

Guidelines on reporting abuse and neglect, and criminal activity

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1. Introduction

Reporting in these *Guidelines* refers to informing a third party who acts in an official capacity about suspected incidents of abuse and neglect, or criminal activity. As legislation regarding reporting child abuse and neglect is regularly amended, it is important to read the *Guidelines* in conjunction with the latest legislation in the relevant state or territory.

Refer to the *APS Code of Ethics* (2007), standard A.5. Confidentiality.

A.5.2. *Psychologists* disclose confidential information obtained in the course of their provision of *psychological services* only under any one or more of the following circumstances:

- (a) with the consent of the relevant *client* or a person with legal authority to act on behalf of the *client*;
- (b) where there is a legal obligation to do so;
- (c) if there is an immediate and specified risk of harm to an identifiable person or persons that can be averted only by disclosing information; or
- (d) when consulting colleagues, or in the course of supervision or professional training, provided the *psychologist*:
 - (i) conceals the identity of *clients* and *associated parties* involved; or
 - (ii) obtains the *client's* consent, and gives prior notice to the recipients of the information that they are required to preserve the *client's* privacy, and obtains an undertaking from the recipients of the information that they will preserve the *client's* privacy.

Refer to the *Code*, standard B.1. Competence.

B.1.2. *Psychologists* only provide *psychological services* within the boundaries of their professional competence. This includes, but is not restricted to:

...

- (d) Complying with the law of the *jurisdiction* in which they provide *psychological services*.

...

Refer to the *Code*, standard A.3. Informed consent.

A.3.6. *Psychologists* who work with *clients* whose capacity to give consent is, or may be, impaired or limited, obtain the consent of people with legal authority to act on behalf of the *client*, and attempt to obtain the *client's* consent as far as practically possible.

2. Focus of the Guidelines

- 2.1. These *Guidelines* are designed to assist *psychologists* to interpret and act in accordance with the sections of the *Code* that relate to the disclosure of information about the risk of harm to children, and to others. The *Guidelines* also deal with issues pertaining to the disclosure of information about the criminal acts or intended criminal acts of *clients* or others. They provide guidance on the reporting of suspected risk to others, including children, and reporting of criminal acts or criminal intentions.
- 2.2. The *Guidelines* should not be regarded as legal opinion. *Psychologists* needing a legal opinion on their reporting responsibilities in relation to risk of harm to others, suspected abuse and neglect of children, or suspected criminal activity, should consult their legal representative after they have read these *Guidelines*. Where applicable, the *Guidelines* should be read in conjunction with the *Guidelines on confidentiality* (2007), the *Guidelines relating to suicidal clients* (2004), the *Guidelines for working with people who pose a high risk of harm* (2005), the *Guidelines relating to previously unreported traumatic memories* (2010), and the *Guidelines for working with young people* (2009).
- 2.3. Reporting responsibilities will be considered in relation to:
 - reporting suspected child abuse and neglect;
 - reporting abuse and neglect of persons from other vulnerable groups – older adults, persons covered by guardianship acts, persons covered by mental health acts;
 - reporting a criminal act allegedly committed by a *client* based on information supplied to the *psychologist* by the *client*, or other parties' alleged criminal activity based on client information; and
 - reporting *clients'* or other parties' alleged intentions to commit criminal acts. Refer to Sections 6.2 and 6.3.

2.4. Limits to confidentiality.

At the outset of providing a *psychological service*, *psychologists* convey to their *clients* the limits to confidentiality – refer to standard A.5.2. in Section 1. This means that *psychologists* inform their *clients*, that if they become aware that “there is an immediate and specified risk of harm to an identifiable person or persons that can be averted only by disclosing information”, then the *psychologist* may disclose that information to avert risk.

- 2.5. *Psychologists* inform their *clients* that information given to them in confidence by *clients* is **not** privileged information, and that the *psychologist* may be compelled at some point in the future by a court of law to reveal that information.

3. Reporting child abuse and neglect

Refer to the Australasian Legal Information Institute website (www.austlii.edu.au) for current versions of the relevant Acts related to reporting child abuse and neglect. See Appendix for more detail.

