

## 9.4.2 Reportable Conduct Procedure

### 1.0 Purpose

The protection of children and young people from harm is the paramount consideration in maintaining systems to prevent and to investigate any instances where YOTS workers engage in harmful behaviour to our children and young people.

The primary objective of this procedure is to ensure YOTS meets our shared responsibilities for the protection of children and young people from harm when inappropriate behaviour allegations are made against YOTS workers and to meet our statutory obligations under Part 4 Children's Guardian Act 2019 relating to Reportable Conduct.

This procedure outlines the roles, responsibilities and action to be taken when YOTS workers behaviour is found to constitute Reportable Allegations, Reportable Convictions or Reportable Conduct. This procedure also applies to any allegation of inappropriate worker behaviour towards young people that does not reach the threshold for reporting to the Office of Children's Guardian (OCG) but could result in staff misconduct proceedings.

### 2.0 Scope

This procedure applies to;

- workers (including employees, board directors, volunteers, contractors & sub-contractors);
- work experience students;
- indirect service providers; and
- any other individual involved in this organisation.

YOTS Schools are required to follow this procedure in conjunction with the YOTS' Child Safe School Procedures.

Reportable Conduct Schemes operate in NSW, Victoria and ACT however YOTS is only required by law to adhere to the Reportable Conduct Scheme covering our NSW services. YOTS Reportable Conduct Procedures are based on the NSW requirements. Where an allegation of inappropriate behaviour or misconduct involving a child or young person is made against a YOTS Worker YOTS Reportable Conduct Procedures are to be followed irrespective of the YOTS service location including Queensland and Victoria.

YOTS does not provide support to young people using their NDIS funding. As such YOTS is not required to report allegations to the NDIS Quality and Safeguards Commission.

### 3.0 Definitions

Allegation	A claim or complaint made by any person about the conduct of a YOTS Worker that may amount to Reportable Conduct, a Reportable Conviction or Reportable Allegation or misconduct.
Assault	Assault means— (a) the intentional or reckless application of physical force without lawful justification or excuse, or (b) any act which intentionally or recklessly causes another to apprehend immediate and unlawful violence. Examples of assault— 1 hitting, striking, kicking, punching or dragging a child 2 threatening to physically harm a child
Child	A child means a person under the age of 18 years
Conflict of Interest	Situations where a conflict arises between a person's official duties and their private interests, which could influence the performance of those official duties.
Decision-maker	The person responsible for making a decision in relation to an Investigation. If the Investigator is: <ul style="list-style-type: none"> <li>the Director Organisation Capability, the YOTS CEO is the decision-maker</li> <li>an external party and the Allegation concerns the Director Organisation Capability, the YOTS CEO is the decision-maker</li> <li>an external party and the Allegation concerns the CEO, the YOTS Chair is the decision-maker</li> </ul>
Head of Agency	The Chief Executive Officer of YOTS.
Ill-treatment, of a child,	Ill-treatment, of a child, means conduct towards a child that is unreasonable and seriously inappropriate, improper, inhumane or cruel. <b>Examples of ill-treatment</b> <ul style="list-style-type: none"> <li>making excessive or degrading demands of a child</li> <li>a pattern of hostile or degrading comments or behaviour towards a child</li> <li>using inappropriate forms of behaviour management towards a child</li> </ul>
Inappropriate Behaviour	YOTS Child Safe Code of Conduct outlines behaviour that is considered inappropriate.
Incident	An event or occurrence that: <ul style="list-style-type: none"> <li>has or is likely to cause harm; and</li> <li>occurs during the course of or as a result of YOTS' activities,</li> </ul>

