actioned. • Heritage Management may be required to provide information about the systems, policies and procedures in place to provide a safe environment for children being educated and cared for at Heritage. • Heritage Management may be required to provide information about and systems for recording, responding to and investigating allegations or convictions involving potentially Reportable Conduct against employees. • The Ombudsman may work with the Heritage Management Committee to build on existing misconduct and reporting procedures including: <ul style="list-style-type: none"> ◦ Monitoring employers’ investigations and analysing trends. ◦ Sharing information with police and key organisations to better protect children from abuse. ◦ Taking complaints about the handling of Reportable Conduct. ◦ Providing guidance and support to entities on best practice, including conducting investigations that are procedurally fair. ◦ Considering investigating an allegation or conviction in limited circumstances. ◦ Monitoring the policies, practices and procedures for the prevention of child abuse and child related misconduct. ◦ Possibly observing interviews conducted by Heritage Management and conferring with the Mediator conducting the investigation about its conduct and progress. If asked, the Mediator must provide the Ombudsman with any information relating to the investigation. • The Ombudsman will consider and respond to the employer’s s17J Report. Where Heritage Management does not understand comments or would like to raise issues about how the matter was addressed, the employer may contact the Ombudsman to discuss concerns. • Written acknowledgment when the matter is completed will be provided. |



Policy Review and Evaluation

In order to assess whether the values and purposes of the policy have been achieved, the Management Committee in consultation with the Director will:

- Regularly seek feedback from the Heritage community regarding its effectiveness.
- Monitor the implementation, compliance, complaints and incidents in relation to this policy.
- Assess whether a satisfactory resolution has been achieved in relation to issues arising from this policy.
- Keep the policy up to date with current legislation, research, policy and best practice.
- Revise the policy and procedures as part of the service's policy review cycle, or as required.
- Notify parents/guardians at least 14 days before making any changes to this policy or its procedures.

References and Further Reading

Australian Children's Education and Care Quality Authority (ACECQA). (2023). [Guide to the National Quality Framework](#).

Australian Children's Education and Care Quality Authority (ACECQA). (n.d.). [Reporting Requirements About Children](#)

ACT Government Community Services. (2022). [Reportable Conduct Scheme](#)

ACT Government, Department of Education. (n.d.). [Child Protection Obligations in the ACT](#)

ACT Ombudsman. (2018). [Reportable Conduct Scheme](#).

ACT Ombudsman. (2018). [Reportable Conduct Resource Kit \(including Practice Guides\)](#)

- [No. 1 - How the ACT Ombudsman responds to notifications and reports](#)
- [No. 2 - Identifying Reportable Conduct \(Version 2.1, 2022\)](#)
- [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 - How to write a final 17J investigation report](#)
- [No. 8 - Information Sharing and Reportable Conduct \(2020\)](#)
- [No. 9 - How the ACT Ombudsman assesses an employer's response or investigation](#)
- [No. 10 - Addressing child protection issues in a code of conduct](#)

Early Childhood Australia (2016). [Code of Ethics 2016](#).

Related Policies and Documents

| Name of Policy and Procedures Document | Location |
|--|--|
| Behaviour Guidance | |
| Child Protection | |
| Child Safe Environment | |
| Complaints and Grievance Management Policy (Staff/non-Staff) | Policies and Procedures section in Members Section on Heritage |
| Creating Inclusion and Equity | |
| Delivery and Collection of Children | |
| Employment and Recruitment | Policy and Procedures Manuals in the Main Office, Programming Room and Front Entrance. |
| Heritage Code of Conduct/Ethics | |
| Heritage Philosophy | |
| Interactions with Children | |
| Non-Compliance | Heritage Handbook and Educator Handbooks |
| Privacy and Confidentiality | |
| Staff Underperformance and Misconduct | |
| Work Health and Safety | |



Version Control and Change History

| Version Number | Approval Date | Approved by | Author and Amendments |
|----------------|------------------|----------------------|--|
| 1 | March 2019 | Management Committee | Author: Julia Charters. New policy to set out Heritage procedures and guidelines for preventing, identifying, investigating and reporting employee misconduct which may constitute Reportable Conduct under the ACT Reportable Conduct Scheme and be reportable to the ACT Ombudsman. (The Scheme was introduced in July 2017 in response to the Royal Commission into institutional responses to child sexual abuse). |
| 2 | 14 November 2023 | Management Committee | Author: Julia Charters Updated legislative background and tabulated. Updated references and added hyperlinks. Added Reportable Conduct Reporting Process Flowchart. Moved Table of Detailed Guidelines for Identifying Reportable Conduct to Appendix 1. Added Reportable Conduct s17J Final Report Template as Attachment. |



