Guidelines on reporting child abuse and neglect, and criminal activity

Reporting in these Guidelines refers to informing a third party that acts in an official capacity about the suspected incidents of child abuse and neglect, or criminal activity.

The APS Code of Ethics (1999)

General Principle III(a): Members must respect the confidentiality of information obtained from clients in the course of their work as psychologists. They may reveal such information to others only with the consent of the person or the person’s legal representative. However in those unusual circumstances where failure to disclose may result in clear risk to the client or to others, the member may disclose minimal information necessary to avert risk. Members must inform their clients of the legal and other limits of confidentiality.

General Principle III(d): Members must be mindful of the legal context in which they work, their obligations toward employers, and their duties toward clients.

Clause B5: When working with young persons or other clients who are unable to give voluntary, informed consent, members must protect these clients’ best interests and will regard their responsibilities as being directed to the parents, next of kin, or guardians. The member shall endeavour to obtain the consent of young people and these other clients.

Clause B6: Members must not disclose information about criminal acts of a client unless there is an overriding legal obligation to do so or when failure to disclose may result in clear risk to themselves or others.

Focus of the Guidelines

These Guidelines are designed to assist members to interpret and act in accordance with the sections of the APS Code of Ethics (the Code) that relate to the disclosure of information about the risk of harm to others, and to children. They 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 of criminal intentions and acts. However, they should not be regarded as legal opinion. Members needing a legal opinion on their reporting responsibilities in relation to risk of harm to others, suspected abuse and neglect of children, and 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 (including when working with minors), the Guidelines relating to suicidal clients, or the Guidelines relating to recovered memories. Reporting responsibilities will be considered in relation to:

- reporting alleged child abuse and neglect;
- reporting abuse and neglect of persons from other vulnerable groups: elder abuse; 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, including ‘Tarasoff’ scenarios (Note 1).

Reporting child abuse and neglect

Relevant State and Territory Acts

All States and Territories, except Western Australia, have legislative requirements that relate to the reporting of child abuse and neglect. In some jurisdictions those requirements are part of specific legislation that deals with the welfare of children, e.g. The Children’s Protection Act 1993 in South Australia and the Children and Young Persons Act 1989 in Victoria. In other jurisdictions they are part of broader welfare or health legislation, e.g. the Community Welfare Act 1983 in the Northern Territory.

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 are legally obliged to do so. That is, the law requires them to do so, and makes provision for dealing with persons covered by the law who do not report suspected cases of abuse. 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. The person must report or else break the law and suffer the consequences.

**Mandated reporting: psychologists**

Psychologists as an occupational group are mandated to report suspected child abuse and neglect in South Australia and Tasmania. Any resident of the Northern Territory, which includes residents who are psychologists, is mandated to report suspected child abuse and neglect. Table 1 at the end of these Guidelines shows relevant Acts by jurisdiction and their implications for psychologists.

**Mandated reporting: other roles in which psychologists might be employed**

Psychologists in New South Wales, Queensland, and the 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 public servants whose job it is to provide services related to the health or wellbeing of children, young people or families, are mandated to report suspected abuse, and in NSW school counsellors, are mandated to report suspected abuse. Table 1 provides a list of occupational groups in which psychologists may be employed that fall into this category.

**Responsibility of persons to notify, and universal mandatory reporting (NT)**

Legislation in Victoria, New South Wales, ACT and Tasmania, for example, contains provision for members of the public to report suspected child abuse and neglect. Such legislation considers reporting to be a moral and/or social responsibility but not a legal obligation of members of the public who suspect such abuse. In the Northern Territory all members of the public are mandated to report suspected child abuse and neglect.

Mandated reporting for psychologists, or those APS members employed in roles where they are mandated to report, is a requirement of their employment and not a personal requirement, except in the case of the Northern Territory. Nevertheless, given that there is provision in most legislation for members of the community to be able to report suspected child abuse and neglect, psychologists need to consider their moral responsibility as members of the community to report suspected child abuse and neglect. If, as members of the community, psychologists decide that they have a moral responsibility to report suspected abuse that they encounter in the course of their professional practice, then such a decision requires them also to consider the limits of confidentiality pertaining to client information and to relay those limits to prospective clients.

**Workplace requirements to report**

In addition to legislation that mandates the reporting of suspected child abuse and neglect, some members 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. The psychologist should clarify organisational expectations.

**Reasonable belief/suspicion/grounds**

All relevant legislation, whether in respect 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, suspicion, or grounds. Reasonable belief may include a person being told by a child that she or he is being abused or neglected, being told by another person acting in good faith that a child is being abused or neglected, and/or observing or otherwise obtaining information from a child of
what appears to be abuse or neglect. There is a large list of indicators that, when considered in context, can be used to
detect abuse or neglect, and members should make themselves aware of those indicators.