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	<p>programs and services, or is, in all the circumstances, likely to be associated with YOTS, its activities, programs and services.</p> <p><i>*All Investigations into Allegations are Incidents.</i></p>
Investigation	Any preliminary or other inquiry into or examination of an Allegation.
Investigator	The person who conducts an investigation who may be an employee of YOTS or an appointed external Investigator.
Misconduct	Misconduct involves behaviours that constitute a breach of the YOTS Child Safe Code of Conduct and/or YOTS Company Code of Conduct.
Neglect	<p>Neglect, of a child, means a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child, that causes or is likely to cause harm to a child, by—</p> <p>(a) a person with parental responsibility for the child, or</p> <p>(b) an authorised carer of the child, or</p> <p>(c) an employee, if the child is in the employee’s care.</p> <p>Examples of neglect—</p> <ol style="list-style-type: none"> <li>1 failing to protect a child from abuse</li> <li>2 exposing a child to a harmful environment, for example, an environment where there is illicit drug use or illicit drug manufacturing</li> </ol>
Reportable Allegation	An allegation that the employee has engaged in conduct that may be reportable conduct, whether or not the conduct is alleged to have occurred in the course of the employee’s employment with the organisation.
Reportable Conduct	<p>Reportable Conduct is;</p> <ul style="list-style-type: none"> <li>• a sexual offence • sexual misconduct • ill-treatment of a child • neglect of a child • an assault against a child • an offence under s 43B (failure to protect) or s 316A (failure to report) of the Crimes Act 1900; and</li> <li>• behaviour that causes significant emotional or psychological harm to a child.</li> </ul>
Reportable Conviction	Means a conviction, including a finding of guilt without the court proceeding to a conviction, in this State or elsewhere, of an offence involving reportable conduct whether or not the conduct occurred in the course of the employee’s employment with the organisation
Sexual Misconduct	<p>Sexual misconduct means conduct with, towards or in the presence of a child that—</p> <p>(a) is sexual in nature, but</p> <p>(b) is not a sexual offence.</p> <p>Examples of sexual misconduct—</p>

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	<ol style="list-style-type: none"> <li>1 descriptions of sexual acts without a legitimate reason to provide the descriptions</li> <li>2 sexual comments, conversations or communications</li> <li>3 comments to a child that express a desire to act in a sexual manner towards the child or another child</li> </ol>
Sexual Offence	<p>Sexual offence means an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child.</p> <p>Examples of sexual offences—</p> <ol style="list-style-type: none"> <li>1 sexual touching of a child</li> <li>2 a child grooming offence</li> <li>3 production, dissemination or possession of child abuse material</li> </ol>
Workers	Includes employees, board directors, volunteers, work experience students, contractors & sub-contractors

## 4.0 Responsibilities and delegations

*Chief Executive Officer (CEO) YOTS:*

- Ensures systems are in place for recording, responding and reporting allegations or convictions of a child protection nature against YOTS workers.
- Provides information, as the OCG requires, about the type and operation of systems for providing a safe environment for children and young people in YOTS care, and systems for handling and responding to Reportable allegations and convictions made against Workers (including allegations which are exempt from notification).
- Requires YOTS workers to inform the Director Organisation Capability (DOC) of any allegation or conviction of inappropriate behaviour or misconduct concerning a fellow Worker within 24 hours.
- Notifies the OCG of Reportable Allegations or Convictions made against YOTS workers and provides the required details to the OCG within 7 business days.
- Provides to the OCG on request, documentary and other information (including records of interviews) with respect to an investigation being undertaken.
- Forwards to the OCG within 30 calendar days an update on the status of the investigation (interim report) or the final report. Further guidance can be sought from the OCG for the final report.

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- YOTS CEO/School Principals will ensure an employee of YOTS has responsibility for notifications to NESAs (in writing as specified or through RANGS Online) within the required timeframes of any formal notifications of breaches of legislation such as Children's Guardian Act 2019, Child Protection (Working with Children) Act 2012 and Children and Young Persons (Care and protection) Act 1998 (see YOTS Governance Framework and Procedures).
- Assumes the role and responsibilities of investigator where allegations are made against the Director OC
- Following investigations is the decision maker (except for allegations made against the CEO YOTS).