Appendix 1: Detailed Guidelines: Identifying Reportable Conduct by Category

| Category of Reportable Conduct | Definitions and Guidelines |
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| Sexual Offences and Convictions | <ul style="list-style-type: none"> • The Director, in consultation with the Committee, must report to the ACT Ombudsman on becoming aware that an employee has been charged, found guilty, or had a conviction relating to a sexual offence (under Part 2-5 of the <i>Crimes Act 1900</i>) and was committed against, with, or in the presence of a child. • It does not matter whether the conduct occurred while the employee was on duty at Heritage or in a personal capacity. • Any allegation of an employee involving a child in a sexual activity that he or she does not fully comprehend, is unable to give informed consent to or that violates the law is Reportable Conduct and must also be reported to the ACT Police.¹² |
| Offences Against the Person | <ul style="list-style-type: none"> • Offences against the person, including physical assault,¹³ relates to an offence against any of the provisions of the Crimes Act 1900. • They are Reportable Conduct if they are committed against, with or in the presence of a child. It does not matter whether the conduct is alleged to have occurred while the employee was on duty at Heritage or in a personal capacity, only that the person was a Heritage employee at the time the alleged conduct was said to have occurred. • Physical assault may include hitting, kicking or punching of a child. A serious threat or fear of physical harm may also constitute an offence. Words or gestures can lead a child to believe the imminent application of physical force, regardless of if the person intends to apply any force. • It is not necessary that the employee act with hostility or that the child sustain an injury. However, the presence or absence of any hostility or injury may be significant when deciding whether the physical force used, or the apprehension created, constituted an assault. • A range of variables must be taken into account when investigating an allegation against an employee, including the age, maturity, health or characteristic of the child involved. • There is a range of physical contact that, because of the context in which it occurs, does not amount to assault. For example, an assault may not have occurred where there is reasonable force used to: <ul style="list-style-type: none"> ○ Exercise appropriate control over a child. ○ Disarm a child seeking to harm themselves or others. ○ Separate children who are fighting. ○ Restrain a child from hurting themselves, others or property. ○ Provide self-defence or the defence of others. • ACT Policing should be contacted in the first instance if Heritage Management is in any doubt or considers there is the possibility that an offence has been alleged.¹⁴ |
| Convictions or Findings of Guilt | <ul style="list-style-type: none"> • A Reportable Conviction 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. • Any conviction or finding of guilt against Heritage employees must be reported to the ACT Ombudsman whether the conduct is alleged to have taken place in the course of the person’s employment or another setting. |

¹² Refer to: Reporting Procedures

¹³ Refer to: Definitions

¹⁴ Refer to: Reporting Obligations



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| <p>Offences against the National Law</p> | <p>An offence against either of the following provisions of the Education and Care Service National Law (ACT): <u>National Law Section 166</u>: Offence to use inappropriate discipline: The approved provider, nominated supervisors and educators must ensure that no child is subjected to- (a) Any form of corporal punishment; or (b) Any discipline that is unreasonable in the circumstances. <u>National Law Section 167</u>: Offence relating to protection of children from harm and hazards: The approved provider and nominated supervisor must ensure that every reasonable precaution is taken to protect children from harm and from any hazard likely to cause injury.</p> |
| <p>Ill-treatment of a child</p> | <p>Ill-treatment of a child is Reportable Conduct and includes those circumstances where an employee treats a child in an unreasonable and seriously inappropriate, inhumane or cruel manner.</p> <ul style="list-style-type: none"> • The behaviour may be intentional or unintentional. • The focus must be on the alleged conduct rather than the actual effect of the conduct on a child. • Ill-treatment of a child can include: <ul style="list-style-type: none"> ○ Emotional abuse ○ Hostile use of force/physical contact towards a child¹⁵ Inappropriate restrictive intervention ○ Making excessive and/or degrading demands on a child ○ Malevolent acts ○ A pattern of hostile or unreasonable and seriously inappropriate, degrading comments or behaviour ○ Inappropriate forms of restrictive intervention. <p>Emotional abuse</p> <ul style="list-style-type: none"> • Emotional abuse may occur when treatment towards a child is unreasonable and seriously inappropriate, inhumane or cruel. Examples include conduct toward a child by an employee where the child is: <ul style="list-style-type: none"> ○ Isolated (e.g. placing a child in a cupboard as punishment) ○ Verbally assaulted.¹⁶ ○ Subjected to a pattern of hostile or unreasonable and seriously inappropriate, degrading comments or behaviour. ○ Harassed/being corrected in excess of what is reasonable. ○ Humiliated or intimidated ○ Rejected ○ Frightened by threats of violence or exposure to violence. ○ Treated in a malevolent or retaliatory manner. ○ Bullied or treated with continual coldness. ○ Alleged to have seen or heard the physical, sexual, or psychological abuse of a person with whom the child or young person has a domestic relationship. • A medical diagnosis is not required to establish a causal link between an employee’s conduct and emotional harm to a child.¹⁷ <p>Hostile use of force/physical contact</p> <ul style="list-style-type: none"> • Hostile use of force/physical contact occurs when a person applies unreasonable and seriously inappropriate, inhumane, or cruel force/physical contact against a child or causes a child to fear the imminent use of such force/physical contact. • Management may also consider whether the alleged conduct is an assault.¹⁸ |

