

WESTERN AUSTRALIA

Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2020

DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill to amend the *Parliamentary Commissioner Act 1971* and the *Working with Children (Criminal Record Checking) Act 2004*.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.

All submissions must be received by 31 January 2021 and should be forwarded to: reportableconduct@ombudsman.wa.gov.au

For further information please see the Ombudsman Western Australia website at <http://www.ombudsman.wa.gov.au>

DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill to amend the *Parliamentary Commissioner Act 1971* and the *Working with Children (Criminal Record Checking) Act 2004*.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.

**Parliamentary Commissioner Amendment
(Reportable Conduct) Bill 2020**

Contents

Part 1 — Preliminary

- | | | |
|----|--------------|---|
| 1. | Short title | 2 |
| 2. | Commencement | 2 |

**Part 2 — *Parliamentary
Commissioner Act 1971* amended**

Division 1 — Preliminary

- | | | |
|----|-------------|---|
| 3. | Act amended | 3 |
|----|-------------|---|

Division 2 — General amendments

- | | | |
|----|-------------------------------|---|
| 4. | Long title amended | 3 |
| 5. | Section 4 amended | 3 |
| 6. | Section 19A amended | 5 |
| 7. | Part III Division 3B inserted | 5 |

Division 3B — Reportable conduct scheme

Subdivision 1 — Preliminary

- | | | |
|------|--|----|
| 19C. | Terms used | 5 |
| 19D. | Conviction | 8 |
| 19E. | Reportable allegation | 8 |
| 19F. | Reportable conduct | 9 |
| 19G. | Reportable conviction | 10 |
| 19H. | Entities to which reportable conduct
scheme applies | 10 |
| 19I. | Object and principles | 10 |

Subdivision 2 — Role of Commissioner

- | | | |
|------|---|----|
| 19J. | Administration, oversight and monitoring
of scheme | 11 |
| 19K. | Functions of Commissioner | 11 |

Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2020

Contents

19L.	Commissioner may exempt conduct	12
19M.	Commissioner may exempt entities	12
19N.	Commissioner may exempt investigations	13
Subdivision 3 — Systems to deal with reportable conduct		
19O.	Head of relevant entity must ensure systems in place	13
19P.	Commissioner must monitor relevant entity	14
Subdivision 4 — Notice, investigation and reporting		
19Q.	Report of reportable allegation or reportable conviction	14
19R.	Head of relevant entity must notify Commissioner	15
19S.	Information may be disclosed to Commissioner or head of entity	16
19T.	Head of relevant entity must respond to reportable allegation or reportable conviction	17
19U.	Commissioner must be notified of matters affecting investigation	18
19V.	Head of relevant entity must report outcome of investigation	19
19W.	Commissioner may conduct own investigation	20
19X.	Notice to head of relevant entity of Commissioner's investigation	21
19Y.	Provisions relating to investigation under section 19W(3)(a)	22
19Z.	Application to State Administrative Tribunal for review	23
19ZA.	Relevant entities that are agents of Crown	23
19ZB.	Concurrent investigations or proceedings	23
Subdivision 5 — Disclosure of information		
19ZC.	Investigation information may be disclosed to child or parent	25
19ZD.	Commissioner may request information about reportable convictions	25
Subdivision 6 — Review of amendments made by Parliamentary Commissioner Amendment (Reportable Conduct) Act 2020		
19ZE.	Review of amendments made by Parliamentary Commissioner Amendment (Reportable Conduct) Act 2020	26
8.	Section 19 amended	27
9.	Section 20 amended	27
10.	Section 21 amended	28
11.	Section 22A amended	28
12.	Section 22AA inserted	29
	22AA. Consultation in relation to reportable conduct scheme	29
13.	Section 22B amended	30
14.	Section 22C inserted	30
	22C. Disclosure of certain information relating to reportable conduct scheme	30
15.	Section 23 amended	32

16.	Section 23A amended	33
17.	Section 25 amended	33
18.	Section 28 inserted	34
	28. Annual report to include report on reportable conduct scheme	34
19.	Section 29 amended	35
20.	Section 29A inserted	35
	29A. Delegation by Commissioner of Police	35
21.	Section 30AA inserted	36
	30AA. Protection from liability for giving information: reportable conduct scheme	36
22.	Section 30B amended	37
23.	Section 33 replaced	37
	33. Regulations	37
24.	Schedule 1 amended	37
25.	Schedule 2 inserted	37
	Schedule 2 — Relevant entities to which this Act applies	
	Division 3 — Additional amendments	
26.	Section 19F amended	39
27.	Schedule 2 amended	39
	Part 3 — Working with Children (Criminal Record Checking) Act 2004 amended	
28.	Act amended	41
29.	Section 4 amended	41
30.	Section 12 amended	41
31.	Section 13 amended	42
32.	Part 2 Division 3A inserted	42
	Division 3A — Findings of relevant reportable conduct	
	18A. Findings of relevant reportable conduct	42
33.	Part 3A inserted	44
	Part 3A — Information gathering and sharing	
	34A. Exchange of information with Parliamentary Commissioner or head of relevant entity	44

Western Australia

LEGISLATIVE ASSEMBLY

**Parliamentary Commissioner Amendment
(Reportable Conduct) Bill 2020**

A Bill for

***An Act to amend the *Parliamentary Commissioner Act 1971* and the
Working with Children (Criminal Record Checking) Act 2004.***

The Parliament of Western Australia enacts as follows:

s. 1

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Parliamentary Commissioner Amendment*
4 *(Reportable Conduct) Act 2020*.

5

2. Commencement

6

This Act comes into operation as follows —

7

(a) Part 1 — on the day on which this Act receives the
8 Royal Assent;

9

10

11

(b) Part 2 Division 3 — on the day after the period of
12 months beginning on the day on which section 7
comes into operation;

12

(c) the rest of the Act — on a day fixed by proclamation.

Part 2 — *Parliamentary Commissioner Act 1971*
amended

Division 1 — Preliminary

3. Act amended

This Part amends the *Parliamentary Commissioner Act 1971*.

Division 2 — General amendments

4. Long title amended

In the long title delete “**authorities and to the deaths of certain children**” and insert:

authorities, to the deaths of certain children and to the reportable conduct scheme

5. Section 4 amended

In section 4 insert in alphabetical order:

CCS Act means the *Children and Community Services Act 2004*;

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

head, of a relevant entity, means —

(a) in relation to a department or an organisation as those terms are defined in the *Public Sector Management Act 1994* section 3(1) —

(i) the chief executive officer or chief employee of the department or organisation; or

(ii) the delegate of the chief executive officer or the chief employee of the department or organisation;

or

(b) in relation to any other authority —

(i) the chief executive officer of the authority; or

- 1 (ii) if there is no chief executive officer —
2 the president, chairman or other
3 principal or presiding member of the
4 authority, or if the authority is
5 constituted by a single person, that
6 person; or
7 (iii) the delegate of a person referred to in
8 subparagraph (i) or (ii);
9 or
10 (c) a person prescribed, or a person of a class
11 prescribed, by the regulations to be the head of
12 an entity or a delegate of that person; or
13 (d) in any other case —
14 (i) the chief executive officer of the entity
15 (however described); or
16 (ii) if there is no chief executive officer —
17 the principal officer of the entity
18 (however described); or
19 (iii) if there is no chief executive officer or
20 principal officer — a person, or the
21 holder of a position, in the entity
22 nominated by the entity and approved
23 by the Commissioner; or
24 (iv) the delegate of a person referred to in
25 subparagraph (i), (ii) or (iii);

26 **relevant entity** means an entity to which the reportable
27 conduct scheme applies under section 19H;

28 **religious body** means a body established or operated
29 for a religious purpose that operates under the auspices
30 of 1 or more religious denominations or faiths;

31 **reportable allegation** has the meaning given in
32 section 19E;

33 **reportable conduct** has the meaning given in
34 section 19F;

35 **reportable conduct scheme** means the scheme
36 established under Part III Division 3B;

37 **reportable conviction** has the meaning given in
38 section 19G;

39

6. Section 19A amended

In section 19A(1) delete the definition of *CCS Act*.