### *Director Organisation Capability (DOC)*

- Advises and supports workers to report allegations and prior convictions of inappropriate behaviour by YOTS workers directed at children and young people.
- Determines whether the allegation may constitute Reportable Conduct, Reportable Convictions or Misconduct. Wherever possible this is a collaborative process involving relevant School Principals, Program and Service Managers (*Refer to Conflict of Interest procedures below*).
- In most cases, investigates possible cases of Reportable Conduct and Reportable Convictions and Misconduct. *Refer to Conflict of Interest procedures below*.
- Participates in the risk assessment, in consultation with the School Principals, Program and/or Service Manager to mitigate any further risk the worker may pose to children and young people in YOTS care.
- Notifies the CEO and other relevant authorities including Police of allegations that may constitute reportable conduct and/or criminal conduct<sup>1</sup>.
- Keeps appropriate records relevant to the professional outcomes of the Investigations (e.g. if the employee is directed to amended duties, training, counselling or additional supervision, is allowed to resign, or is dismissed by YOTS) on individual personnel files.

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<sup>1</sup> See Section 3. 9. 5 NSW Education Standards Authority (NESA) Manual for Non-Government Schools outlines reporting requirements.

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- Ensures all allegations are recorded as an Incident pursuant to YOTS risk management framework, using a pseudonym that can be cross-referenced to the Investigation file.
- Reviews HR practices to ensure YOTS Child Safe Policy and procedures are followed.

### *Principals and Service Managers*

- Advise and support all children, young people and workers to report allegations and previous convictions of inappropriate behaviour and misconduct by YOTS workers
- Must report allegations of inappropriate behaviour, misconduct and previous convictions and by YOTS Workers that come within their knowledge to the DOC within 24 hours
- In consultation with the DOC participates in clarifying the allegation.
- where the allegation is about;
  - your team member, the Director OC must be notified directly
  - a YOTS Director/School Principal, the CEO must be notified directly.
  - the CEO, the DOC must be notified directly.
  - *Refer to Conflict of Interest procedures below.*
- Ensures YOTS Mandatory Reporting policy and procedures are followed
- In consultation with the DOC participates in the incident risk assessment to mitigate any further risk the Worker may pose to children and young people in YOTS care.
- Ensures that details of any allegation made and related investigation are recorded on the file of the child or young person who made the allegation.

### *Workers*

- Advise and support all children and young people to report allegations of inappropriate behaviour by YOTS workers
- Must report allegations of inappropriate behaviour and previous convictions by YOTS Workers that come within their knowledge to the Director OC within 24 hours.

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- Where practicable, discuss their concerns with their Program and Service Managers who can provide advice and support
- Ensure YOTS Mandatory Reporting policy and procedures are followed
- If the allegation is about;
  - your line manager, the Director OC must be notified directly
  - a Director, the CEO must be notified directly.
  - If the Allegation is about the CEO, the Director OC must be notified directly.
  - *Refer to Conflict of Interest procedures below.*

## 5.0 Procedure

### 5.1 Initial Response to an Allegation

All workers must confidentially report allegations of inappropriate worker behaviour and previous convictions that comes within their knowledge to the Director OC

- If the allegation is about the Director OC, the CEO must be notified directly.
- If the allegation is about the CEO, the Director OC must be notified directly.
- *Refer to Conflict of Interest procedures below.*

The DOC (in most cases) in consultation with the relevant School Principal/ Program /Service Manager will clarify the allegation – exactly what has been alleged (who, what, when, where). This process must be conducted in a manner that does not prejudice any future investigation. For example;

- the identity of the person making the allegation, the child(ren) or young person(s) involved, the worker against whom the allegation has been made, and any witnesses;
- when and where the alleged incident or incidents occurred;
- a description of the acts and/or omissions which form the basis of the allegation against the worker and
- where it is not clear, clarify the estimate of physical force if physical assault or ill-treatment is being alleged.

Where appropriate YOTS Mandatory Reporting Procedures are followed.

### 5.2 Immediate Response to an Allegation

- must ensure the safety of all children and young people in our care and

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- must be conducted following the principles of procedural fairness.

The DOC determines, depending on the nature of the allegation and following a risk assessment, what immediate action should be taken against the worker. Possible options include;

- suspension,
- relocation and/or
- increased supervision.

This process must consider any potential risks to children and young people posed by the employee. This consideration is paramount and outweighs any action that may be taken that could impact on the reputational risk to the worker. All parties to an allegation will be reminded of the sensitive and confidential nature of the matter and be cautioned not to discuss the incident. Consideration will be given to who has a legitimate need to know about the incident for eg other workers and parents. It is important to ensure that whatever action is taken does not prejudice any future investigation. The employee should be advised that action taken was based on a risk assessment, confidentiality will be maintained and that a rigorous fair investigation of the allegation will take place.