3.1. Relevant State and Territory Acts

All States and Territories of Australia have legislative requirements that relate to the reporting of child abuse and neglect (refer to the Appendix). In some *jurisdictions* those requirements are part of specific legislation that deals with the welfare of children, for example, the Children’s Protection Act (1993) in South Australia and the Children, Youth and Families Act (2005) in Victoria. In other *jurisdictions* they are part of broader welfare or health legislation, for example, the Community Welfare Act (1983) in the Northern Territory.

3.2. The legal requirement of mandated reporting

Mandated (or mandatory) reporting means that persons from occupational groups and other persons who are mandated by those Acts to report suspected abuse or neglect of children are legally obliged to do so. That is, the law requires them to do so. If a person is mandated to report suspected cases of abuse or neglect, then the law removes that person’s discretionary decision-making about whether a suspected case of abuse or neglect should be reported. There is provision in some legislation for the imposition of penalties on persons who are mandated to report suspected child abuse or neglect but who fail to do so. Failure to report suspected child abuse and neglect under those circumstances may result in a fine and/or penalty.

3.3. Mandated reporting: psychologists

As at June 2010, psychologists as an occupational group are mandated to report suspected child abuse and neglect in South Australia and Tasmania. All residents of the Northern Territory, which includes residents who are psychologists, are mandated to report suspected child abuse and neglect. Table 1 in the Appendix of these *Guidelines* shows relevant Acts by geographical *jurisdiction* and their implications for psychologists. Refer to the Australasian Legal Information Institute website (www.austlii.edu.au) for current versions of the relevant Acts related to reporting child abuse and neglect. See Table 1 for more detail.

3.4. Mandated reporting: other roles in which psychologists might be employed

Psychologists in New South Wales (NSW), Queensland, and the Australian Capital Territory (ACT), are mandated to report suspected child abuse and neglect only if they belong to other occupational groups specifically listed in legislation. For example, in the ACT persons employed to counsel young people at a school, and people whose job is to provide services to children, young people or families, are mandated to report suspected abuse. In NSW school counsellors are mandated to report suspected abuse. Table 1 provides a list by state and territory of occupational groups in which psychologists may be employed that fall into this category.

Refer to the *Code*, standard B.12. Conflicting demands

B.12.1. Where the demands of an organisation require *psychologists* to violate the general principles, values or standards set out in this *Code*, *psychologists*:

- (a) clarify the nature of the conflict between the demands and these principles and standards;
- (b) inform all parties of their ethical responsibilities as *psychologists*;
- (c) seek a constructive resolution of the conflict that upholds the principles of the *Code*; and
- (d) consult a senior psychologist.

3.5. Workplace requirements to report

In addition to legislation that mandates the reporting of suspected child abuse and neglect, some *psychologists* may be required by workplace policies and procedures to report suspected abuse. In these cases, the workplace policies and procedures should clearly specify the procedures for reporting suspected abuse and the consequences of not reporting. *Psychologists* clarify their organisation's expectations of them regarding reporting suspected child abuse and neglect.

3.6. Reasonable grounds for suspected child abuse and neglect

Relevant legislation in all Australian jurisdictions, whether related to mandated reporting or to voluntary reporting of suspected child abuse and neglect, does not require that there be conclusive proof of the abuse or neglect before it is reported. Abuse and neglect may be reported on the basis of reasonable belief or suspicion. Reasonable belief or suspicion that a child is in need of protection is more likely formed when:

- a child states that they have been physically injured or sexually abused;
- a relative, friend, acquaintance or sibling of the child states that the child has been physically injured or sexually abused; or
- professional observations of the child's behaviour or development lead the *psychologist* to form a belief that the child has been physically injured or sexually abused, or to form a belief that there has been a failure to provide for the shelter, safety, supervision or nutritional needs of the child.

3.7. Practitioner's own responsibility

Where persons are mandated to report suspected child abuse or neglect, the requirement is on them and not on their organisation or workplace section to do so, notwithstanding the requirement in some *jurisdictions* to make the report to the chief executive officer of the organisation or department. For example, under the ACT Children and Young People Act (2008), a psychologist who is employed as a school counsellor is required to report suspected abuse or neglect to the school principal. However, the onus remains with the school counsellor to instigate a report with the relevant external State/Territory organisation. See the Appendix.

