



## ***Are We Mandatory Reporters Under Child Protection Laws?***

### **THE ANSWER IS NO**

**Under the various New South Wales child protection laws we are not mandatory reporters, however Scouts Australia make it compulsory to report allegations of abuse or Code of Behaviour breaches, direct to the Executive Officer at Branch Headquarters.**

**But doesn't the Act say we are?**

**NO. We are not Mandatory Reporters under the child protection Acts.**

- a) Firstly the Department of Community Services (DoCS) have informed us we are **NOT** mandatory reporters.
- b) Secondly we have had legal interpretations of the 'Children and Young Persons (Care and Protection) Act 1998' including Section 27, from three separate legal experts. They all agree mandatory reporting **does not** apply to the Association especially with the application of the *ejusdem generis* rule to section 27..
- c) Thirdly the Minister's speech in Parliament, when the Bill was being passed, together with the '*NSW Interagency Guidelines for Child Protection Intervention*' (2000) make it very clear we are **NOT**.

**Does that mean we cannot go to DoCS?**

No, Section 24 gives everyone the option to report any suspicions or allegations to DoCS. Whilst not wanting to stop people reporting to the various authorities the Association asks, in fact requires, that it be notified if that step is being taken. The preference is for the suspicion or allegation be made direct to the Executive Officer at Branch Headquarters

**Why does the Association require us to report suspicions or allegations to the Executive Officer?**

There are a number of reasons; the most important is our ability to protect our youth members.

- a) As soon as we are notified we can take steps to protect our youth members,
- b) Advise/warn the person allegedly the offender of Leaders Code of Conduct; in more severe cases suspend the alleged offender until the investigation is complete; offer support to the alleged victims
- c) The Association regularly interacts with the DoCS and Joint Investigation Teams. When we are the reporting body, because our relationship with the authorities we can keep abreast of any investigation. This is not possible if the reporter is someone else.

**What if I feel nervous about speaking to the Executive Officer?**

Simply inform your Group Leader, or Leader in Charge, and ask them to inform Region and or the Executive Officer at Branch HQ.

**Will the person be able to sue me for reporting.?**

**NO**, unless your claim is false –misleading or mischievous.

Section 29 of the Children and Young Persons (Care and Protection) Act 1998' specifically protects people who are 'reporting' an incident direct to the authorities. This would apply if you were reporting to G/L Region or Branch.

It is unlikely to protect you if you were just gossiping about it to others.

**What about Leaders who are nurses and social workers and their jobs make them mandatory reporters.?**

They do not HAVE to report to DoCS whilst acting as a Leader. The Interagency Guidelines state " ... are only mandated to report if the concerns arise in the course of their work. It is a personal choice to report concerns that arise in a person's private life."

**ALL SUSPICIONS AND ALLEGATIONS OF ABUSE MUST BE REPORTED  
TO THE EXECUTIVE OFFICER AT BRANCH HEADQUARTERS.**

**‘Children and Young Persons (Care and Protection) Act 1998’ and Mandatory Reporting.**

The application of the *ejusdem generis* rule would mean that the phrases "management position" in Section 27(1)(b) and "person's work" in Section 27(2)(b) must be read in the same context as the phrase "professional work or other paid employment" in Section 27(1)(a).

The role of a Scouter is not 'paid employment' nor is it a 'professional vocation'. It is the view therefore that Section 27 does NOT apply. There is, however, a more general reason why Section 27 binds neither Scouters nor employees of the Association.

That is because, for the purposes of this Act, the Scout Association is NOT an organisation, which provides health care, welfare, education, children's services (s20 applies only to children under age 6), residential services or law enforcement.

Although, in the broadest sense of some of those phrases, the Association (morally & ethically) views itself as providing such services, the current state of the law is that LEGALLY, the Association provides none of them (as defined).

**Additional information.**

- (A) Our position that we are NOT mandatory reporters is consistent with the Department of Community Services (DoCS) position, and confirmed in their correspondence to us.
- (B) In 1998 the 2nd reading speech to the Parliament, when this Act was a Bill before the Parliament, (*The 'Interpretations Act 1987' sets out if there is any doubt about an Act the 2nd reading speech should be used as a guide*) also supported this position and showed the intention of the legislators when passing the legislation. I offer this short section of the reading speech. (My underlining.)

Second reading speech 1/12/1998 The Hon Shaw  
*Hansard page 10899*

*“Consistent with the recommendations of the police royal commission, this bill significantly expands the range of professionals required to report circumstances where a child is at risk of harm. These will now include all those who in the course of their professional work or other paid employment deliver health care, welfare, education, children's services, residential or law enforcement services to children. The requirement also includes managers and supervisors in these areas. The proposed reforms reflected in clause 27 will have the benefit of providing much greater clarity to the law on mandatory reporting. This reform will allow for a consistent approach and also make a clear statement to the community about the high expectations placed on those who are in the privileged position of working with children and young people.”*

**In addition the official ‘NSW Interagency Guidelines for Child Protection Intervention’ (2000) on page 85, in referring to section 27 (1) a and b of the Act above, says:**

*“As this is a necessarily broad category of professionals it is important to check agency procedures for your reporting responsibilities. Staff and managers are only mandated to report if the concerns arise in the course of their work. It is a personal choice to report concerns that arise in a person's private life.”*

In other words at school a teacher has a mandatory responsibility to report suspected abuse, (possibly through his/her Principal?) BUT when she goes to her voluntary job of managing the local 12 year olds netball team, or scout troop, it is no longer mandatory for her to report. “It is a personal choice to report concerns that arise in a person's private life.” The earlier section (§24) allows this.

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