



Nature Alliance Family Day Care Service

Reportable Conduct Scheme



PURPOSE

As the approved provider Nature Alliance Family Day Care, coordinators and FDC Educators are committed to identifying possible risk and significant risk of harm to children and young people at the Family Day Care Service. We understand our duty of care to protect children from all types of abuse, including protecting them from potential abuse that could occur within the service by employees, visitors, students or contractors. It is therefore imperative that all staff have a thorough knowledge and understanding of the requirements of the Reportable Conduct Scheme, which seeks to improve the responses of organisations to allegations of child abuse and neglect by their employees, visitors, students, volunteers and usual occupants of the FDC Service.

SCOPE

This policy applies to the approved provider, employees, Educators, Educator Assistants, children, families, visitors, students and usual occupants of the FDC Service.

REPORTABLE CONDUCT SCHEME

The Reportable Conduct Scheme (the Scheme) will make Western Australian children safer. The Scheme will compel heads of organisations to notify allegations of, or convictions for, child abuse by their employees to the Ombudsman and then investigate these allegations. These investigations will be supervised and reviewed by the Ombudsman.

The Scheme implements key recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and provides that child abuse in organisations will always be:

- notified to an impartial and independent body;
- investigated fully; and
- dealt with to ensure children are protected from abuse within institutions.

The Reportable Conduct Scheme does not replace the need to report allegations of child abuse, including criminal conduct to the WA Police Force, the Department of Communities or other applicable regulatory bodies or to otherwise take appropriate action within your organisation.

This includes requirements for Nature Alliance FDC to notify the Ombudsman of reportable allegations, convictions by their employees and investigate the allegation and provide a report to the Ombudsman on the outcome of the investigation.

The Scheme captures reportable conduct whether or not it occurred before, on or after 1 January 2023.

Definitions:

CONVICTIONS

A reportable conviction refers to a conviction for an offence of a sexual nature committed against, with, or in the presence of a child or other prescribed offences. Types of reportable conduct include sexual offences; sexual misconduct; physical assault; and other prescribed offences; significant neglect of a child and any behaviour that causes significant emotional or psychological harm to a child. A reportable allegation refers to information where an employee, Educator, student or volunteer has engaged in reportable conduct.

WHAT TYPES OF CONDUCT ARE REPORTABLE?

The types of 'reportable conduct' are:

- Sexual offences (against, with or in the presence of, a child);
- Sexual misconduct (against, with or in the presence of, a child); and
- Physical assault (against, with or in the presence of, a child).
- Significant neglect of a child; and
- Any behaviour that causes significant emotional or psychological harm to a child.

WHAT ARE SEXUAL OFFENCES?

A sexual offence is an offence of a sexual nature under a law of Western Australia, another state/territory, or the Commonwealth committed against, with or in the presence of a child, such as:

- Sexual penetration of a child;
- Indecent dealings with a child;
- Procuring, inciting or encouraging a child to engage in sexual behaviour or do an indecent act; and
- Production, distribution or possession of child exploitation material.

An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of a sexual offence.

WHAT IS SEXUAL MISCONDUCT?

Sexual misconduct includes misconduct against, with or in the presence of a child that is sexual in nature but does not include a sexual offence. Sexual misconduct may include (but is not limited to) behaviours such as:

- Inappropriate touching;
- Sharing pornographic images;
- Speaking of sexual acts without a legitimate reason to do so;
- Comments to a child that express a desire to act in a sexual manner towards the child, or another child; and
- Grooming behaviour.

WHAT IS PHYSICAL ASSAULT?

Physical assault can occur when a person intentionally or recklessly:

- Applies physical force against a child without lawful justification or excuse - such as hitting, striking, kicking, punching or dragging a child (**actual physical force**); or
- Causes a child to apprehend the immediate and unlawful use of physical force against them—such as threatening to physically harm a child through words and/or gestures and regardless of whether the person actually intends to apply any force (**apprehension of physical force**).

WHAT IS A REPORTABLE ALLEGATION?

A reportable allegation is any information that leads a person to form the belief on reasonable grounds that an employee (as broadly defined under the Act) of an organisation covered by the Scheme has engaged in reportable conduct, whether or not the conduct is alleged to have occurred in the course of the employee's employment.

WHAT IS A REPORTABLE CONVICTION?