3.8. Protection of identity and legal liability

There are provisions in all relevant legislation to protect the identity of persons who are required to, or who in good faith voluntarily report suspected abuse and neglect. Such persons who act in accordance with that legislation are, under the legislation, exempt from civil and/or criminal liability.

3.9. Methods of reporting

Those States and Territories that have introduced legislation that mandates and/or otherwise makes provision for suspected child abuse and neglect to be reported have also established services that provide advice and support for members of the public and professionals who suspect and report such abuse. The agency to whom suspected abuse or neglect is reported is normally specified in the legislation – see Appendix.

3.10. *Psychologists* who suspect or have knowledge of child abuse or neglect consider the following set of questions before deciding how they will act:

- What is the relevant legislation in this *jurisdiction*?
- Does the legislation mandate me as a psychologist or in my current position as an employee to report cases of suspected child abuse and neglect?
- Are there any workplace policies and procedures that require me to report suspected child abuse and neglect?
- If I am not mandated/gazetted to report suspected child abuse and neglect, how will the welfare of the child be affected by whatever action I take?
- Have I adequately consulted with a senior colleague?

3.11. Research literature on child abuse and neglect

It is important that *psychologists* whose work may bring them into contact with children and parents, become acquainted with the research literature on child abuse and neglect (for example: Alvarez, Kenny, Donohue, & Carpin, 2004; Black & Black, 2007; Connolly, Price, & Gordon, 2009; Connolly, Price, & Gordon, 2010; Edwards, Dube, Felitti, & Anda, 2007; Hershkowitz, 2006; London, Bruck, Ceci, & Shuman, 2005; Renninger, Veach, & Bagdad, 2002; Smith, Ireland, Thornberry, & Elwyn, 2008; Sorsoli, Kia-Keating, & Grossman, 2008).

4. Reporting abuse and neglect of persons from other vulnerable groups

Vulnerable groups other than children include older adults in aged care facilities, people with an intellectual disability, people covered by guardianship acts, and people covered by mental health acts. In the absence of any statutory requirement, if *psychologists* who provide services for vulnerable *clients* notice indicators of abuse or neglect, they consider the welfare of the *client* as paramount and take appropriate action.

Refer to *Guidelines for the provision of psychological services for, and the conduct of research with, older adults* (2005).

5. Reporting clients' criminal offences or alleged criminal offences

5.1. Due to the special relationship between a *psychologist* and a *client*, a situation may arise where a *client* discloses criminal activity, actual or planned. How this is dealt with will raise legal issues but also ethical ones such as confidentiality and client welfare.

5.2. Confidentiality

Refer to the *Code*, standard A.3. Informed consent.

A.3.1. *Psychologists* fully inform *clients* regarding the *psychological services* they intend to provide, unless an explicit exception has been agreed upon in advance, or it is not reasonably possible to obtain informed consent.

A.3.3. *Psychologists* ensure consent is informed by:

...

(c) explaining how information will be collected and recorded;

(d) explaining how, where, and for how long, information will be stored, and who will have access to the stored information;

...

(f) explaining to *clients* what the reasonably foreseeable consequences would be if they decline to participate or withdraw from the proposed procedures;

...

(h) explaining confidentiality and limits to confidentiality (see standard A.5.);

...

Refer to *Guidelines on Confidentiality* (2007).

5.2.1. *Psychologists* are mindful of the primary role they undertake when providing a *psychological service* to a *client*. When receiving information from a *client* about a crime committed by the *client*, a *psychologist* considers:

- the *client's* best interests;
- whether there is an immediate and specified risk of harm to an identifiable person - if so, the disclosure of minimal information to avert the risk of harm would be allowed under standard A.5.2.(c); and
- the ongoing therapeutic relationship.

5.2.2. If there is conflict between the values of the *psychologist* and the past criminal actions referred to by a *client*, the *psychologist* considers whether the *client* would be better served by being referred to another practitioner.

5.3. Criminal Law

From a legal perspective there exists a distinction between criminal law and civil law. In criminal law the matter of concealment of information about a crime is covered by those parts of the criminal codes and statutes concerning accessories to crimes. In sections of the criminal codes concerning accessories, it is generally the case that simply knowing about an offence is insufficient for such a conviction to occur. Furthermore, failure to act on information about an offence, that is, failure to report an offence is also insufficient for a person to be found guilty of being an accessory after the fact to that offence. *Psychologists*, therefore, would normally not be held to be criminally liable for not reporting offences committed by their *clients* or reported to them by their *clients*. This assumes that the offence is not one that *psychologists* are mandated to report.