7. Part III Division 3B inserted

After Part III Division 3A insert:

Division 3B — Reportable conduct scheme

Subdivision 1 — Preliminary

19C. Terms used

In this Division —

assault means —

- (a) the intentional or reckless application of physical force without lawful justification or excuse; or
- (b) any act that intentionally or recklessly causes another person to apprehend immediate and unlawful violence;

child means a person who is under 18 years of age;

conduct means an act or an omission to do an act;

contractor includes —

- (a) an officer of, or a person employed or engaged to work for, a contractor; and
- (b) a subcontractor of a contractor; and
- (c) an officer of, or a person employed or engaged to work for, a subcontractor; and
- (d) a volunteer working for a contractor or a subcontractor;

employee, of a relevant entity —

- (a) means an individual who has reached 18 years of age and is —
 - (i) an officer or employee of the relevant entity, whether or not the individual's work is in connection with any work or activities of the entity that relate to children; or

- 1 (ii) engaged by the entity to provide
2 services to children, including as a
3 volunteer or contractor; or
- 4 (iii) a carer as defined in the CCS Act
5 section 3;
- 6 and
- 7 (b) if the relevant entity is a religious body —
- 8 (i) includes a minister of religion and a
9 religious leader of the religious body;
10 but
- 11 (ii) does not include a person only because
12 the person participates in worship;
- 13 and
- 14 (c) if the relevant entity is the Police Force of
15 Western Australia, includes a person appointed
16 under the *Police Act 1892* Part I as an officer or
17 constable of the Police Force;
- 18 **investigation**, of a matter, includes any preliminary or
19 other inquiry into, or examination of, the matter;
- 20 **investigation information** means information —
- 21 (a) relating to a reportable allegation or a
22 reportable conviction; or
- 23 (b) obtained as a result of an investigation into a
24 reportable allegation or reportable conviction
25 conducted by the Commissioner or a relevant
26 entity; or
- 27 (c) relating to any of the following —
- 28 (i) the progress, conduct or findings of an
29 investigation referred to in
30 paragraph (b);
- 31 (ii) any action taken or not taken as a result
32 of the findings of an investigation
33 referred to in paragraph (b);
- 34 **investigator** means a person conducting an
35 investigation under this Act on behalf of the head of a
36 relevant entity for the purposes of the reportable
37 conduct scheme;
- 38 **relevant commencement day** means the day on which
39 the *Parliamentary Commissioner Amendment*
40 *(Reportable Conduct) Act 2020* section 7 comes into
41 operation;

sexual misconduct —

- (a) includes misconduct against, with or in the presence of, a child that is sexual in nature; but
- (b) does not include a sexual offence;

sexual offence —

- (a) means an offence of a sexual nature under a law of this State, another State, a Territory or the Commonwealth, committed against, with or in the presence of, a child; and
- (b) includes, without limitation —
 - (i) an offence under *The Criminal Code* Chapter XXXI committed against, with or in the presence of, a child; and
 - (ii) an offence of a sexual nature under *The Criminal Code* Chapter XXV; and
 - (iii) an offence of a sexual nature under any other provision of *The Criminal Code* committed against, with or in the presence of, a child; and
 - (iv) an offence under a law of another State, a Territory or the Commonwealth the elements of which, if they had occurred in this State, would have constituted an offence of a kind referred to in subparagraph (i), (ii) or (iii); and
 - (v) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind referred to in subparagraphs (i) to (iv) or paragraph (a); and
 - (vi) an offence that, at the time it was committed —
 - (I) was an offence of a kind referred to in subparagraphs (i) to (v) or paragraph (a); or
 - (II) in the case of an offence committed before the relevant commencement day — was an offence of a kind referred to in subparagraphs (i) to (v) or paragraph (a).

19D. Conviction

- (1) For the purposes of this Division, a reference to a **conviction** in relation to an offence committed by a person is a reference to any of the following —
- (a) a court making a formal finding of guilt in relation to the offence;
 - (b) if there has been no formal finding of guilt before conviction — a court convicting the person of the offence;
 - (c) a court accepting a plea of guilty from the person in relation to the offence;
 - (d) a court acquitting the person following a finding under *The Criminal Code* section 27 that the person is not guilty of the offence on account of unsoundness of mind or an acquittal following an equivalent finding under a law of another State, a Territory or the Commonwealth.
- (2) For the purposes of this Division, a reference to a **conviction** includes a reference to a conviction that is a spent conviction.
- (3) For the purposes of subsection (2), an offence becomes spent if, under a law of this State, another State, a Territory or the Commonwealth, the person concerned is permitted not to disclose the fact that the person was convicted or found guilty of the offence.
- (4) For the purposes of this Division, a reference to a **conviction** does not include a reference to a conviction that is subsequently quashed or set aside by a court.

19E. Reportable allegation

In this Act —

reportable allegation —

- (a) means any information that leads a person to form a suspicion on reasonable grounds that an employee has committed reportable conduct or conduct that may involve reportable conduct, whether or not the conduct is alleged to have occurred within the course of the employee's employment; but

- 1 (b) does not include information relating to a
2 reportable conviction.

3 **19F. Reportable conduct**

4 In this Act —

5 ***reportable conduct*** means —

- 6 (a) the following conduct, whether or not a
7 criminal proceeding in relation to the conduct
8 has been commenced or concluded and whether
9 the conduct occurred before, on or after the
10 relevant commencement day —

- 11 (i) a sexual offence;
12 (ii) sexual misconduct;
13 (iii) an assault committed against, with or in
14 the presence of, a child;
15 (iv) an offence prescribed by the regulations
16 for the purposes of this definition;

17 but

- 18 (b) does not include conduct that is —

- 19 (i) reasonable for the discipline,
20 management or care of a child or of
21 another person in the presence of a
22 child, having regard to —
23 (I) the characteristics of the child,
24 including the age, health and
25 developmental stage of the
26 child; and
27 (II) any relevant code of conduct or
28 professional standard that at the
29 time applied to the discipline,
30 management or care of the child
31 or the other person;

32 or

- 33 (ii) trivial or negligible and that has been or
34 will be investigated and recorded as part
35 of another workplace procedure; or
36 (iii) of a class or kind exempt from being
37 reportable conduct under
38 section 19L(1).

1 **19G. Reportable conviction**

2 In this Act —

3 *reportable conviction* —

- 4 (a) means a conviction for an offence under a law
5 of the State, another State, a Territory or the
6 Commonwealth that is an offence referred to in
7 paragraph (a)(i) or (iv) of the definition of
8 *reportable conduct* in section 19F; and
9 (b) in relation to a person, includes a conviction
10 entered for the person before, on or after the
11 relevant commencement day.