The support needs of the child or young person and the employee who is the subject of the allegation, including cultural support needs and victim support provisions under the *Victims Rights and Support Act 2013* must be considered and addressed.

### 5.3 OCG 7 Day Notification

Once the allegation has been clarified the DOC determines whether the allegation is a reportable allegation. The allegation **must** be reported if the following is satisfied;

1. the alleged perpetrator is a YOTS worker
2. the alleged behaviour fits any of the following criteria;
  - a sexual offence
  - sexual misconduct
  - ill-treatment of a child
  - neglect of a child
  - an assault against a child
  - an offence under s 43B (failure to protect) or s 316A (failure to report) of the Crimes Act 1900; and



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- behaviour that causes significant emotional or psychological harm to a child. (see definitions).

**Note:** Grooming is included as a sexual offence. Crossing of professional boundaries will not amount to sexual misconduct in and of itself unless there is a sexual element. However, it is considered a breach of YOTS Code of Conduct and will be dealt with by YOTS internal disciplinary procedures.

In assessing the alleged inappropriate conduct the Director OC should consider;

- professional standards
- YOTS Codes of Conduct and
- accepted community standards.

Reportable conduct does not extend to:

- conduct that is reasonable for the purposes of the discipline, management or care of a child, having regard to the age, maturity, health or other characteristics of the child and to any relevant codes of conduct or professional standards
- the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace procedures
- conduct of a class or kind exempted from being reportable conduct by the Children's Guardian under section 30 of the Children's Guardian Act 2019 or was previously exempted by the Ombudsman and is subject to the transitional arrangements.

The Reportable Conduct Directorate at the OCG can provide advice throughout the process including advice on the threshold to notify ph 82193800. Resources are available at <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme>

Where the DOC determines the alleged worker conduct is reportable the YOTS CEO is advised, the [7 Day Notification Form](#) is completed and forwarded to the OCG. (7 business days from when the Director OC determines the incident is a reportable allegation).

**Note:** This form applies to any allegation or conviction concerning reportable conduct including incidents prior to the YOTS worker's recruitment to YOTS and during their employment with YOTS (inside and outside of work hours).

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In consultation with the Department of Communities and Justice (DCJ) and/or Police the Director OC will determine when any investigation will commence to avoid any contamination of evidence.

The DOC must also determine whether the allegation could constitute criminal behaviour and if so must report the matter to Police. In order to manage conflict of interest risks, investigations will only be conducted by the DOC or an external investigator.

### 5.4 OCG 30 Day Interim Report

YOTS CEO must submit an Interim Report to the OCG on reportable allegations if:

- **30 calendar days** have passed since the YOTS CEO became aware of the reportable allegation ie since lodgement of the 7 day notification
- YOTS CEO has received written notice from the Children's Guardian or on advice from the Commissioner of Police or the Director of Public Prosecutions to **not** defer or suspend the investigation
- YOTS CEO has **not** received written notice from The Children's Guardian giving an exempting from commencing or continuing the investigation, and
- YOTS **Entity Report** is not ready to submit and **no** extension has been provided by the Children's Guardian.

The [Interim Report Form](#) should include the following information;

(i) in relation to a reportable allegation - if known, the facts and circumstances of the reportable allegation,

(ii) in relation to a conviction - any known information about the conviction,

(iii) action taken since the OCG received a notification about the reportable allegation or the conviction

(iv) further action the YOTS CEO proposes to take in relation to the reportable allegation or conviction, including where YOTS CEO proposes to take no further action,

(v) the reasons for the action taken, the action proposed to be taken or the reasons for the decision to take no further action,

(vi) include copies of documents such as transcripts of interviews and copies of evidence.

Where the matter has not been finalised attachments should include a Risk Management Action Plan and an Investigation Plan.