¹⁵ Refer also to: Section above: Offences against the person

¹⁶ Refer to: Definitions

¹⁷ Refer to: Child Protection Policy for further examples of Emotional Abuse

¹⁸ Refer to: Definitions and Section above: Offences against the Person



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| | <ul style="list-style-type: none"> • An allegation of hostile use of force/physical contact may be considered where: <ul style="list-style-type: none"> ○ The alleged conduct results in the child being injured, beyond a type of injury like a minor scratch or graze (this can result from a single episode or repeated episodes) ○ The force/physical contact had the potential to result in an injury that is more than a minor scratch or graze, or the child was afraid that injury may result. Note: Even if the harm or fear was caused unintentionally, it may be Reportable Conduct if the person ought to have known their actions could result in inappropriate use of force or a fear of such force (i.e. the person acted recklessly). It may be necessary to consider an allegation of emotional abuse in this case. ○ The injury suffered may be minor, but the force/physical contact applied is associated with aggravating circumstances such as demeaning or threatening behaviour by the employee. ○ An object such as a ruler, book, marker or other object is used to gain a child’s attention in a hostile or inappropriate manner (for example, throwing the object near the child) ○ Forms of corporal discipline are used by an employee towards a child (this does not include reasonable discipline of an employee’s child in an employee’s personal capacity). • It is important to consider the context in which allegations of hostile use of force/physical contact against a child are made to determine whether it constitutes Reportable Conduct. Factors that may be relevant include the age, health and developmental stage, physical ability or the cultural background of the child or children involved. • It may also be relevant to consider whether the use of force/physical contact was appropriate or if it was intended to: <ul style="list-style-type: none"> ○ Exercise appropriate control over a child ○ Disarm a child seeking to harm themselves or others ○ Move a child out of harm’s way ○ Restrain a child from hurting themselves, others or damaging property provide self-defence or the defence of others.¹⁹ <p>Inappropriate Restrictive Intervention</p> <ul style="list-style-type: none"> • Inappropriate restrictive intervention includes the use of mechanical or physical restraints which result in the unreasonable limitation of a child’s freedom of movement. • It may also include seclusion or sole confinement of a child, directing a child to remain in an unreasonable physical position, or the unreasonable withdrawal of social interactions or privileges from a child. The restraint must be unreasonable and seriously inappropriate, inhumane or cruel. • When considering whether the restrictive intervention was reasonable, the circumstances of the case must be considered including the overall context of the conduct, professional standards, policies and procedures and the characteristics of the child/children involved. |
| <p>Neglect</p> | <ul style="list-style-type: none"> • Neglect of a child involves the actions or inactions (omissions) of an employee who has the responsibility to care for a child. Such actions may be intentional or unintentional. • Neglect refers to a failure to provide a child with the basic needs for his or her physical/emotional/psychological and intellectual development. <p>The following are categories of neglect:</p> <ul style="list-style-type: none"> • Supervisory Neglect: |

¹⁹ Refer to: Child Protection Policy for more indicators of physical abuse.