12 **19H. Entities to which reportable conduct scheme applies**

13 The reportable conduct scheme applies to an entity set
14 out in Column 2 of Schedule 2 that —

- 15 (a) exercises care, supervision or authority over
16 children as part of its primary functions or
17 otherwise; and
18 (b) is not exempt under section 19M(1).

19 **19I. Object and principles**

- 20 (1) The object of this Division is to protect children from
21 harm by establishing and implementing a scheme
22 for —

- 23 (a) reporting and investigating reportable
24 allegations and reportable convictions; and
25 (b) taking appropriate action in response to
26 findings of reportable conduct.

- 27 (2) The reportable conduct scheme is based on the
28 principles that —

- 29 (a) the protection and best interests of children are
30 paramount considerations; and
31 (b) if a child is able to form views on a matter
32 concerning a reportable allegation or reportable
33 conviction and it is appropriate in the
34 circumstances to consult the child —
35 (i) the child must be given the opportunity
36 to express the views freely; and
37 (ii) the views are to be given due weight in
38 the investigation in accordance with the

- 1 developmental capacity of the child and
2 the circumstances;
3 and
4 (c) criminal conduct or suspected criminal conduct
5 should be reported to the police; and
6 (d) the Commissioner and others involved in the
7 reportable conduct scheme should work in
8 collaboration to ensure a fair process is used in
9 the investigation of reportable allegations and
10 reportable convictions; and
11 (e) employees who are the subject of reportable
12 allegations are entitled to be afforded natural
13 justice in investigations into their conduct.

14 **Subdivision 2 — Role of Commissioner**

15 **19J. Administration, oversight and monitoring of**
16 **scheme**

17 The Commissioner is responsible for administering,
18 overseeing and monitoring the reportable conduct
19 scheme.

20 **19K. Functions of Commissioner**

- 21 (1) The Commissioner has the following functions in
22 relation to the reportable conduct scheme —
23 (a) to educate and provide advice to relevant
24 entities in order to assist them to identify
25 reportable conduct and to notify and investigate
26 reportable allegations and reportable
27 convictions;
28 (b) to oversee the investigation of reportable
29 allegations and reportable convictions by
30 relevant entities;
31 (c) if the Commissioner considers it to be in the
32 public interest to do so — to investigate
33 reportable allegations and reportable
34 convictions;
35 (d) if the Commissioner considers it in the public
36 interest to do so — to investigate whether
37 reportable allegations or reportable convictions
38 have been appropriately handled or investigated
39 or responded to by the head of a relevant entity;

- 1 (e) to make recommendations to relevant entities in
2 relation to the findings of the investigations
3 referred to in paragraph (c) or (d);
- 4 (f) to monitor the compliance of relevant entities
5 with the reportable conduct scheme and
6 whether appropriate action is taken by a
7 relevant entity;
- 8 (g) to monitor a relevant entity's systems for
9 preventing, notifying and dealing with
10 reportable conduct;
- 11 (h) to report to Parliament on the reportable
12 conduct scheme;
- 13 (i) to perform any other function conferred on the
14 Commissioner under this Division.
- 15 (2) Without limiting the Commissioner's investigation
16 powers under this Act, the Commissioner may exercise
17 any power and perform any function the Commissioner
18 has under Divisions 3 and 4 for the purpose of
19 performing the Commissioner's functions under this
20 Division.

21 **19L. Commissioner may exempt conduct**

- 22 (1) The Commissioner may exempt a class or kind of
23 conduct of employees of a relevant entity from being
24 reportable conduct.
- 25 (2) The Commissioner must publish the details of an
26 exempt class or kind of conduct on the Commissioner's
27 website.

28 **19M. Commissioner may exempt entities**

- 29 (1) The Commissioner may exempt an entity from the
30 reportable conduct scheme.
- 31 (2) The Commissioner must give written notice to an
32 entity of an exemption under subsection (1) that relates
33 to the entity.
- 34 (3) An exemption under subsection (1) continues until the
35 Commissioner gives the entity written notice that the
36 exemption is revoked.

19N. Commissioner may exempt investigations

- (1) The Commissioner may exempt the head of a relevant entity from commencing or continuing an investigation.
- (2) An exemption under subsection (1) may be for a specified period.
- (3) Without limiting subsection (1), the Commissioner may exempt the head of the relevant entity if —
 - (a) the matter is already being dealt with or investigated by another appropriate person or body; or
 - (b) the head of the relevant entity has made a request for the exemption in a notice under section 19U.
- (4) The Commissioner must give written notice to the head of the relevant entity of an exemption under subsection (1) that relates to the entity.
- (5) An exemption under subsection (1) continues until —
 - (a) the Commissioner gives the head of the relevant entity written notice that the exemption is revoked; or
 - (b) if the exemption is for a specified period — the end of the specified period.
- (6) The head of the relevant entity is not required to provide a report of an investigation under section 19V(1) if the investigation is exempt under this section.

Subdivision 3 — Systems to deal with reportable conduct

19O. Head of relevant entity must ensure systems in place

The head of a relevant entity must ensure that the relevant entity has in place —

- (a) a system for preventing reportable conduct by an employee of the relevant entity in the course of the person's employment; and
- (b) a system for enabling any person, including an employee of the relevant entity, to notify the head of the relevant entity of a reportable

- 1 allegation or reportable conviction involving an
2 employee of the relevant entity of which the
3 person becomes aware; and
- 4 (c) a system for enabling any person, including an
5 employee of the relevant entity, to notify the
6 Commissioner of a reportable allegation or
7 reportable conviction involving the head of the
8 relevant entity of which the person becomes
9 aware; and
- 10 (d) a system for investigating a reportable
11 allegation or reportable conviction relating to
12 an employee of the relevant entity and taking
13 appropriate action in response to a finding of
14 reportable conduct; and
- 15 (e) a system for the receipt, handling and
16 disclosure of information relating to
17 investigation information, reportable
18 allegations and reportable convictions.

19 **19P. Commissioner must monitor relevant entity**

- 20 (1) The Commissioner must monitor the compliance by a
21 relevant entity with the requirements of section 19O.
- 22 (2) If requested by the Commissioner, the head of a
23 relevant entity must provide to the Commissioner any
24 information about a system referred to in section 19O.
- 25 (3) The Commissioner may make recommendations for
26 action to be taken by the head of a relevant entity and
27 may provide the head of the relevant entity with any
28 necessary information relating to the recommendations
29 if a reasonable concern with a system referred to in
30 section 19O is identified.

31 **Subdivision 4 — Notice, investigation and reporting**

32 **19Q. Report of reportable allegation or reportable**
33 **conviction**

- 34 (1) This section applies if a person becomes aware of a
35 reportable allegation or reportable conviction involving
36 an employee of a relevant entity.
- 37 (2) If the person is an employee of the relevant entity, the
38 employee must as soon as practicable after becoming

- 1 aware of the reportable allegation or reportable
2 conviction —
- 3 (a) report the matter to the head of the relevant
4 entity; or
- 5 (b) if the matter relates to the head of the relevant
6 entity — report the matter to the
7 Commissioner.
- 8 (3) If the person is not an employee of the relevant entity,
9 the person may —
- 10 (a) report the matter to the head of the relevant
11 entity; or
- 12 (b) if the matter relates to the head of the relevant
13 entity — report the matter to the
14 Commissioner.
- 15 (4) A person who has made a report to the head of the
16 relevant entity under this section may report the matter
17 to the Commissioner if the person is not satisfied with
18 the response of the head of the relevant entity to the
19 report.
- 20 **19R. Head of relevant entity must notify Commissioner**
- 21 (1) This section applies if the head of a relevant entity
22 becomes aware of a reportable allegation or a
23 reportable conviction involving a person who is an
24 employee of the relevant entity.
- 25 (2) The head of the relevant entity must give written notice
26 to the Commissioner of the following information
27 within 7 working days after becoming aware of the
28 reportable allegation or reportable conviction —
- 29 (a) details of the reportable allegation or reportable
30 conviction;
- 31 (b) the name (including any former name and alias)
32 and date of birth of the employee;
- 33 (c) whether the police have been contacted about
34 the reportable allegation or reportable
35 conviction;
- 36 (d) the risk assessment made and the risk
37 management action taken or proposed to be
38 taken by the relevant entity;