A reportable conviction is, in summary, a conviction for an offence of a sexual nature committed against, with, or in the presence of a child. A conviction for an offence committed by a person includes:

- A court making a finding of guilt in relation to the offence;
- If there has been no formal finding of guilt before conviction, a court convicting the person of the offence.
- A court accepting a plea of guilty from the person in relation to the offence.
- A court acquitting the person following a finding under *The Criminal Code* section 27 that the person is not guilty on account of unsoundness of mind or an acquittal following an equivalent finding under a law of another State, a Territory or the Commonwealth; or

A conviction that is a spent conviction (but does not include a conviction that is subsequently quashed or set aside by a court).

WHAT MUST BE NOTIFIED TO THE OMBUDSMAN?

Under the Scheme, both 'reportable allegations' and 'reportable convictions' need to be notified to the Ombudsman.

WHO IS CONSIDERED AN EMPLOYEE UNDER THE REPORTABLE CONDUCT SCHEME

Under the definitions of the Reportable Conduct Scheme all people over the age of 18 considered as employees of the service include

- paid employees.
- volunteers and students
- Family Day Care Educators and assistants.

WHAT IS A BELIEF ON REASONABLE GROUNDS?

A reportable allegation is any information that leads a person to form the belief on reasonable grounds, that an employee has engaged in reportable conduct or conduct that **may** involve reportable conduct, whether or not the conduct is alleged to have occurred in the course of the employee's employment. This includes where a reportable allegation is made against the head of the organisation.

A belief on reasonable grounds is more than suspicion. There must be some objective basis for the belief. However, it is not the same as having proof.

For example, a person is likely to form the belief on reasonable grounds if they:

- Observed the conduct themselves;
- Heard directly from a child that the conduct occurred; or
- Received information from another credible source (including another witness).

PROCEDURES

Nature Alliance FDC Service will

1. Ensure all staff, FDC Educators, usual occupants, students and volunteers are aware of the Reportable Conduct Scheme and understand types of reportable conduct and procedures for reporting reportable conduct allegations or reportable convictions to the approved provider or Ombudsman.
2. Ensure all employees and FDC Educators are aware of mandatory reporting procedures including notification to the Department of Communities operate alongside, and does not replace, the Report Conduct Scheme.

If an Educator or other party form a belief on reasonable grounds that that reportable conduct has occurred, they will

1. Notify the Nature Alliance FDC Manager or authorised person of their beliefs.

The service will then:

2. notify the WA Police Force immediately if they believe criminal conduct or suspected criminal conduct is occurring or has occurred, or if there are immediate concerns for a child's safety.
3. Notify the Department of Communities if they believe that a child has been sexually abused, or is the subject of ongoing sexual abuse
4. notify the ECRU of incidents, complaints, and allegations via the National Quality Agenda IT System (NQA ITS).
5. will notify the Ombudsman within 7 working days of receiving a report of a reportable allegation or reportable conviction. Phone Free call 1800 117 000 or (08) 9220 7555.
[Online Notification Form](#).

PROCEDURAL FAIRNESS

The Reportable Conduct Scheme provides for procedural fairness to be afforded to persons the subject of a Reportable Conduct report and investigation. Procedural fairness is provided by offering an opportunity to respond to the reportable conduct allegations or reportable conviction before any adverse finding has been made.

Procedural fairness must be afforded at *three* stages of the investigation and decision-making process:

- A person must be informed that they are the subject of an investigation and of the reportable allegation or reportable conviction being investigated, and given the opportunity to respond to the reportable allegations or reportable conviction being investigated by making a submission, preferably in writing.
- Inform the person of any proposed adverse finding and give them an opportunity to make submissions about the proposed finding.
- If any disciplinary or other action is proposed in relation to the person as the result of any adverse findings from the investigation, inform the person in writing of the action that is proposed to be taken and give the person an opportunity to make submissions in relation to the proposed action.

SUPPORT

Being subject to a reportable conduct report and investigation can be distressing. Employees and other parties may be provided with information on appropriate and available support services.

SOURCE

Childcare Desktop

Legislation *Parliamentary Commissioner Act 1971*

WA Ombudsman - Reportable Conduct Scheme

Telephone: (08) 9220 7555

Email: reportableconduct@ombudsman.wa.gov.au

Website: www.ombudsman.wa.gov.au