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| | <ul style="list-style-type: none"> ○ An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child. ○ An intentional or reckless failure to adequately supervise a child, or a significantly careless act or failure to act, that involves a gross breach of professional standards. ○ Has the potential to result in the death of, or significant harm to, a child or expose a child to dangerous or life-threatening situations, which could result in physical injury or significant harm. ○ Note: Providing illegal drugs, restricted substances or alcohol to children may constitute supervisory neglect and/or a criminal offence ● Carer Neglect is grossly inadequate care that involves depriving a child of the basic necessities of life: such as the provision of food and drink, clothing, critical medical care or shelter. Abandonment is leaving a child alone for more than a reasonable period without provision of age-appropriate care, and is also carer neglect ● Failure to Protect from Abuse is an obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child ● Reckless Acts are acts or failure to act that involve a gross breach of professional standards and has the potential to result in the death of, or significant harm to, a child ● Emotional Neglect refers to situations where the employee or caregiver is unresponsive to the child’s emotional needs or is characterised by a lack of warmth, nurturance, encouragement or supports and results in significant harm or exposure to the risk of significant harm. <p>Note: A single incident can constitute neglect if it falls within one of these categories. Neglect may be episodic, related to a particular crisis, or it may be chronic and persistent. Neglect may also be an ongoing situation of repeated failure of a caregiver to fulfil a duty or obligation resulting in actual harm to a child or where there is the potential for significant harm to a child.²⁰</p> |
| <p>Psychological Harm</p> | <ul style="list-style-type: none"> ● Exposing or subjecting a child to behaviour, or a circumstance, that psychologically harms the child is Reportable Conduct. Psychological harm means that the harm is more than trivial or insignificant but need not have a lasting permanent effect. ● Behaviour or a circumstance that psychologically harms a child involves conduct that is obviously unreasonable or very clearly unreasonable and results in significant psychological harm or trauma to a child including anxiety, chronic depression or post-traumatic stress disorder or the exacerbation or aggravation of an existing psychological condition. ● There needs to be a causal link between the inappropriate behaviour and the psychological harm. Additionally, the harm must be more than short lived or temporary. ● For Reportable Conduct involving psychological harm to occur, the following elements must be present: <ul style="list-style-type: none"> ○ An obviously or very clearly unreasonable or serious act or series of acts that the employee knew or ought to have known was unreasonable, and ○ Evidence of psychological harm to the child that is more than transient, including displaying patterns of 'out of character behaviour', regression in behaviour, distress, anxiety, physical symptoms or self-harm, and ○ An alleged causal link between the employee's conduct and the psychological harm to the child. ● When it is alleged that an employee's behaviour has caused psychological harm to a child, it may be necessary for Heritage Management to obtain a |

²⁰ Refer to: Child Protection Policy and Procedures for further examples.



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| | <p>psychological or medical assessment of the child to determine whether psychological harm can be established. However, a clinical diagnosis will not be required in every circumstance, particularly if the assessment itself may cause harm. E.g., in certain serious and/or ongoing domestic violence cases, it may be open to infer that a child has been psychologically harmed, in the absence of a clinical diagnosis.</p> |
| <p>Misconduct of a Sexual Nature</p> | <ul style="list-style-type: none"> • The alleged misconduct of a sexual nature²¹ must have been committed against, with or in the presence of a child for it to be Reportable Conduct. This includes conduct that may not equate to a criminal offence. • Misconduct of a sexual nature may include (but is not limited to) behaviours with a child such as: <ul style="list-style-type: none"> ○ Physical contact or speech or other communication of a sexual nature ○ Inappropriate touching ○ Inappropriate relationship with, attention or focus ○ Grooming behaviour ○ Sharing pornography or pornographic images ○ Voyeurism ○ Crossing professional boundaries. • Misconduct of a sexual nature includes a range of behaviours, some of which may be sexual, and some may be in preparation for sexual activity. • It may also occur when an employee involves a child in sexual activity by using their power over the child and taking advantage of their trust. • Helping or inducing another person to engage in sexual misconduct against a child is also sexual misconduct and should be reported. <p>There are three categories of sexual misconduct. Below are examples in each category that may suggest that sexual misconduct is occurring.²²</p> <p>Crossing professional boundaries</p> <ul style="list-style-type: none"> • Crossing professional boundaries, includes behaviour that involves an inappropriate and overly personal or intimate relationship with, conduct towards or focus on a child or class of children. • Persistent less serious breaches of professional conduct in this area, or a single serious 'crossing of the boundaries' by an employee, may constitute sexual misconduct, particularly if the employee either knew, or ought to have known, that their behaviour was unacceptable. • Communications directed to an individual child that are different or exclude other children may also be inappropriate. • Care should be exercised before Heritage Management make a finding of crossing professional boundaries. Codes of conduct that outline the nature of the professional boundaries which should exist between employees and children/young people can be particularly useful when considering whether a person has crossed these boundaries. • For employees who either intentionally breach such codes or have demonstrated an inability to apply them appropriately, it may be necessary for management to provide more detailed written advice about what constitutes appropriate behaviour to the employee. <p>Sexually explicit comments and other overtly sexual behaviour</p> <ul style="list-style-type: none"> • Sexually explicit comments and other overtly sexual behaviour are also examples of crossing professional boundaries and include a broad range of sexualised behaviour with or towards children. • It is not possible to provide a definitive list of unacceptable sexual conduct involving children, however, the following gives guidance: <ul style="list-style-type: none"> ○ Sexualised behaviour with or towards a child (including sexual exhibitionism). |