- 1 (e) the name, address and telephone number of the
2 relevant entity;
- 3 (f) the name of the head of the relevant entity;
- 4 (g) how the head of the relevant entity intends to
5 proceed with the matter;
- 6 (h) any information prescribed by the regulations.
- 7 (3) The head of the relevant entity is only required to
8 provide information under subsection (2)(a), (b), (c)
9 and (h) of which the head of the relevant entity is
10 aware.
- 11 (4) The Commissioner, at the request of the head of the
12 relevant entity may, in writing, extend the time for
13 giving a notice under this section.
- 14 (5) This section does not apply in relation to conduct of
15 employees of a relevant entity that is of a class or kind
16 of conduct that is exempt under section 19L(1).
- 17 (6) It is an offence for the head of a relevant entity to fail,
18 without reasonable excuse, to comply with
19 subsection (2).
20 Penalty for this subsection: a fine of \$5 000.
- 21 (7) It is a defence to a charge for an offence against
22 subsection (6) for the person charged to prove that the
23 person honestly and reasonably believed that another
24 person had notified the Commissioner of the reportable
25 allegation or reportable conviction in accordance with
26 subsection (2).
- 27 **19S. Information may be disclosed to Commissioner or**
28 **head of entity**
- 29 (1) The head of a relevant entity may disclose any
30 information to the Commissioner that the head of the
31 relevant entity believes on reasonable grounds reveals
32 reportable conduct involving an employee of the
33 relevant entity.
- 34 (2) An employee of a relevant entity may disclose any
35 information to the Commissioner that the employee
36 believes on reasonable grounds reveals reportable
37 conduct involving the head of the relevant entity.
- 38 (3) A person who makes a report to the head of a relevant
39 entity under section 19Q may disclose any information

1 to the head of the relevant entity that the person
2 believes on reasonable grounds reveals reportable
3 conduct involving an employee of the relevant entity.

- 4 (4) A person who has made a report to the head of the
5 relevant entity under section 19Q and is not satisfied
6 with the response of the head of the relevant entity to
7 the report may disclose any information to the
8 Commissioner that the person believes on reasonable
9 grounds reveals reportable conduct involving an
10 employee of the relevant entity.

11 **19T. Head of relevant entity must respond to reportable**
12 **allegation or reportable conviction**

- 13 (1) As soon as practicable after the head of a relevant
14 entity becomes aware of a reportable allegation or
15 reportable conviction involving an employee of the
16 relevant entity, the head of the relevant entity —
17 (a) must —
18 (i) investigate the reportable allegation or
19 reportable conviction; or
20 (ii) arrange for an employee of the relevant
21 entity to investigate the reportable
22 allegation or reportable conviction on
23 behalf of the head of the relevant entity;
24 or
25 (iii) engage a person as an independent
26 investigator to investigate the reportable
27 allegation or reportable conviction on
28 behalf of the head of the relevant entity;
29 and
30 (b) must inform the Commissioner of the identity
31 of the person who will conduct the
32 investigation.
- 33 (2) The head of a relevant entity must give an employee
34 who is the subject of an investigation under this section
35 an opportunity to make submissions to the head of the
36 relevant entity setting out the employee's responses in
37 relation to —
38 (a) the reportable allegation or reportable
39 conviction; and

- 1 (b) any proposed adverse findings of the
2 investigation; and
- 3 (c) any actions affecting the employee that are
4 proposed to be taken as a result of the findings
5 of the investigation.
- 6 (3) The head of a relevant entity must take all reasonable
7 steps to ensure that an investigation under this section
8 is carried out in a timely way.
- 9 (4) The Commissioner may, in writing, request the head of
10 a relevant entity to provide investigation information to
11 the Commissioner.
- 12 (5) The head of a relevant entity must comply with a
13 request under subsection (4).
- 14 (6) It is an offence for the head of a relevant entity to fail,
15 without reasonable excuse, to comply with
16 subsection (1) or (5).
17 Penalty for this subsection: a fine of \$5 000.

18 **19U. Commissioner must be notified of matters affecting**
19 **investigation**

- 20 (1) The head of a relevant entity must give the
21 Commissioner written notice, as soon as practicable, if,
22 in relation to a matter being investigated under
23 section 19T(1), the head of the relevant entity —
- 24 (a) forms the view that the matter does not
25 constitute reportable conduct; or
- 26 (b) becomes aware that another appropriate person
27 or body is dealing with or investigating the
28 matter; or
- 29 (c) is required by law to comply with the directions
30 of another person or body in relation to the
31 investigation of the matter; or
- 32 (d) is requested by another appropriate person or
33 body to cease, or discontinue for a period, the
34 investigation of the matter.
- 35 (2) The notice must be in a form and contain the
36 information required by the Commissioner.

- 1 (3) The head of the relevant entity may, in the notice,
2 request the Commissioner to exempt the head of the
3 relevant entity under section 19N(1) from the
4 requirement to continue the investigation.

5 **19V. Head of relevant entity must report outcome of**
6 **investigation**

- 7 (1) The head of a relevant entity must, as soon as
8 practicable after the end of an investigation under
9 section 19T(1) of a reportable allegation or reportable
10 conviction, give the Commissioner —
11 (a) a written report setting out —
12 (i) the findings of the investigation and the
13 reasons for those findings; and
14 (ii) any disciplinary or other action taken, or
15 proposed to be taken, in relation to the
16 reportable conduct; and
17 (iii) any submissions made by the employee
18 under section 19T(2); and
19 (iv) if the entity does not propose to take any
20 disciplinary or other action in relation to
21 the employee — the reasons why no
22 action is to be taken;
23 and
24 (b) any other information that the head of the
25 relevant entity considers relevant to the report.
26 (2) After receiving the report and other information, the
27 Commissioner may, by written notice given to the head
28 of the relevant entity, request any additional
29 information specified in the notice that the
30 Commissioner considers relevant to determine
31 whether —
32 (a) the reportable allegation or reportable
33 conviction was properly investigated; and
34 (b) appropriate action was taken as a result of the
35 investigation.
36 (3) The head of a relevant entity must comply with a
37 request of the Commissioner under subsection (2).