### 5.5 Workers Response to an Allegation

Consideration must be given to the timing of when the worker is told about the allegation and given an opportunity to respond. This can be critical to the success of an investigation and can impact on the degree and duration of stress experienced by the worker. Where DCJ and/or the police wish to interview the worker YOTS must follow their advice.

When all the relevant information has been obtained, the allegation should be formally put to the worker. The worker must be given an opportunity to respond at an interview or in writing.

The worker may wish to have a support person present. The support person should be advised their role is to observe, support, not interrupt the interview and maintain confidentiality. A witness to the investigation would not generally be an appropriate support person. Where the worker elects to make a written submission this must be included in the final report.

### 5.5 Investigation and Making a Finding

As prescribed under the Children's Guardian's Act 2019 YOTS must investigate and make findings. The Investigator documents the information gathered during the investigation, objectively analysing the evidence to support any conclusions. Their report identifies the finding/s best supported by the available evidence and includes recommendations arising from the investigation. This report is provided to the YOTS CEO or their delegate to make a decision on the matter. The decision-maker must be independent of the investigator and in a more senior position.

Where the Investigator is:

- the DOC , the YOTS CEO is the decision-maker
- an external party and the allegation concerns the DOC, the YOTS CEO is the decision-maker
- an external party and the allegation concerns the CEO, the YOTS Chair is the decision-maker

Findings can cover that the reportable allegation is:

- **sustained** (i.e. a finding of reportable conduct has occurred), or
- **not sustained – insufficient evidence** (i.e. there is some evidence of weight however there is insufficient evidence available to reasonably establish that the alleged conduct did occur), or

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- **not sustained – lack of evidence of weight** (i.e. where the evidence is of such poor probative value or lacking in weight, such as to warrant a finding that, on the balance of probabilities, the conduct did not occur), or
- **false** (i.e. where inquiries into the matter show reportable conduct or an act of violence did not occur). Some of these matters may be vexatious, for example where inquiries into the matter show the allegation was made without substance and to cause distress to the person against whom the allegation was made, or
- **not reportable conduct** (i.e. where inquiries into the matter show the conduct was not reportable). For example, use of force that was trivial or negligible in the circumstances, conduct that was reasonable in the circumstances or accidental. This may include 'misconceived' matters, where inquiries into the matter show that, even though the allegation was made in good faith, it was based on a misunderstanding of what actually occurred and the incident was not reportable conduct.

### The Decision-maker;

- Accepts or rejects recommendations made by the Investigator. The reasons for making an alternative decision must be documented.
- Sends letters, if appropriate, to the child or young person, their parents or carers and the complainant to inform them of the outcome of the investigation. The letter(s) should take account of the privacy rights of the worker who is the subject of the allegation. The letter(s) could include an offer to discuss the matter, if appropriate.
- Sends a letter to the worker stating the outcome of the investigation and the action that will be taken. This letter could include an offer to discuss the matter, as appropriate.

The YOTS CEO unless satisfied that the disclosure is not in the public interest should disclose to the alleged victim and their parent carer information about;

- the progress of the investigation
- the findings of the investigation and
- action taken in response to the findings.

Where it is decided to not disclose, reasons for this decision should be documented and provided to the OCG.

## 5.6 Taking Action

As a result of the investigation decisions are made about what action should be taken. This can include;

- possible disciplinary action in relation to the worker who is the subject of the allegation,
- amendments to policy and procedures, and
- strategies to minimise future risk of reportable conduct by the worker and/or other workers.

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Any previous relevant matters relating to the worker should be considered when deciding the appropriate action to be taken. If, at the end of the investigation, the allegation is found to be false and vexatious, a decision should be made regarding what action to take, if any, against the person(s) who made the allegation.

### 5.7 Final Report (Entity Report)

Once YOTS CEO is satisfied that the investigation has been concluded, they must, as soon as practicable, submit to the OCG an entity report unless the Children's Guardian has given a written exemption or the YOTS CEO has a reasonable excuse.