5.3.1. New South Wales Crimes Act (1900)

In New South Wales there is a legal requirement for a person to report a crime disclosed to him or her (Crimes Act, 1900 [NSW]), only for serious crimes which, if proven, could attract a prison sentence of five years or more. However, for psychologists in New South Wales, prosecution for concealment of a serious crime cannot proceed without the approval of the Attorney-General, if the knowledge about the crime was obtained in the course of practising as a psychologist. That tempering of liability also applies to a limited number of other professions, including researchers for professional or academic purposes (Crimes (General) Regulation 2005 [NSW]). It is anticipated that the Attorney-General would not give approval in circumstances where a psychologist was able to provide a reasonable explanation for not reporting the crime.

5.3.2. Terrorism and other acts against governments

There are no mandatory reporting requirements of suspected terrorist activity in Australia. The Australian Government established the office of Australian National Security with a 24 hour hotline to facilitate the reporting of suspected terrorist activity and provides information and support to business and members of the public (www.nationalsecurity.gov.au). Under the Commonwealth Crimes Act (1914) and some State Acts, it is an offence not to report acts of treason.

5.3.3. In all Australian jurisdictions except the ACT failure to report a crime (in NSW a serious crime) is an offence if the person not reporting receives an inducement for not reporting it. Thus, only in very specific circumstances can psychologists be held criminally liable for not reporting a criminal offence.

5.4. Forensic psychology context

Forensic psychology workplaces include, but are not limited to, corrections and parole, forensic mental health, Family Court, child protection, police, and work in other courts and tribunals. Any legal requirement within a contract of employment will take precedence over the *Code* and *Guidelines*, though in such situations *psychologists* refer to standard B.12.1. – see section 3.4. For example, the reporting of prior criminal activity is a regular part of the work of some *psychologists* employed in forensic settings, especially when preparing pre-sentence reports. In such situations, it is vital that *psychologists* ensure that *clients* fully understand the consequences of any disclosure they may make, and that *psychologists* do **not** use their position of power to coerce *clients* to reveal information.

6. Reporting a client's intention to commit a criminal offence

6.1. Criminal law

Under criminal law relating to liability for omission, except in very exceptional circumstances for which the law provides, people cannot be criminally culpable because they have not acted to prevent a criminal offence, nor do they have an obligation to act in order to prevent an offence. Therefore, if a *psychologist* does not report that a criminal offence is likely to be committed, that is generally insufficient reason for a *psychologist* to be found guilty of a criminal offence.

6.2. Civil law

6.2.1. In civil law, where an action is generally brought by one person against another person or organisation seeking compensation for loss or damages, a *psychologist* may be held to be liable for failing to exercise due care to the *client* or third parties. When providing *psychological services*, *psychologists* consider to whom they may owe a duty of care, and if they are concerned that the information they have been told affects an identified person other than the *client*, they seek further relevant advice and consult a senior colleague.

6.2.2. If *psychologists* are concerned about the safety of a *client* or other identifiable person, they advise the police about the type of threats that have been made and the relevant circumstances.

Refer to *Guidelines for working with people who pose a high risk of harm to others* (2005).

6.3. Considerations on deciding whether to report an intention to commit a criminal offence.

The *Code* stipulates that *psychologists* may disclose confidential information “if there is an immediate and specified risk of harm to an identifiable person or persons that can be averted only by disclosing information”, refer to standard A.5.2.(c) in Section 1. *Psychologists* therefore consider the following set of questions before deciding on a course of action if they become aware of a *client’s* intention to commit a crime:

- What is the relevant legislation in this *jurisdiction*?
- Are there any workplace policies and procedures that require me to report suspected criminal activity?
- If I work in an agency or organisation, who is the relevant staff member to whom I should report the matter?
- Under the circumstances where a *client* states an intention to commit a crime or reports that a crime might be committed by another party, to what extent does the intended crime pose a clear risk to the *client* or to others?
- How would an intended victim be warned? (For example, refer to Section 6.2.2.)
- Have I adequately consulted with a senior colleague?