²¹ Refer to: Child Protection Policy and Procedures for further indicators.

²² Refer to: Child Protection Policy for further examples.



- Inappropriate conversations of a sexual nature.
- Comments that express a desire to act in a sexual manner.
- Unwarranted and inappropriate touching involving a child.
- Personal correspondence and communications (including emails, social media and web forums) with a child in relation to the adult's romantic, intimate or sexual feelings for a child.
- Exposure of a child to sexual behaviour of others including the display of pornography.
- Watching a child undress in circumstances where supervision is not required and clearly inappropriate.

Grooming behaviour

- Grooming behaviour may be found where there is evidence of a pattern of conduct where the employee gradually engages the child in sexual activity by using inducements, bribes, rewards, or threats.
- Often there is use of a variety of controlling techniques toward a vulnerable subject in order to establish trust or to normalise sexually harmful behaviour.
- Grooming behaviour may also involve behaviour designed to prohibit exposure of the relationship. Behaviour should only be seen as 'grooming' where there is evidence of a pattern of conduct that is consistent with preparing the alleged victim for sexual activity.
- The types of behaviours that may lead to a conclusion that grooming behaviour is occurring include persuading a child or group of children that they have a 'special' relationship for example by:
 - Spending inappropriate special time with a child
 - Inappropriately giving gifts
 - Inappropriately showing special favours to them but not others
 - Inappropriately allowing the child to overstep rules.
 - Asking the child to keep their relationship to themselves.
- Where an employee is showing unusual interest/preoccupation with a child, early intervention to clarify the reasons for this and identify risks to the child, are important. Such conduct should never be minimised, rationalised or overlooked, but may have a reasonable explanation.
- Heritage Management may become aware of the possibility of a child having an unusual attachment to, or even a 'crush' on an employee. Such interactions must be effectively and sensitively managed.
- Testing boundaries may also lead to a conclusion that grooming behaviour is occurring. Examples of testing boundaries include:
 - Undressing in front of a child.
 - Encouraging inappropriate physical contact (even where it is not overtly sexual)
 - Talking about sex or exposing a child to pornographic material
 - Sexualised behaviour including exhibitionism, voyeurism or 'accidental' intimate touching.
- Inappropriately extending a relationship outside of work or inappropriate personal communications (for example, e-mails, telephone calls, text messaging, social media and web forums) that explore sexual feelings or intimate or personal feelings with a child may also be indicators that grooming or crossing professional boundaries is occurring.
- An employee requesting that a child keep any aspect of their relationship secret or using tactics to keep any aspect of the relationship secret, would generally increase the likelihood that grooming is occurring. Contact with ACT Policing is advisable if this is found to be occurring.²³

Source: [ACT Ombudsman, 2022.](#)

²³ Refer to: Reporting Procedures

Attachment 1: Risk Assessment



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 employer/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 |
| 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 |

Source: [ACT Ombudsman, 2018](#)



Attachment 2: Planning and Conducting an Investigation

Planning and Conducting an Investigation



ACT Ombudsman Investigation Plan Template (Example — organisations may use alternative templates)

| | |
|--|--|
| Name of Alleged Victim/DOB/address/parents or carers | |
| Name of Person Subject of the Allegation (PSOA) Is the PSOA an employee? DOB/address/Working With Vulnerable People Registration/TQI Registration/Health Registration or others as applicable. | |
| Does the allegation involve conduct that needs to be considered using an investigation process or are there other ways to resolve the issues? Identify core factual issues | |
| Who will investigate? To what regulatory bodies should this matter be reported? (Ombudsman, Teacher Quality Institute, Access Canberra, Australian Health Practitioner Regulation Agency, Children Education and Care Assurance etc.) | |
| Who will provide counselling and other supports as identified in the risk analysis? | |
| Are there any identified conflicts of interest? | |
| Proof/Facts in issue— draft allegations after consideration of scope and purpose | |