- 1 (4) It is an offence for the head of a relevant entity to fail,
2 without reasonable excuse, to comply with
3 subsection (1) or (3).
4 Penalty for this subsection: a fine of \$5 000.
- 5 **19W. Commissioner may conduct own investigation**
- 6 (1) The Commissioner may conduct an investigation under
7 this section if the Commissioner considers it is in the
8 public interest to do so.
- 9 (2) The Commissioner may make a decision to conduct an
10 investigation under this section —
- 11 (a) on the Commissioner's own initiative; or
12 (b) in response to a report or disclosure under this
13 Division; or
14 (c) in response to a complaint made to the
15 Commissioner in relation to —
- 16 (i) the handling or investigation by the
17 head of a relevant entity under this
18 Division of a reportable allegation or
19 reportable conviction involving an
20 employee of the relevant entity; or
21 (ii) a finding of, or action taken or not taken
22 by, the head of a relevant entity under
23 this Division in relation to a reportable
24 allegation or reportable conviction
25 involving an employee of the relevant
26 entity.
- 27 (3) An investigation may be conducted into any of the
28 following —
- 29 (a) any reportable allegation or reportable
30 conviction involving an employee of a relevant
31 entity;
32 (b) any handling or investigation by the head of a
33 relevant entity of a reportable allegation or
34 reportable conviction involving an employee of
35 the relevant entity;
36 (c) any action taken or not taken by the head of a
37 relevant entity in response to a finding of
38 reportable conduct by an employee of the
39 relevant entity.

- 1 (4) The Commissioner may make the following findings
2 following an investigation under subsection (3)(a) —
3 (a) that there are reasonable grounds to suspect that
4 the employee has engaged in reportable
5 conduct;
6 (b) that the employee has a reportable conviction;
7 (c) that there are no, or no reasonable, grounds to
8 suspect that the employee has engaged in
9 reportable conduct;
10 (d) that the employee does not have a reportable
11 conviction.

12 **19X. Notice to head of relevant entity of Commissioner's**
13 **investigation**

- 14 (1) If the Commissioner decides to conduct an
15 investigation under section 19W, the Commissioner
16 must give the head of the relevant entity written notice
17 stating —
18 (a) that the Commissioner intends to carry out an
19 investigation under section 19W; and
20 (b) particulars of the investigation; and
21 (c) whether the Commissioner requires the head of
22 the relevant entity not to commence, or to
23 suspend, an investigation by the head of the
24 relevant entity into a matter the Commissioner
25 has decided to investigate.
- 26 (2) The Commissioner, on completing an investigation
27 under section 19W, may require the head of the
28 relevant entity to continue an investigation that is
29 suspended under subsection (1)(c).
- 30 (3) The head of a relevant entity must, as far as
31 practicable, comply with a requirement of the
32 Commissioner under subsection (1)(c) or (2).
- 33 (4) It is an offence for the head of a relevant entity to fail,
34 without reasonable excuse, to comply with
35 subsection (3).
36 Penalty for this subsection: a fine of \$5 000.

19Y. Provisions relating to investigation under section 19W(3)(a)

- (1) This section applies if the Commissioner decides to conduct an investigation referred to in section 19W(3)(a).
- (2) The Commissioner must give the employee who is the subject of the investigation written notice stating —
 - (a) that the Commissioner intends to carry out an investigation under this section; and
 - (b) particulars of the investigation.
- (3) As soon as practicable after the investigation ends, the Commissioner —
 - (a) must give the head of the relevant entity written notice stating that the investigation has ended; and
 - (b) must report to the head of the relevant entity —
 - (i) the findings of the investigation; and
 - (ii) the reasons for the findings;and
 - (c) may make any recommendations that the Commissioner thinks fit.
- (4) The head of a relevant entity must not take any action to implement a recommendation of the Commissioner under subsection (3)(c) involving an employee of the relevant entity until the later of the following —
 - (a) the end of the period under section 19Z(2) for the employee to apply for a review of the finding;
 - (b) if the employee makes an application under section 19Z(1) for a review of the finding — the final determination of the review.
- (5) As soon as practicable after the investigation ends, the Commissioner must —
 - (a) give the employee who is the subject of the investigation written notice stating that the investigation has ended; and

- (b) report to the employee —
- (i) the findings of the investigation; and
- (ii) the reasons for the findings.

19Z. Application to State Administrative Tribunal for review

- (1) A person aggrieved by a finding of the Commissioner on an investigation conducted under section 19W(3)(a) may apply to the State Administrative Tribunal for a review of the finding.
- (2) An application under subsection (1) must be made within 28 days after the person is notified of the finding for which the review is sought.
- (3) For a review under this section, the State Administrative Tribunal is to be constituted by a judicial member as defined in the *State Administrative Tribunal Act 2004* section 3(1).
- (4) A finding of the Commissioner on an investigation conducted under section 19W(3)(a) is taken to be a decision for the purposes of the *State Administrative Tribunal Act 2004* Part 3 Division 3.

19ZA. Relevant entities that are agents of Crown

Sections 19R(6), 19T(6), 19V(4) and 19X(4) do not apply to a relevant entity that is an agent of the Crown.

19ZB. Concurrent investigations or proceedings

- (1) This section applies if —
- (a) the Commissioner of Police advises the Commissioner or the head of a relevant entity that an investigation or finding under this Division is likely to compromise a police investigation; or
- (b) another person or body with authority to investigate the conduct of an employee of a relevant entity advises the Commissioner or the head of the relevant entity that an investigation or finding under this Division is likely to compromise an investigation by that person or body (a *relevant investigation*).

- 1 (2) The Commissioner or the head of the relevant entity
2 may —
- 3 (a) suspend the investigation or finding until
4 otherwise advised; and
- 5 (b) take steps to manage any risks while the
6 investigation or finding is suspended; and
- 7 (c) if the investigation or finding was being
8 conducted by the head of the relevant entity —
- 9 (i) advise the Commissioner about the
10 suspension under this section; and
- 11 (ii) advise the Commissioner of the steps
12 being taken to manage the risks.
- 13 (3) Before making a decision about whether to suspend or
14 continue an investigation, the Commissioner or the
15 head of the relevant entity must consult with the
16 Commissioner of Police or the person conducting the
17 relevant investigation.
- 18 (4) Before making a decision under subsection (2)(b) about
19 the steps to be taken to manage risks the Commissioner
20 or the head of the relevant entity must consult with, as
21 the case requires —
- 22 (a) the Commissioner of Police or the officer in
23 charge of the police investigation; or
- 24 (b) the person or body conducting the relevant
25 investigation.
- 26 (5) If the Commissioner or the head of the relevant entity
27 decides not to suspend the investigation, the
28 Commissioner or the head of the relevant entity must
29 ensure the investigation is conducted in a way that does
30 not compromise the police investigation or the relevant
31 investigation, as the case requires.
- 32 (6) This section does not affect the operation of any other
33 Act.
- 34 (7) In this section, a police investigation or relevant
35 investigation includes any court proceeding (including
36 an appeal) arising out of the investigation.

Subdivision 5 — Disclosure of information

19ZC. Investigation information may be disclosed to child or parent

- (1) The Commissioner or the head of a relevant entity may disclose investigation information to any of the following —
- (a) a child who is the subject of conduct that forms the basis of a reportable allegation or a reportable conviction that has been investigated by the Commissioner or the head of the relevant entity;
 - (b) a parent or guardian of a child referred to in paragraph (a), or a person who has parental responsibility for the child.
- (2) The Commissioner or the head of a relevant entity must not disclose information under subsection (1) —
- (a) if the disclosure would —
 - (i) put the wellbeing of the child at risk; or
 - (ii) contravene the CCS Act section 124F or 240; or
 - (iii) compromise an investigation under this Act, a police investigation, a relevant investigation referred to in section 19ZB or an investigation under another Act;
 - or
 - (b) in any circumstances prescribed by the regulations.

