

Reporting on Victoria's Reportable Conduct Scheme

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It may or may not surprise you to learn that the rates of stress, burnout and depression among Australian principals are double that of most other professions (Riley, 2016). For teachers, increased accountability, the implementation of national standards and the widening of responsibilities to include everything from social work to swimming are contributing to higher attrition rates and lower levels of job satisfaction (Australian Scholarships Group, 2017). Possibly the most damaging trend for both groups is the lack of professional trust and respect accorded to today's educators.

There are some instances where the lack of trust in educators is totally understandable and probably the most disturbing of these relates to the pervasiveness of child sexual abuse in institutions such as schools. A report by the Royal Commission into Institutional Responses to Child Sexual Abuse (2014) acknowledges the profound impact this has had on individuals and broader society and reflects community concerns about the issue. Keeping our children safe while they are at school is of paramount importance, and it is for this reason that Victoria has recently introduced a new Reportable Conduct Scheme.

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The Scheme 'seeks to improve organisations' responses to allegations of child abuse and neglect by their workers and volunteers' (Commission for Children and Young People, 2017a) and is based on a similar scheme that has been in operation in New South Wales since 1999. It outlines five types of reportable conduct:

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

Heads of organisations have new responsibilities to notify the Commission for Children and Young People (the Commission) of allegations of reportable conduct within three business days, and then to investigate the issue themselves or refer it to the police if there are grounds to do so.

So far, so good. But what has raised alarm bells for many principals is the detail about how the Scheme is implemented. In particular, the reporting process does not allow for teachers against whom an allegation has been levelled to be consulted until *after* the matter has been reported to the Commission. In some ways this is understandable because it removes any possibility of a principal covering up for or colluding with a teacher. It does, however, leave the way open for vexatious complaints to have damaging consequences. Gray (2016) asserts that, 'Allegations made against principals and teachers presume guilt until they prove their innocence' and the way the Scheme works certainly enables this. The Victorian Department of Education and Training Human Resources guidelines state:

Some complaints may be determined to be vexatious or malicious in nature. Where the principal/manager determines after due consideration that this is the case, the complaint should be dismissed and the complainant

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counselled about his or her action in lodging a complaint. (2017, p.13)

Reporting a teacher prior to giving that due consideration infers a lack of professional respect and trust that can cause unwarranted stress for teachers.

There is no doubt that the very serious reportable conduct categories of sexual offences or misconduct, physical violence and significant neglect should be thoroughly investigated, and that immediate reporting of these makes sense. Where the waters get murky is with the more nebulous concept of 'behavior that is likely to cause significant emotional or psychological harm'. The rest of this article will focus specifically on that aspect of reportable conduct.

In the NSW Reportable Conduct Scheme, there are subtle differences in the language used to describe this category of conduct. For example, the NSW emphasis is on psychological harm and does not include emotional harm, which has been added in the Victorian Scheme. Furthermore, the NSW Scheme discusses behaviour that *causes* harm,

whereas the Victorian version has changed the terminology to 'behaviour that is *likely* to cause harm'. I don't wish in any way to diminish the importance of emotional wellbeing or to suggest that emotional harm should not be covered by the Scheme. It is, however, potentially a much more subjective concept to judge than the other categories. Whether emotional harm has been caused is, to some degree, in the eye of the beholder; an action by a teacher may cause emotional distress to one child but not to another, whereas sexual misconduct, for instance, is much more black and white. Principal briefings have suggested that if a child says they don't want to come to school because of a particular teacher, that could constitute reportable conduct on the basis of emotional harm. These circumstances certainly merit investigation, but should the conduct be reported before the principal does some basic checking into the situation?