Planning and Conducting an Investigation

| | |
|--|--|
| <p>Scope and purpose:</p> <ul style="list-style-type: none"> • Legislative Framework • Relevant policy/code of conduct | |
| <p>Benchmarks/criteria</p> <p>Does the PSOA have prior concerns disciplinary or administrative issues to be considered as appropriate?</p> | |
| <p>Resources</p> <ul style="list-style-type: none"> • documents that should be reviewed • technical facilities (for example, computers, laptops, audio/video recording equipment) • places that should be visited • assign information gathering tasks as appropriate | |
| <p>Consider who will be interviewed</p> <p>Keep a list of affected persons (people who may be adversely affected by the investigation)</p> <p>Timeframe for completion</p> | |

Example Investigation Log

| No | Activity/Task/Date | Contact details/person completing task | Follow up/other tasks |
|----|--|--|-----------------------|
| 1 | 1 January 2020 Review documentation | Investigator | Write allegations |



Attachment 3: s17J Final Report Template

Allegations:

Provide details of each of the allegations. It may be convenient to cut and paste detailed allegation(s) from the letter to the employee who is the subject of the allegation where possible:

| | | | |
|---|------------------------------------|---|---------|
| How was the employee (subject of the allegation) informed of and asked to respond to the allegation: | | | |
| In writing <input type="checkbox"/> | Verbally <input type="checkbox"/> | Not informed <input type="checkbox"/> | Reason: |
| By what method did the employee (subject of the allegation) respond to the allegation/s? | | | |
| In writing <input type="checkbox"/> | Interview <input type="checkbox"/> | Did not provide response <input type="checkbox"/> | |
| If the employee (subject of the allegation) was interviewed, was the employee invited to have a support person? | | | |
| Yes <input type="checkbox"/> | | No, why? | |
| Did the employee (subject of the allegation) opt for a support person? | | | |
| Yes <input type="checkbox"/> | | No <input type="checkbox"/> | |



Allegation 1: Insert Complaint (Copy chart for each allegation)

| Evidence from the alleged victim | |
|---|---|
| Name | Insert summary of relevant information/relevant extracts from transcripts. Set out each piece of evidence separately under a clear heading. E.g.: Incident Report from John Smith dated 6 March 2013 |
| Evidence from the employee subject of the allegation | |
| Name | Insert summary of relevant information/relevant extracts from transcripts Set out each piece of evidence separately under a clear heading E.g.: Incident Report from Julie Smith dated 8 March 2013 |
| Evidence from witnesses | |
| Name | Insert summary of relevant information/relevant extracts from transcripts. Set out each piece of evidence separately under a clear heading. E.g.: Record of Interview from Michael Jones dated 8 March 2013 Summary of interview conducted with witness Include any evidence supplied by witness (for example drawings) |
| Analysis: Did the behaviour occur as alleged? | |
| Weigh up the evidence, draw a conclusion on the balance of probabilities as to whether the conduct occurred as alleged. Make a determination: sustained, not sustained (insufficient evidence), not sustained (lack of evidence of weight), not sustained (false), not reportable conduct Provide reasons for findings. | |



| | | |
|--|---|---------|
| Action Taken by the Organisation (Designated Entity) | | |
| Head of entity (organisation) | Actions: Actions may include: <ul style="list-style-type: none"> • No action after the investigation process • A formal apology • Counselling (a file noted discussion about inappropriate behaviour) • Letter of warning • Training • Performance monitoring or managing • Transfer/demotion • Termination • Other forms of disciplinary action as per organisation policy | |
| Risk Assessment | | |
| Risk Area | Assessment | |
| Alleged victim | Analysis: | Action: |
| Employee subject of the allegation | Analysis: | Action: |
| Other children | Analysis: | Action: |
| Workplace (including schools) | Analysis: | Action: |
| (Other) | Analysis: | Action: |

Investigation Report prepared by:

Investigation Report reviewed by:

Source: [ACT Ombudsman 2018](#).