Possible indicators of child abuse and neglect

There is a large list of indicators that may signal the likelihood of physical, sexual and emotional abuse. Indicators signal
the need for concern and further investigation but by themselves are not conclusive evidence that a child has been
abused or neglected. Psychologists should apprise themselves of these indicators, which include:

Physical abuse: bruises, burns, lacerations, welts, sprains, dislocations, cuts, bite marks, broken bones, symptoms of
poisoning, internal injuries or haemorrhaging coupled with wariness of adults, fear of going home, passivity and
compliance, fearfulness, use of clothing to cover the signs of injury, or improbable explanations for the injury.

Sexual abuse: retelling or acting out of age-inappropriate sexual knowledge or description of sexual acts, recurrent
complaints about headaches, stomach pains or sleeping problems, bed-wetting, self-destructive behaviour, eating
disorders, problems with school work, or wearing inappropriate clothing to bed. In some instances there may be
evidence of physical injury to the genitalia, anus, perineal region, or other parts of the body. In some instances sexual
abuse results in pregnancy or the presence of a sexually transmitted disease.

Emotional abuse: withdrawal, passivity, tearfulness, thoughts about one’s own and others’ worthlessness, distrust,
anger, attention-seeking, and poor interpersonal skills coupled with exposure to family violence or evidence of adult
criticism, verbal abuse, rejection, blaming, unreasonable demands, and inappropriate punishment.

Neglect: persistent hunger, symptoms of malnutrition, poor hygiene, limited or inappropriate clothing, untended injuries
or illnesses or developmental delays coupled with theft of food, reluctance to leave school or care facilities, substance
abuse, or aggression toward others.

General: children’s self-reports of neglect or abuse are indicators that abuse may be occurring and should be heeded
seriously as such.

Practitioner’s own responsibility

Where persons are mandated to report suspect child abuse or neglect, the requirement is on them and not on their
organisation or workplace section to do so, notwithstanding the need in some jurisdictions to make the report to the
chief executive officer of the organisation or section. For example, under the relevant ACT Act a psychologist who is
employed as a school counsellor is required to report suspected abuse or neglect to the school principal who may then
take action on the matter. However, the onus remains with the school counsellor and not the principal or others to
instigate a report with the relevant external State/Territory organisation. See Table 1.

Penalties for not reporting

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 imprisonment.

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, exempted from civil and/or criminal liability.
Exemption from professional etiquette/codes

Most mandatory reporting legislation specifically states that reports made under that legislation do not constitute breaches of professional ethics or conduct codes. In such cases the APS or a Psychologists Registration Board is likely to have great difficulty in bringing an action against a psychologist who has acted in good faith in accordance with the legislation by reporting suspected abuse or neglect at the expense of client confidentiality.

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 must be reported is normally specified in the legislation – see Table 1.

Factors that influence professionals’ decisions of whether or not to report: (know your own inclinations)

Even when reporting of child abuse is mandated or when there are professional and workplace expectations that members will report suspected abuse, not all psychologists support mandatory reporting. A survey of the literature suggests that psychologists may be less likely to report suspected abuse when:

- they have limited awareness of the indicators, extent, and negative sequelae of abuse;
- they are not confident that alleged abuse is actually occurring;
- children’s description of reported abuse is vague;
- alleged victims are adolescents;
- psychologists have little confidence in those agencies to which abuse must be reported because the agencies are thought to be ineffective and inefficient when investigating reports;
- reporting is considered to be counter-therapeutic; or
- alleged abusers are willing to enter into therapy.

It is important that members whose work may bring them into contact with children and parents, become acquainted with the research literature on child abuse and neglect, and examine their own experiences, beliefs and prejudices that influence how they might act if they suspect that a child is a victim of abuse or neglect or that a parent is a perpetrator of such abuse or neglect. Research evidence suggests that some psychologists are inclined not to report child abuse and neglect, even when mandated to do so. This inclination may be due to reasons for not reporting shown above and/or to the well-documented social psychological phenomenon known as the ‘by-stander’ effect. In order to address this disinclination to report, it is suggested that members who suspect or have knowledge of child abuse or neglect consider the following set of questions before deciding how they should act.