The [Entity Report](#) must include the following -

(a) in relation to a **reportable allegation** -

- (i) information about the facts and circumstances of the reportable allegation, and
- (ii) after completing the investigation the findings the YOTS CEO has made
- (iii) an analysis of the evidence and the rationale for the findings,

(b) in relation to a **reportable conviction** -

- (i) information about the conviction and
  - (ii) the determination the YOTS CEO has made about the conviction,
- (c) a copy of any written submission made by the alleged perpetrator

(d) information about what action has been, or will be, taken in relation to the reportable allegation or conviction including the following -

- (i) remedial or disciplinary action in relation to the employee,
- (ii) whether information about the matter has been referred to a different entity,
- (iii) changes to systems or policies,
- (iv) if no further action is to be taken - that no further action is to be taken,
- (e) the reasons for the action taken, including taking no further action,
- (f) any other information prescribed by the regulations.

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(2) The YOTS report must also be accompanied by any copies of documents that are relevant to the report, including transcripts of interviews and copies of evidence.

If the matter is found to be non-reportable conduct the DOC will ensure that any unacceptable practice will be addressed through supervision or the disciplinary processes.

### 6.0 Information Security

All information collected in relation to the incident must be kept in a safe and secure place, with access only by approved persons. Records relating to information concerning allegations against an employee should be kept on a file separate to the employee's personnel file.

Following investigation only information pertinent for the professional management of the employee is copied to their personnel file such as if the employee is directed to amended duties, training, counselling or additional supervision, is allowed to resign, or is dismissed by the agency.

### 7.0 Conflict of Interest

If the allegation is about the DOC the YOTS CEO must be notified directly. If the allegation is about the CEO, the DOC must be notified directly. Investigators should be objective and impartial, and be seen as such. One factor that can affect an investigator's neutrality is a conflict of interest between their role as an investigator and other personal or professional views or responsibilities.

Personal views or private interest can influence and compromise a person's capacity to perform their duties. Given the sensitive nature of allegations of a child protection nature against a worker and the serious potential outcomes for those involved, objectivity and impartiality is paramount.

YOTS recognises and manages actual or reasonably perceived conflict of interests by addressing the following issues:

- What is the nature of the conflict of interest? For example, does the investigator have a personal, financial or other type of relationship with the employee against whom the allegation has been made?
- How significant is any such relationship or interest? For example, is the relationship one of simple acquaintance, has the investigator worked closely for a period of time with the person being investigated, or is the 'conflict' based on something more likely to give rise to personal feelings?
- Does the investigator hold any personal or professional biases that may lead to the conclusion that the investigator is not an appropriate person to investigate the matter?

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- How serious is the alleged conduct being investigated? The more serious the allegation, the more important it is there is no actual or reasonably perceived conflict of interests.
- Would the investigator or anyone associated with them personally benefit from or be damaged by the investigation finding?
- How likely is it that the person with the conflict of interests will be, or might appear to be, influenced in their role?
- Is the investigator aware of the potential for conflict? Did they volunteer information or acknowledge the conflict? Does the investigator believe they can remain impartial?
- What are the views of the alleged victim, family, and the person the subject of the allegation? Do they object to the proposed investigator?
- Is the allegation about the YOTS CEO? What steps need to be taken to address this?

