

Physical Violence – Information Sheet

Physical violence is a type of reportable conduct under Tasmania's Reportable Conduct Scheme.

This information sheet provides guidance to assist organisations in deciding whether conduct or behaviour is physical violence under the Reportable Conduct Scheme. This information may not cover all possible situations. If further guidance is required, please contact the OIR.

How is physical violence defined in the *Child and Youth Safe Organisations Act 2023*?

Physical violence is defined in section 7(1) as:



the intentional or reckless application of physical force to a person without lawful justification or excuse; or



any act which intentionally or recklessly causes a person to apprehend immediate and unlawful violence to the person.

This definition includes actual or apprehended physical violence.

What is actual physical violence?

Actual physical violence is the intentional or reckless application of physical force to a person **without** lawful justification or excuse.

Examples of actual physical violence include:

- Hitting
- Striking
- Punching
- Pushing
- Using restraint or excessive force that is inappropriate to the situation
- Kicking
- Spitting
- Dragging
- Using an object to hit or strike

How can organisations determine/decide if conduct is actual physical violence?

1

The physical violence must be actually **violent behaviour** (i.e. where there is force or aggression). Conduct that is minor, trivial or negligible does not satisfy the ordinary meaning of violence (see also meaning of minor trivial or negligible behaviour described below).

2

The violent behaviour should include the **intentional** or **reckless** application of force. This means, the conduct by way of the application of force was either:

(a) **intentional** – deliberate or on purpose, whereby the person meant to do the act of physical violence; or

(b) **reckless** – aware of the risks, the person proceeds regardless of the possible consequences.

3

The definition of physical violence allows for a defence (i.e. an excuse) if the physical violence was with lawful justification. If, however, the physical force is without lawful justification or excuse, then it would be reportable conduct.

What 'counts' as lawful justification or excuse?

Lawful justification or excuse means where there has been a lawful reason why the physical force was applied. For example, where physical force that would usually amount to physical violence, was **reasonably applied** to protect oneself, or a child or young person from harming themselves or others, or causing damage to property.

By '**reasonably applied**', we mean force that is **appropriate and proportionate** to the danger that is being avoided (i.e. no more excessive than it needs to be in the circumstances).

Where lawful justification or excuse can be demonstrated, the behaviour would **not** be considered reportable conduct.

What is apprehended physical violence?

Apprehended physical violence is any act which intentionally or recklessly causes a person to apprehend or fear immediate and unlawful violence to the person.

Examples of apprehended physical violence include:



Angrily punching a wall next to a child or young person's head causing them to fear they were about to be punched



Standing over a child or young person in an intimidating way that causes them to fear they will be hurt



Verbally threatening to physically harm a child or young person.

Does lawful justification apply to apprehended physical violence?

Although the wording used is different, in effect, if the apprehended violence is lawful, then it will not count as apprehended physical violence.

For example, screaming at a child who is about to cross the road dangerously will not be considered apprehended violence as the reason for screaming is to alert the child and avoid the risk of the child being run over.

How do you decide if certain behaviour amounts to physical violence or if it is minor trivial or negligible?

As noted above, the ordinary meaning of physical violence is directed to conduct that is characterised as violent, ie where force or aggression is used. Conduct such as physical contact by touching someone would be considered minor, trivial or negligible and may not ordinarily be considered to be violent conduct. We say 'may' because every situation is different, and due consideration needs to be given to the context and circumstances in which the alleged conduct took place.



Determining whether conduct is minor, trivial or negligible.

It is important to consider the specific circumstances and context of the behaviour when deciding whether certain conduct was violent as certain behaviour may not be trivial or negligible when considering the context:

Are there any special circumstances which may suggest the conduct is or is not minor, trivial or negligible?

For example:

- What was the age of the child or young person?
- Does the child or young person have a disability?
- Was the child or young person's cultural background considered?
- Did the worker behave in a reckless manner with disregard of the context or circumstances of the child or young person?

Examples of minor, trivial and/or negligible subject to due consideration to context and circumstances

Redirecting attention

A teacher tilting a child's head up from their phone to regain their attention in class.

Guiding movement

Briefly placing a hand on a child's shoulder to guide them in the right direction (e.g., in a line) or stepping into their path and briefly taking their arm to guide them away from a hazard.

Accidental contact

A worker brushing against a child in a crowded hallway, or a sports coach unintentionally making physical contact while demonstrating a drill.

Making a notification

For all organisations **except Out-of-Home Care and Ashley Youth Detention Centre**, this means:

**3
Days**

if, within 3 business days, the application of physical force is found to be minor, trivial or negligible, as long as a workplace investigation is conducted, there is **no need to notify the OIR, or conduct an investigation into reportable conduct.**

if there is no workplace investigation or the matter cannot be resolved within 3 business days and needs fuller investigation, **you must notify the OIR and then investigate.**

If an investigation does proceed, the organisation may find:

- the conduct was more serious than first thought and **did amount to reportable conduct**
- the conduct was minor, trivial and/or negligible in nature and **therefore is not reportable conduct.**



For **Out-of-Home Care and Ashley Detention Centre**, even minor, trivial or negligible conduct **must be notified to the OIR.**