19ZD. Commissioner may request information about reportable convictions

- (1) In this section —
- court*** means the Supreme Court, the District Court, the Magistrates Court or the Children’s Court;
- Registrar*** in relation to —
- (a) the Supreme Court, means the Principal Registrar of the Supreme Court; or
 - (b) the District Court, means the Principal Registrar of the District Court; or

- 1 (c) the Magistrates Court, means the Principal
2 Registrar of the Magistrates Court; or
- 3 (d) the Children's Court, means a registrar of the
4 Children's Court.
- 5 (2) The Commissioner may make a request to the Registrar
6 of a court to provide information relating to a
7 reportable conviction entered against an employee of a
8 relevant entity that the Commissioner reasonably
9 requires for the purposes of an investigation under the
10 reportable conduct scheme.
- 11 (3) The Commissioner is authorised to disclose
12 information obtained under this Division or Division 3
13 or 4 for the purpose of that request.
- 14 (4) The Registrar of the court to whom a request may be
15 made under subsection (2) is authorised to disclose
16 information to the Commissioner for the purposes of an
17 investigation under the reportable conduct scheme.
- 18 (5) This section applies despite section 13(2).

19 **Subdivision 6 — Review of amendments made by**
20 ***Parliamentary Commissioner Amendment (Reportable***
21 ***Conduct) Act 2020***

22 **19ZE. Review of amendments made by *Parliamentary***
23 ***Commissioner Amendment (Reportable Conduct)***
24 ***Act 2020***

- 25 (1) The Minister must review the operation and
26 effectiveness of the amendments made to this Act by
27 the *Parliamentary Commissioner Amendment*
28 *(Reportable Conduct) Act 2020*, and prepare a report
29 based on the review, as soon as practicable after the 5th
30 anniversary of the day on which section 7 of that Act
31 comes into operation.
- 32 (2) The review must include consideration as to whether
33 the reportable conduct scheme should be expanded to
34 apply to any other entities.
- 35 (3) The Minister must cause the report to be laid before
36 each House of Parliament as soon as practicable after it
37 is prepared, but not later than 12 months after the
38 5th anniversary.

- 1 (4) If, in the Minister's opinion, a House of Parliament will
2 not sit during the period of 21 days after finalisation of
3 the report, the Minister must send the report to the
4 Clerk of the House.
- 5 (5) When the report is sent to the Clerk of a House it is
6 taken to have been laid before the House.
- 7 (6) The laying of the report that is taken to have occurred
8 under subsection (5) must be recorded in the Minutes,
9 or Votes and Proceedings, of the House on the first
10 sitting day of the House after the Clerk receives the
11 report.
12

13 **8. Section 19 amended**

14 After section 19(8) insert:
15

- 16 (9) This section applies to an investigation by the
17 Commissioner for the purposes of the reportable
18 conduct scheme as follows —
- 19 (a) subsections (1) and (1a) do not apply;
20 (b) a reference to a department or authority is taken
21 to be a reference to a relevant entity;
22 (c) a reference to the principal officer of a
23 department or authority is taken to be a
24 reference to the head of a relevant entity;
25 (d) subsection (7)(b) applies only if the
26 investigation relates to a relevant entity that is a
27 department or authority.
28

29 **9. Section 20 amended**

30 (1) After section 20(2A) insert:
31

- 32 (2AA) No obligation to maintain secrecy or other restriction
33 upon the disclosure of information obtained by or
34 furnished to the head of a relevant entity or an
35 investigator conducting an investigation under
36 Division 3B, whether imposed by any enactment or by
37 any rule of law, applies to the disclosure of information
38 for the purposes of that investigation.
39

1 (2) In section 20(2B) delete “Crown or any authority to which this
2 Act applies” and insert:

3

4 Crown, any authority to which this Act applies or a relevant
5 entity
6

7 (3) In section 20(3):

8 (a) delete “(2A)” and insert:

9

10 (2A), (2AA)
11

12 (b) delete “he” and insert:

13

14 the person
15

16 **10. Section 21 amended**

17 (1) In section 21 delete “For” and insert:

18

19 (1) For
20

21 (2) At the end of section 21 insert:

22

23 (2) For the purposes of conducting an investigation under
24 Division 3B, the Commissioner may, at any time, enter
25 any premises occupied or used by any relevant entity,
26 and inspect those premises or anything for the time
27 being in those premises.
28

29 **11. Section 22A amended**

30 In section 22A(1) delete “concerning any complaint under this
31 Act or any investigation under this Act.” and insert:

32

33 concerning —

34 (a) any complaint under this Act; or

35 (b) any investigation under this Act, other than an
36 investigation carried out for the purposes of the
37 reportable conduct scheme.

Note: The heading to amended section 22A is to read:

Consultation other than in relation to reportable conduct scheme

12. Section 22AA inserted

After section 22A insert:

22AA. Consultation in relation to reportable conduct scheme

- (1) The Commissioner may consult the Corruption and Crime Commission, the Public Sector Commissioner, the Inspector of Custodial Services or the Director of Public Prosecutions concerning —
- (a) a reportable allegation or reportable conviction; or
 - (b) any investigation under this Act carried out for the purposes of the reportable conduct scheme; or
 - (c) any other matter that is relevant to the functions of the Commissioner under the reportable conduct scheme.
- (2) The Commissioner or the head of a relevant entity may consult with a specified person concerning —
- (a) a reportable allegation or reportable conviction; or
 - (b) any investigation under this Act carried out for the purposes of the reportable conduct scheme; or
 - (c) any other matter that is relevant to the functions of the Commissioner or the head of the relevant entity under the reportable conduct scheme.
- (3) In subsection (2) —
- specified person*** means —
- (a) the Commissioner of Police; or
 - (b) the Commissioner for Children and Young People; or
 - (c) the CEO as defined in the CCS Act section 3; or

1 (d) the CEO as defined in the *Working with*
2 *Children (Criminal Record Checking) Act 2004*
3 section 4.

4 (4) Information obtained by the Commissioner, the Deputy
5 Commissioner or a member of the Commissioner's
6 staff under this Act for the purposes of the reportable
7 conduct scheme may be disclosed for the purposes of
8 any consultation by the Commissioner under
9 subsection (1) or (2).

10 (5) Information obtained by the head of a relevant entity or
11 an investigator conducting an investigation under this
12 Act for the purposes of the reportable conduct scheme
13 may be disclosed for the purposes of any consultation
14 by the head of the relevant entity under subsection (2).
15

16 **13. Section 22B amended**

17 In section 22B:

18 (a) after "this Act" insert:

19
20 (other than an investigation carried out for the purposes
21 of the reportable conduct scheme)
22

23 (b) in paragraph (e)(ii) delete "Commissioner," and insert:

24
25 Commissioner for Children and Young People,
26

27 **14. Section 22C inserted**

28 After section 22B insert:

29
30 **22C. Disclosure of certain information relating to**
31 **reportable conduct scheme**

32 (1) In this section —
33 ***reportable conduct information*** means information
34 obtained by the Commissioner, the Deputy
35 Commissioner or a member of the Commissioner's
36 staff for the purposes of the reportable conduct scheme.

