

Review of Victoria's Reportable Conduct Scheme – Submission

19 October 2022

Introduction

Independent Schools Victoria (**ISV**) welcomes the opportunity to make a submission to the Victorian Government on the Reportable Conduct Scheme (**the Scheme**) which was established under the *Child Wellbeing and Safety Act 2005* (Vic) (**the Act**).

This submission is made on behalf of ISV Member Schools.

Background

ISV was established in 1949. ISV is a not-for-profit organisation and a member of Independent Schools Australia. ISV represents approximately 230 Member Schools which educate more than 158,000 school students across metropolitan Melbourne and rural and regional Victoria. Many of these schools offer a range of other child-facing services, including childcare, kindergarten, out of school hours care and holiday care.

ISV is not an authority that operates or manages schools. ISV provides professional services and support to members. This includes providing advice to members about the Scheme. In particular, ISV provides advice to Member Schools about:

1. Whether an allegation may be reportable under the Scheme;
2. What the school needs to do following receipt of an allegation of reportable conduct; and
3. The contact details of external investigators who might be able to assist the school.

ISV's focus is to discuss and clarify issues with Member Schools and offer suggestions as to how the school might handle a reportable conduct allegation. ISV does not participate in internal investigations under the Scheme.

Submission

It is important to acknowledge at the outset that ISV recognises that the Scheme is essential for the protection of children and young people in Victoria. ISV supports the fundamental principles on which the Scheme is based, which are set out in section 16B of the Act, particularly the principle that the protection of children is the paramount consideration in the context of child abuse or employee misconduct involving a child.¹ Further, ISV believes that the Scheme is successful in protecting children and young people from abuse and misconduct.

Despite this, some Member Schools have made recommendations to ISV for improving the Scheme. These recommendations include:

¹ *Child Wellbeing and Safety Act 2005* (Vic) s 16B(1)(a).

1. Provision of direct and specific information and advice by the Commission for Children and Young People (**CCYP**) to schools;
2. Extension of the 3-day reporting period to 7 business days;
3. Clarification of the 30-day update to CCYP; and
4. Reduction of confusion about the regulatory overlap to report and respond to allegations of reportable conduct.

Each of these recommendations is discussed in detail below.

1. Provision of direct and specific information and advice by CCYP to schools

Some Member Schools have indicated to ISV that they would appreciate additional guidance, information and advice from CCYP in relation to particular instances of reportable conduct. The CCYP website states that it is able to provide guidance to organisations regarding their requirements under the Scheme. However, schools have consistently reported to ISV that this guidance is limited. Written advice tends to be wordy, jargonistic and difficult to interpret, particularly for school principals with limited experience in managing reportable conduct allegations.

Schools have also indicated to ISV that CCYP employees appear to be unable to give specific, direct advice, and will provide verbal advice that simply quotes the information sheets and other resources which are available on the CCYP website. This applies to advice about whether an allegation constitutes reportable conduct, as well as to advice about the investigation that schools need to undertake once an allegation has been reported.

With regard to advice about whether an allegation constitutes reportable conduct, schools have informed ISV that CCYP employees will often neither confirm nor deny whether an incident is reportable under the Scheme, but will indicate that this is a matter for the school to determine. Schools have expressed frustration with the process of dealing with CCYP, particularly the lack of consistent, direct and specific advice about whether an allegation is reportable or not. Given that CCYP has more experience in dealing with reportable conduct allegations than individual school principals, it would be helpful for Members Schools if CCYP employees were able to provide information and advice, either verbally or in writing, in regard to *specific instances* of reportable conduct.

Anecdotal evidence suggests a lack of relevant advice and uncertainty about their obligations has prompted some principals in independent schools to adopt an excessively cautious and risk-averse approach, leading to potential over-reporting or reporting of incidents not covered by the Scheme. This in turn risks creating a distorted impression of the extent of reportable conduct in those schools.

2. Extension of the 3-day reporting period to 7 business days

Under the Scheme, the head of an organisation has three business days to decide whether the allegation constitutes a reportable conduct allegation and, if so, to notify CCYP of the allegation. Member Schools have reported to ISV that they can find it difficult to meet this narrow timeframe. ISV understands that the New South Wales Reportable Conduct Scheme, which similarly investigates and reports on allegations of certain conduct towards children, requires the head of an organisation to report an allegation within seven business days. ISV therefore suggests that it may be appropriate to extend the current timeframe for reporting to CCYP to seven business days.

Like the provision of direct guidance by CCYP, this would serve to reduce the likelihood of risk-averse schools over-reporting incidents, while still ensuring that action is taken in a timely manner.

3. Clarification of the 30-day update to CCYP

Under the Scheme, the head of an organisation must, within 30 calendar days after becoming aware of an allegation, provide certain detailed information about the allegation to CCYP. It would appear that there is a misunderstanding amongst some Member Schools about this notification requirement. For example, some Member Schools are of the opinion that within the 30-day period, they are required to have finalised the investigation into the incident and made a recommendation or finding. This is clearly not correct. Further clarification from CCYP about this requirement would be beneficial in assisting schools to better understand and use the Scheme.

4. Reduction of confusion about the regulatory overlap to report and respond to allegations of reportable conduct

Depending on the nature of the allegation, there are a range of different reporting requirements to different agencies, which may include (but are not limited to):

- CCYP
- Department of Families, Fairness and Housing (**DFFH**)
- Victoria Police
- The Orange Door
- Victorian Institute of Teaching (**VIT**)
- Victorian Registration and Qualifications Authority (**VRQA**)
- Quality Assessment and Regulation Division of the Victorian Department of Education and Training (**QARD**)

Member Schools often find navigating the different reporting obligations difficult. Member Schools have expressed uncertainty about what their reporting obligations are when they receive disclosures which fall outside the thresholds set by these different agencies. In addition, members sometimes don't understand that for certain allegations, they are required to report to different agencies.

ISV therefore considers that there should be greater cross-sector collaboration amongst agencies which deal with children and young people and additional guidance and information from CCYP about schools' reporting obligations. It is anticipated that this may assist Member Schools to not only enhance their understanding and use of the Scheme, but also their understanding of reporting more generally.

Conclusion

In summary, ISV and its Member Schools fully support the aim of the Scheme and the legislation that underpins it. The protection of children is paramount. The recommendations made in this submission – improving the provision of direct and relevant advice to schools, extending and clarifying reporting timelines, and greater collaboration between relevant government agencies – would enhance that protection while easing the burden on school leaders and reducing the over-reporting of incidents through the Scheme.