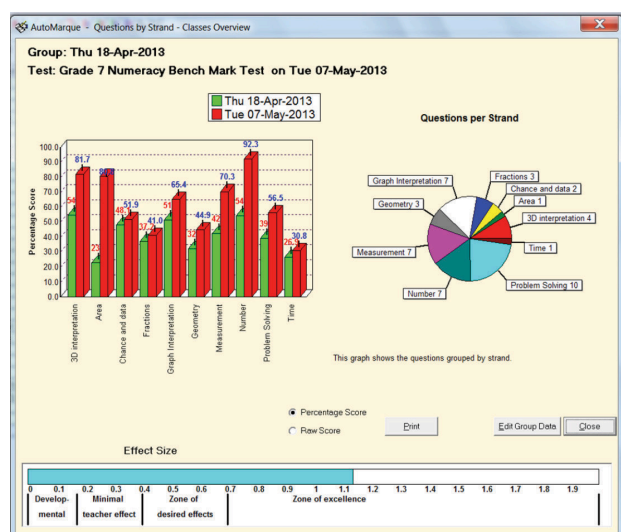
The other interesting point to note in the language of the Victorian Scheme is the use of the term 'significant'. While the 'Notifying and identifying reportable conduct' fact sheet about the NSW Scheme does refer to significant harm, it doesn't go into detail about what it means (Ombudsman New South Wales, 2017). However, in Victoria, 'It is enough that the alleged conduct is more than *trivial* or *insignificant* to



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fall within the definition of *significant* under the Reportable Conduct Scheme' (Commission for Children and Young People, 2017b).

Whether an event is more than trivial or not seems to be a subjective proposition. According to School Governance, an organisation that specialises in educational risk, compliance and policy management, 'Reportable conduct schemes establish a lower reporting threshold than mandatory reporting obligations' (SchoolGovernance.net.au, 2017), and the designation of *significant* as just more than trivial supports this assertion. If we accept the dictionary definition of trivial as 'of little importance or value' (Oxforddictionaries.com, 2017), it is difficult to conceptualise what teacher behaviour that is just above this might look like and whether it is *likely* to cause emotional or psychological harm. It is also unclear whether the degree of importance designated is from the child's perspective, in which case they may be well feel it is more than trivial, or from an adult's perspective, which could possibly be a more balanced view. These issues have been raised by the Independent Education Union, who argue that clear descriptions of reportable conduct are required to allow principals to make informed decisions about what needs to be referred to the Commission (Independent Education Union Victoria Tasmania, 2017).

There are ramifications for teachers who have a reportable conduct allegation lodged against them. When Victorian teachers re-register for the coming year, for example, they now have to inform the Victorian Institute of Teaching (VIT) if they have been the subject of a reportable conduct matter, 'and provide information about the circumstances of that matter' (Victorian Institute of Teaching, 2015). While this does open the way for teachers to indicate if an investigation has cleared them of any wrongdoing, the fact that the VIT suggests they will use the information to assess teachers' ongoing suitability to work with children is confronting if the allegation proved to have no substance.

A similar reportable conduct scheme was

launched in the ACT this year. The guidelines for this program appear to allow for greater discretion in reporting as they imply that principals can use their judgement: 'The reportable conduct scheme is allegation based. If an allegation, on the face of it, suggests that reportable conduct has occurred or may have occurred, it must be notified to the Ombudsman' (ACT Ombudsman, 2017). Examples of what does and doesn't constitute reportable conduct are included in a practice guide, making the responsibilities of principals much clearer. If a teacher raises their voice to attract attention or call the class to order, for instance, this is not reportable, whereas subjecting a child 'to a pattern of hostile or unreasonably inappropriate or degrading comments or behaviour' would clearly require escalation (ACT Ombudsman, 2017).

Given that three jurisdictions now have reportable conduct schemes, it is likely that other states and territories will follow suit, and child protection is certainly an issue of national importance. All three existing schemes place the onus on principals to investigate and report on claims once they have been referred, albeit with the support of the relevant authority. It is therefore worthwhile following developments in this area to ensure that principals understand and meet their obligations, children are provided with safe educational environments, and teachers are treated with fairness and respect, and if necessary, are subject to suitable sanctions if conduct is found to be inappropriate.

Further reading

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