Checklist for members working with children and/or parents

- 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 to report suspected child abuse and neglect, to what extent do I have a moral responsibility to report it?
- What in my experience, beliefs, or opinions may prevent me from fulfilling my legal duty under the legislation or my moral responsibility to report suspected cases of abuse?
- To what agency does the legislation require one to report suspected cases of abuse?
- If I am in an agency or organisation, who is the chief executive officer to whom workplace policies and procedures require me to report suspected cases of abuse?
- Do I adequately inform clients about the limits that are imposed on client confidentiality by legislation, workplace regulations, and my own sense of moral responsibility to report suspected cases of child abuse and neglect?
Who should I consult if I need advice about child abuse and neglect or about whether reasonable grounds for reporting exist?
Do I have reasonable grounds under my State or Territory legislation and related policies and procedures for suspecting that child abuse or neglect is occurring in a particular instance?
Do I have reasonable grounds to suspect that a client is likely to perpetrate an act of abuse or neglect on a particular child or particular children?
Will I now take action to report my reasonable belief that a child is a suspected victim of abuse or neglect or is in danger of becoming a victim of abuse or neglect?
In deciding either to act or not to act, will my actions be in accordance with the law?
Will my actions be morally and ethically responsible actions?
Why then have I not yet reported the matter to the relevant child protection agency?

Reporting abuse and neglect of persons from other vulnerable groups

Other vulnerable groups include groups such as older adults in nursing homes and people with an intellectual disability. At this stage there does not appear to be any legislation that requires such reporting. However, members have an ethical and moral responsibility to act if a client or another person is perceived to be clearly at risk of harm. Members who provide services for vulnerable clients should therefore consider the following set of questions before deciding on a course of action if indicators of abuse or neglect are present:

- Are there any workplace policies and procedures that require me to report suspected abuse and neglect?
- To what extent do I have a moral responsibility to report suspected cases of abuse or neglect?
- What in my experience, beliefs, or opinions may prevent me from fulfilling my moral responsibility to report suspected cases of abuse or neglect?
- If I am in an agency or organisation, who is the relevant responsible officer to whom I report suspected cases of abuse?
- Do I adequately inform clients about the limits that are imposed on client confidentiality by workplace regulations and my own sense of moral responsibility to report suspected cases of abuse or neglect?
- Who should I consult if I need advice about abuse and neglect or about reporting my concerns?
- In deciding either to act or not to act, will my actions be in accordance with my workplace policies and procedures?
- Will my actions be morally and ethically responsible actions?
- Will I now take action to report my reasonable belief that a person is a suspected victim of abuse or neglect or is in danger of becoming a victim of abuse or neglect?

Reporting criminal offences or alleged offences

The question to be addressed is whether psychologists have a legal or a moral responsibility to report either criminal behaviour in which their clients have allegedly or actually engaged, or clients’ allegations of others’ criminal behaviour. From a legal perspective a distinction must be made 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 simply to act on information about an offence, i.e. failure simply to report an offence, is also insufficient for a person to be found guilty of being an accessory after the fact to that offence. Members, 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.

Exceptions

**NSW Crimes Act**

However, an exception to the absence of a legal duty to report a criminal offence is found in the New South Wales Crimes Act 1900. In this Act the definition of a serious offence is one that carries a maximum penalty of five years or more imprisonment. This Act makes it an offence for persons who have knowledge that a serious offence has been committed, which might lead to the apprehension of the offender, to fail to report the information to police without a
reasonable excuse. Serious offences may therefore include child abuse for which there is no mandating of psychologists as an occupational group in New South Wales.

Acts of treason, and inducements

There are some other exceptions that apply to everyone. Under some criminal codes, e.g. the Queensland and Commonwealth Crimes Acts, it is an offence not to report acts of treason. The Queensland and Victorian Crimes Acts also make failure to report a crime an offence, if the person not reporting receives an inducement for not reporting it.

Thus, only in very specific circumstances, which pertain to concealment of acts of treason or in New South Wales of serious crimes, can one be held criminally reliable for not reporting a criminal offence.

Forensic psychology workplaces

Any legal requirement within a contract of employment will take precedence over the Code of Ethics and Ethical Guidelines. For example, the reporting of prior criminal activity is a regular part of the work of some members employed in forensic settings, especially when preparing pre-sentence reports. In such situations, it is vital that members ensure clients fully understand the consequences of any disclosure they may make, and that members do not use their position of power to coerce clients to reveal information.

Civil liability

The situation is different in civil law where members might be exposed to potential legal action for not reporting an offence, if it can be argued that the position in which they are employed or the nature of their contractual arrangements with clients requires them to exercise a duty of care, and that failure to report an offence is a dereliction of that duty.

Failure by a member to report an offence that results in future offences that cause harm to other parties may make the member liable under civil law for failure to exercise due care for others, as required by his or her employment or contractual arrangements with clients.

Members should also bear in mind that information given to them in confidence by clients is not privileged information, and that they may be compelled at some point in future by a court of law to reveal that information.