7. Record keeping

Psychologists document their decision-making processes when faced with a decision whether or not to report potential abuse or neglect of a child by the *client*, or when faced with a decision whether or not to disclose information related to a *client* who has stated an intention to commit a criminal offence.

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Revised version approved by the APS Board of Directors, June 2010.
(Previous version entitled, “Guidelines reporting child abuse and neglect, and criminal activities”)

9. Appendix

Table 1. Mandatory reporting obligations regarding child maltreatment and abuse by State and Territory

(as at July 2012)

Juris-diction	Relevant Act(s)	Mandated employment in which psychologists might work	Types of maltreatment and abuse	Government department overseeing child protection
ACT	Children and Young People Act 2008	<ul style="list-style-type: none"> • A person who, in the course of the person's employment, has contact with or provides services to children, young people and their families • School counsellor • Child care centre employee • Home based care co-ordinator • Public servant providing services personally to children and young people or families 	<ul style="list-style-type: none"> • Physical • Sexual 	The Community Services Directorate
C'wealth	Family Law Act 1975 (Section 67 ZA)	<p>Employees of the Family Court of Australia, Federal Magistrates Court and Family Court of Western Australia including the following roles:</p> <ul style="list-style-type: none"> • Family consultants • Family counsellors • Family dispute resolution practitioners 	<ul style="list-style-type: none"> • Physical • Sexual • Psychological • Neglect 	A prescribed child welfare authority
NSW	Children and Young Persons (Care and Protection) Act 1998 incorporating the Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009	<ul style="list-style-type: none"> • Persons employed to deliver health care, welfare, education, (including school psychologists), children's services, residential services, or law enforcement to children • Persons in management with direct responsibility for, or direct supervision of, above services to children 	<p>Risk of significant harm of abuse including:</p> <ul style="list-style-type: none"> • Physical • Sexual • Emotional • Psychological • Neglect • Exposure to family violence 	<p>Department of Family and Community Services</p> <p>or</p> <p>Keep Them Safe Alternative Reporting Process</p>
NT	Care and Protection of Children Act 2007 (Sections 15 and 26)	Any person with reasonable grounds	<ul style="list-style-type: none"> • Physical • Sexual • Emotional/psychological • Neglect • Exposure to physical violence 	Department of Children and Families or Police
QLD	Child Protection Act 1999	<ul style="list-style-type: none"> • Employees of DCCSDS • Staff in residential care services for children 	<ul style="list-style-type: none"> • Physical • Sexual • Emotional • Psychological • Neglect • Exposure to family violence 	Department of Communities, Child Safety and Disability Services (DCCSDS)
	Education (General provisions) Act 2006 (Amended 2012)	<ul style="list-style-type: none"> • Employees (including school psychologists) at any public or independent school (both primary and secondary) 	<ul style="list-style-type: none"> • Sexual (reported or suspected) 	DCCSDS and the principal/director of the school

Juris-diction	Relevant Act(s)	Mandated employment in which psychologists might work	Types of maltreatment and abuse	Government department overseeing child protection
SA	Children's Protection Act 1993	All registered psychologists are mandated to report. Some other mandated notifiers include: <ul style="list-style-type: none"> • Probation officer • Approved family day care provider • Government department or agency, local government or non government agency employee or volunteer providing services to children and young people • Manager or supervisor of services to children and young people 	<ul style="list-style-type: none"> • Physical • Sexual • Emotional/ psychological • Neglect 	Department for Communities and Social Inclusion
TAS	Children, Young Persons and Their Families Act 1997	All registered psychologists are mandated to report. Some other mandated notifiers include: <ul style="list-style-type: none"> • Probation officers • Managers of child care services • Commercial child care providers 	<ul style="list-style-type: none"> • Physical • Sexual • Emotional/ psychological • Neglect • Exposure to family violence 	Department of Health and Human Services
VIC	Children, Youth and Families Act 2005	• Psychologists are not currently mandatory reporters, but may be so in the future		Department of Human Services
WA	See C'wealth Act above			
	Western Australia Family Court Act (1997)	• Court personnel including Family Counsellors	<ul style="list-style-type: none"> • Physical • Sexual • Emotional/ psychological • Neglect 	Department for Child Protection
	Children and Community Services Act 2004	• Psychologists are not mandated notifiers under this Act		