- 1 (2) The Commissioner, the Deputy Commissioner or a
2 member of the Commissioner's staff authorised for the
3 purposes of this section by the Commissioner or the
4 Deputy Commissioner may disclose reportable conduct
5 information if —
- 6 (a) the information —
- 7 (i) is disclosed to a person referred to in
8 section 22B(aa), (b), (c), (d) or (ea); and
- 9 (ii) concerns a matter of a kind for which
10 information can be disclosed to that
11 person under section 22B;
- 12 or
- 13 (b) the information —
- 14 (i) is disclosed to the Commissioner of
15 Police; and
- 16 (ii) concerns a matter that is relevant to the
17 functions of the Commissioner of
18 Police;
- 19 or
- 20 (c) the information —
- 21 (i) is disclosed to the Commissioner for
22 Children and Young People or a
23 member of the staff of the
24 Commissioner for Children and Young
25 People authorised for the purposes of
26 this subparagraph by the Commissioner
27 for Children and Young People; and
- 28 (ii) concerns a matter that is relevant to the
29 functions of the Commissioner for
30 Children and Young People under the
31 *Commissioner for Children and Young*
32 *People Act 2006*;
- 33 or
- 34 (d) the information —
- 35 (i) is disclosed to the CEO as defined in the
36 CCS Act section 3 or a member of the
37 staff of the Department as defined in
38 that section; and

- 1 (ii) concerns a matter that is relevant to the
2 functions of the CEO under that Act;
- 3 or
- 4 (e) the information —
- 5 (i) is disclosed to the CEO as defined in the
6 *Working with Children (Criminal*
7 *Record Checking) Act 2004* section 4 or
8 a member of the staff of the Department
9 as defined in that section; and
- 10 (ii) concerns a matter that is relevant to the
11 functions of the CEO under that Act.
12
- 13 **15. Section 23 amended**
- 14 (1) In section 23(1):
- 15 (a) after “investigation” (first occurrence) insert:
16
17 by the Commissioner
18
- 19 (b) in paragraph (c) delete “section 22A or 22B.” and insert:
20
21 Division 3B or section 22A, 22AA, 22B or 22C(2).
22
- 23 (2) In section 23(1b):
- 24 (a) delete “his opinion,” and insert:
25
26 the Commissioner’s opinion,
27
- 28 (b) delete “person,” and insert:
29
30 person or of the proper operation of the reportable
31 conduct scheme,
32
- 33 (3) In section 23(1d)(a) after “authority” insert:
34
35 or relevant entity
36

1 (4) After section 23(1e)(a) insert:
2

3 (aa) if the opinions relate to a relevant entity, the
4 head of the relevant entity; or
5

6 **16. Section 23A amended**

7 (1) In section 23A delete “Any” and insert:
8

9 (1) Any
10

11 (2) At the end of section 23A insert:
12

13 (2) Subsection (1) does not apply to a document sent to the
14 Commissioner, the Deputy Commissioner or a member
15 of the Commissioner’s staff for the purposes of the
16 reportable conduct scheme.
17

18 **17. Section 25 amended**

19 After section 25(7) insert:
20

21 (8) This section applies in relation to an investigation by
22 the Commissioner for the purposes of the reportable
23 conduct scheme as follows —

24 (a) any reference to the appropriate authority is
25 taken to be a reference to the relevant entity;

26 (b) any reference to the principal officer of the
27 appropriate authority is taken to be a reference
28 to the head of the relevant entity;

29 (c) subsection (3) applies only if the investigation
30 relates to a relevant entity that is a department
31 or authority;

32 (d) for the purposes of an investigation referred to
33 in section 19W(3)(a) —

34 (i) subsections (1) and (2) do not apply;
35 and

- 1 (ii) a reference in subsections (3) to (5) to a
2 recommendation under subsection (2) is
3 taken to be a reference to a
4 recommendation under
5 section 19Y(3)(c).
6

7 **18. Section 28 inserted**

8 At the end of Part III Division 5 insert:
9

10 **28. Annual report to include report on reportable**
11 **conduct scheme**

- 12 (1) The annual report of the accountable authority of the
13 Parliamentary Commissioner for Administrative
14 Investigations under the *Financial Management*
15 *Act 2006* Part 5 must include a report about the
16 operation of the reportable conduct scheme in the
17 financial year to which the report relates, including the
18 following —
19 (a) a description of the activities of the
20 Commissioner in relation to the reportable
21 conduct scheme;
22 (b) an evaluation of the response of relevant
23 entities to the recommendations of the
24 Commissioner under the reportable conduct
25 scheme;
26 (c) a description of matters relating to the
27 reportable conduct scheme, including trends,
28 notifications and investigations.
29 (2) A report under subsection (1) must not include
30 information that could lead to the identification of a
31 child or a person investigated under the reportable
32 conduct scheme.
33 (3) This section does not limit the power of the
34 Commissioner under section 27(1) to also, at any time,
35 lay before each House of Parliament a report in relation
36 to the reportable conduct scheme.
37

1 **19. Section 29 amended**

2 After section 29(2) insert:

3

- 4 (3) References in this section, in relation to an
5 investigation for the purposes of the reportable conduct
6 scheme, to the party subject to the investigation include
7 references to the relevant entity or the head of the
8 relevant entity.

9

10 **20. Section 29A inserted**

11 After section 29 insert:

12

13 **29A. Delegation by Commissioner of Police**

- 14 (1) The Commissioner of Police may delegate any power
15 or duty of the Commissioner of Police under
16 section 19ZB, 22AA or 22C(2) to the following
17 persons —
18 (a) a specified police officer;
19 (b) police officers of a specified rank or class;
20 (c) another person appointed or employed under
21 the *Police Act 1892*.
22 (2) The delegation must be in writing signed by the
23 Commissioner of Police.
24 (3) A person to whom a power or duty is delegated under
25 this section cannot delegate that power or duty.
26 (4) A person exercising or performing a power or duty that
27 has been delegated to the person under this section is
28 taken to do so in accordance with the terms of the
29 delegation unless the contrary is shown.
30 (5) Nothing in this section limits the ability of the
31 Commissioner of Police to perform a function through
32 an officer or agent.

33

21. Section 30AA inserted

After section 30A insert:

**30AA. Protection from liability for giving information:
reportable conduct scheme**

- (1) This section applies if a person acting in good faith —
- (a) gives a report, notification or information to the Commissioner under Part III Division 3B or in the course of, or for the purposes of, an investigation into a reportable allegation or reportable conviction under this Act; or
 - (b) gives a report, notification or information to the head of a relevant entity under Part III Division 3B; or
 - (c) gives information to an investigator carrying out an investigation under Part III Division 3B.
- (2) The report, notification or information may be given despite any other enactment, law or agreement that prohibits or restricts its disclosure.
- (3) In giving the information or making the report or notification the person —
- (a) does not incur any civil or criminal liability or liability to be punished for a contempt of court; and
 - (b) is not to be taken to have breached any duty of confidentiality or secrecy imposed by law; and
 - (c) is not to be taken to have breached any professional ethics or standards or any principles of conduct applicable to the person's employment or to have engaged in unprofessional conduct.
- (4) Civil proceedings cannot be brought against a person in respect of an act referred to in subsection (1)(a), (b) or (c) without the leave of the Supreme Court, and the Supreme Court must not give leave unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith.

Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2020

Part 2 Parliamentary Commissioner Act 1971 amended

Division 2 General amendments

s. 25

Column 1	Column 2
Providers of education services	<p>A school as defined in the <i>School Education Act 1999</i> section 4.</p> <p>A college or other vocational education and training institution as those terms are defined in the <i>Vocational Education and Training Act 1996</i> section 5(1).</p> <p>A registered training provider as defined in the <i>Vocational Education and Training Act 1996</i> section 5(1).</p> <p>A university established under a written law.</p> <p>An Australian university college, an authorised non-university institution or a recognised overseas university as those terms are defined in the <i>Higher Education Act 2004</i> section 3.</p>
Providers of health services	<p>A health service provider as defined in the <i>Health Services Act 2016</i> section 6.</p> <p>A private hospital service provider as defined in the <i>Private Hospitals and Health Services Act 1927</i> section 2(1).</p> <p>A provider of a mental health service as defined in the <i>Mental Health Act 2014</i> section 4 that has inpatient beds for children and young people.</p> <p>A provider of a drug and alcohol treatment service that has inpatient beds for children and young people.</p> <p>An ambulance service.</p>
Providers of out-of-home care services	<p>A person who has entered into an agreement under the CCS Act section 15(1) for the provision of placement services.</p>
Providers of child care services	<p>An education and care service as defined in the <i>Education and Care Services National Law (Western Australia)</i> section 5(1).</p> <p>A child care service as defined in the <i>Child Care Services Act 2007</i> section 4.</p>

Column 1

Column 2

Providers of youth
justice services

A provider of a detention centre as defined in the
Young Offenders Act 1994 section 3.

A provider of community justice services funded by
the department principally assisting in the
administration of the *Young Offenders Act 1994*.

1

2

Division 3 — Additional amendments

3

26. Section 19F amended

4

In section 19F in the definition of *reportable conduct* after
paragraph (a)(iii) insert:

5

6

7

(iiia) significant neglect of a child;

8

9

10

(iiib) any behaviour that causes significant
emotional or psychological harm to a
child;

11

12

27. Schedule 2 amended

13

In Schedule 2 after the item relating to Providers of youth
justice services insert:

14

15

Religious bodies

A religious body that provides, or has provided,
activities, facilities, programs or services that
provide a means for adults to have contact with
children.

**Examples of activities, facilities, programs or
services —**

(a) altar serving;

(b) art groups;

(c) bible study groups;

(d) choirs and music groups;

(e) church-run creches;

(f) dance groups;

(g) faith-based children's and youth groups;

(h) multi-faith networks;

- (i) open days;
- (j) prayer groups;
- (k) religious community engagement and outreach;
- (l) religious festivals and celebrations;
- (m) religious services;
- (n) sports teams;
- (o) Sunday schools;
- (p) tutoring services;
- (q) youth camps.

Providers of disability services

A service provider as defined in the *Disability Services Act 1993* section 3.

A registered provider of supports and services under the National Disability Insurance Scheme established under the *National Disability Insurance Scheme Act 2013* (Commonwealth).

Providers of accommodation and respite services for children

A provider of a homelessness service that provides overnight beds only for children and young people and is funded by the department principally assisting in the administration of the CCS Act.

A provider of boarding facilities for students who are children.

An entity that provides overnight camps for children and young people as part of its primary activity.

A provider of any other accommodation or respite services for children.

Part 3 — Working with Children (Criminal Record Checking) Act 2004 amended

28. Act amended

This Part amends the *Working with Children (Criminal Record Checking) Act 2004*.

29. Section 4 amended

In section 4 insert in alphabetical order:

head, of a relevant entity, has the meaning given in the *Parliamentary Commissioner Act 1971* section 4;

Parliamentary Commissioner means the Commissioner as defined in the *Parliamentary Commissioner Act 1971* section 4;

relevant entity has the meaning given in the *Parliamentary Commissioner Act 1971* section 4;

relevant reportable conduct means reportable conduct that is prescribed by the regulations for the purposes of this definition;

reportable conduct has the meaning given in the *Parliamentary Commissioner Act 1971* section 19F;

30. Section 12 amended

(1) In section 12(3) in the Table after item 6 insert:

6A	The CEO is aware that a finding of relevant reportable conduct has been made in relation to the applicant under the <i>Parliamentary Commissioner Act 1971</i> Part III Division 3B.	s. 12(5)
----	--	----------

(2) In section 12(8):

(a) delete “offence,” and insert:

offence or finding of relevant reportable conduct,

s. 31

- 1 (b) in paragraphs (b) and (c) delete “committed;” and insert:
2
3 committed or the relevant reportable conduct occurred
4 or is alleged to have occurred;
5
6 (c) in paragraph (d) after “offence” insert:
7
8 or relevant reportable conduct
9
10 (d) in paragraph (e)(ii) delete “applicant;” and insert:
11
12 applicant; or
13
14 (e) after paragraph (e)(ii) insert:
15
16 (iii) any finding of relevant reportable
17 conduct made in relation to the
18 applicant;
19

20 **31. Section 13 amended**

- 21 In section 13(1)(a)(ii) after “criminal record” insert:
22
23 or the findings of the applicant’s relevant reportable conduct
24

25 **32. Part 2 Division 3A inserted**

- 26 After Part 2 Division 3 insert:
27

28 **Division 3A — Findings of relevant reportable conduct**

29 **18A. Findings of relevant reportable conduct**

- 30 (1) In this section —
31 *employee*, of a relevant entity, has the meaning given
32 in the *Parliamentary Commissioner Act 1971*
33 section 19C;
34 *identifying information*, in relation to a person,
35 includes the person’s —
36 (a) name and any former name and alias; and

- 1 (b) date of birth; and
2 (c) address.
- 3 (2) The Parliamentary Commissioner may give written
4 notice to the CEO of a finding of relevant reportable
5 conduct under the *Parliamentary Commissioner*
6 *Act 1971* if —
- 7 (a) the Parliamentary Commissioner reasonably
8 believes that the finding is in respect of a
9 person who —
- 10 (i) has applied for an assessment notice
11 under section 9 or 10; or
12 (ii) has a current assessment notice;
13 and
- 14 (b) the finding relates to a person who is or was an
15 employee of a relevant entity that is prescribed,
16 or is of a class of relevant entity prescribed, by
17 the regulations.
- 18 (3) A notice under subsection (2) must include the
19 following information in relation to the person to
20 whom the finding relates —
- 21 (a) any identifying information the Parliamentary
22 Commissioner holds in relation to the person;
23 (b) a brief summary of the relevant reportable
24 conduct and the finding.
- 25 (4) The CEO must treat a notice of a finding given to the
26 CEO under subsection (2) as an application for an
27 assessment notice by the person to whom the finding
28 relates.
- 29 (5) Information may be disclosed under this section despite
30 any other enactment, law or agreement that prohibits or
31 restricts its disclosure.
- 32 (6) If the person to whom the finding relates has a current
33 assessment notice, section 12 applies to the application
34 as if a reference in that section to issuing an assessment
35 notice were a reference to issuing an assessment notice
36 or a further assessment notice.
37

s. 33

33. Part 3A inserted

After section 34 insert:

Part 3A — Information gathering and sharing

34A. Exchange of information with Parliamentary Commissioner or head of relevant entity

(1) In this section —

identifying information has the meaning given in section 18A(1);

investigation information has the meaning given in the *Parliamentary Commissioner Act 1971* section 19C;

reportable allegation has the meaning given in the *Parliamentary Commissioner Act 1971* section 19E;

reportable conviction has the meaning given in the *Parliamentary Commissioner Act 1971* section 19G.

(2) The CEO may disclose to the Parliamentary Commissioner or the head of a relevant entity any identifying information held in relation to a person who is an applicant for an assessment notice under section 9 or 10.

(3) The CEO may request the Parliamentary Commissioner or the head of the relevant entity to provide information and documents (including investigation information) about a reportable conviction or a reportable allegation to which a finding of relevant reportable conduct relates.

(4) The Parliamentary Commissioner or the head of the relevant entity may disclose the information or documents requested to the CEO.

(5) Information may be disclosed under this section despite any other enactment, law or agreement that prohibits or restricts its disclosure.