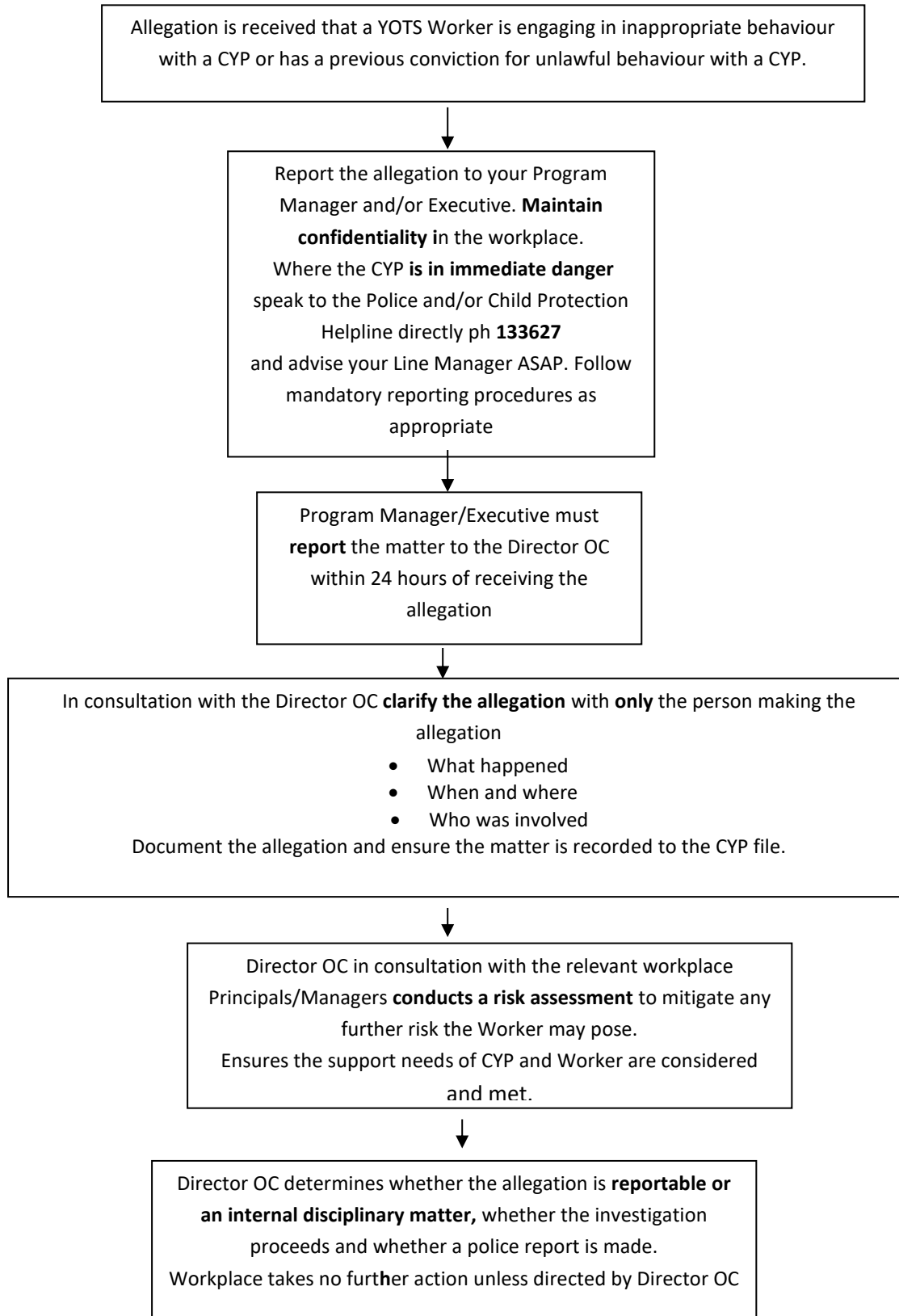
### 8.0 Reviews and Appeals

Any request for a review of findings should be first made to the YOTS CEO. If after following this process the YOTS worker who is the subject of the finding is unsatisfied with the handling or outcome of the reportable allegation, a complaint can be made to the OCG. For a review to be undertaken, the YOTS worker must provide additional information that was not considered during the investigation or identify an aspect of procedural fairness that was compromised during the investigation.

### 9.0 Whistleblower Protection

Any person who gives a report, makes a complaint, or gives the Children's Guardian a notification of a reportable allegation, or complies with Part 4 of the Children's Guardian Act 2019 is protected ie immune from liability.

### Reportable Conduct Flowchart





### 10.0 Related Documents

Title and document number	Owner
Child Safe Code of Conduct	OC
Company Code of Conduct	OC
Child Safe Policy	OC
Mandatory Reporting Procedure	OC
Recruitment Policy	OC
Recruitment and Selection Guidelines	OC
Risk Management Policy	BOARD
Complaints Policy	BOARD
Complaints Procedure	BOARD
Schools Child Safe Procedures	OC

### 11.0 Revision Table

Version number	Reason/description	Date
3.0	Updated procedure to reflect Voluntary Out of Home Care and NESAs requirements and introduction of Children's Guardian Act 2019.	March 2020
4.0	Updated to reflect YOTS organisational restructure	June 2020