Moral responsibility

There remains the matter about whether members have a moral responsibility to report a crime. This is a question that requires the member to consider whether the crime or alleged crime is so morally repugnant that it should be reported. Although the Code does not provide for members to exercise a moral judgement in relation to reporting criminal activity, it is reasonable that psychologists as members of the public should have the moral freedom to make such a decision. It is important that members examine their moral responsibilities in regard to criminal behaviour and suitably inform clients of any circumstances that might predispose them on the basis of personal morality to report a crime. It may also require the member to make a judgement about whether the (alleged) offender is likely to re-offend, and the implications of re-offending for others’ wellbeing.

Reporting clients’ intentions to commit a criminal offence

Under criminal law relating to liability for omission, except in very exceptional circumstances for which the law provides, people cannot be criminally liable 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, the simple act of not reporting that a criminal offence is likely to be committed is generally insufficient reason for a member to be found guilty of a criminal offence.
However, a member may be held to be liable under civil law for failing to exercise due care by not reporting that an offence is likely to be committed. Such liability is generally associated with the ‘Tarasoff’ case (Note 1) in the USA. No such cases currently have been reported in Australian law. However, members should bear in mind that their public duty of care may be held by a court of law to have precedence over confidentiality agreements between the member and client, if questions of giving evidence in a criminal case or a civil action arise.

**Steps in deciding to report a criminal offence or intention to commit a criminal offence**

The Code stipulates that members have an ethical responsibility to act if a client or another person is perceived to be clearly at risk of harm. Members therefore should consider the following set of questions before deciding on a course of action if they become aware of a crime or of an intention to commit a crime:

- Are there any workplace policies and procedures that require me to report suspected criminal activity?
- Under the circumstances where a crime has (allegedly) been committed, to what extent is the (alleged) offender likely to re-offend, and what are the implications of re-offending for others’ wellbeing?
- 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?
- To what extent do I have a personal moral responsibility to report this type of crime or suspected criminal activity?
- What in my experience, beliefs, or opinions may prevent me from fulfilling my workplace, ethical or moral responsibility to report this actual or suspected criminal activity?
- If I am in an agency or organisation, who is the relevant staff member to whom I should report the matter?
- Have I adequately informed the client about the limits that are imposed on client confidentiality by workplace regulations, the Code, and my own sense of moral responsibility to report actual or suspected criminal activity?
- Who should I consult if I need advice about whether I should report my concerns?
- In deciding either to act or not to act, will my actions be in accordance with my workplace policies and procedures?
- Will my actions be morally and ethically responsible actions?
- If the matter is ever heard in a court of law am I able to defend my decision either to report or not report the matter, and will my case records stand up to scrutiny by the court if a court requires me to produce them?
- What is the minimum amount of information that needs to be disclosed in order to exercise my workplace, ethical or moral responsibility to report the matter?
- Will I now take action to report this matter?
- If yes, who will I contact?
- Who, if anyone, should warn an intended victim?

**Note**

1. In the case of Tarasoff v. Regents of the University of California the Supreme Court of California found that a psychologist and a psychiatrist had failed in their duty to protect an intended victim (Tatiana Tarasoff) from their client’s dangerous behaviour, which resulted in the victim’s death (see McMahon, 1992). The psychologist and psychiatrist had prior awareness of their client’s intent to kill the victim.

**References**

Table 1: Mandatory reporting obligations by State and Territory (Modified December 2003)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Relevant Act(s)</th>
<th>Mandated employment in which psychologists might work</th>
<th>Government Department overseeing child protection</th>
</tr>
</thead>
</table>
| ACT          | Children and Young People Act 1999 | • School counsellor  
• Child care centre employee  
• Home based care manager  
• Public servant providing services relating to the health or wellbeing of children and young people | Department of Family Services |
| Comm.        | Family Law Reform Act 1995 | • Family and child counsellor  
• Family and child mediator | |
| NSW          | Children and Young Persons (Care and Protection) Act 1998 | • Persons employed to deliver health care, welfare, education, 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 | Department of Community Services |
| NT           | Community Welfare Act 1983 | All members of the public are mandated to report, which means all psychologists are mandated to report. | Department of Family Youth and Children’s Services |
| QLD          | Child Protection Act 1999 | • Employees of DFYCC  
• Staff in residential care services for children Care | Department of Families Youth and Community |
| SA           | Children’s Protection Act 1993 | All psychologists are mandated to report. Some other mandated notifiers include:  
• 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 | Department of Human Services |
| TAS          | The Children, Young Persons and Their Families Act 1997 | All psychologists are mandated to report. Some other mandated notifiers include:  
• Probation officers  
• Managers of child care services  
• Commercial child care providers | Department of Health and Human Services |
| VIC          | Children and Young Persons Act 1989 | • Psychologists are not currently mandated notifiers, but may be so in the future | Department of Human Services |
| WA           | Nil | Nil | Department of Health |