

Ombudsman Western Australia

Information about the proposed Reportable Conduct Scheme for Western Australia



The office of the Ombudsman acknowledges Aboriginal and Torres Strait Islander people of Australia as the traditional custodians of Australia. We recognise and respect the exceptionally long history and ongoing cultural connection Aboriginal and Torres Strait Islander people have to Australia, recognise the strength, resilience and capacity of Aboriginal and Torres Strait Islander people and pay respect to Elders past, present and future.

We acknowledge the Whadjuk Noongar people as the traditional custodians of the land on which the office of the Ombudsman is located.

What is this Information Sheet about?

This Information Sheet is about the proposed Reportable Conduct Scheme for Western Australia.

What is the proposed Reportable Conduct Scheme?

It is a scheme to report employee misconduct involving children. The Royal Commission into Institutional Responses to Child Sexual Abuse found that organisations need to improve their responses to child abuse and recommended that state and territory governments set up schemes which oblige heads of organisations to notify an independent body of misconduct involving children, known as reportable conduct, by their employees, volunteers and contractors.

The proposed Reportable Conduct Scheme for Western Australia will provide independent oversight of how certain organisations prevent and handle allegations and convictions of child abuse involving any of the organisation's employees.

The proposed Reportable Conduct Scheme will apply to organisations that exercise a high degree of responsibility for children and where there is a heightened risk of child abuse. These organisations will need to notify the Ombudsman of allegations and convictions of child abuse involving their employees (please see below for who is considered an employee).

The Ombudsman can then review the findings made and the action taken by the organisation or undertake their own investigation.

Why do we need a Reportable Conduct Scheme?

Reportable conduct schemes aim to prevent harm to children and make children safer. The Royal Commission into Institutional Responses to Child Sexual Abuse recommended the introduction of nationally consistent reportable conduct schemes.

The objective of the proposed Reportable Conduct Scheme Bill is to protect children from harm by implementing a scheme for:

- reporting and investigating allegations and convictions of child abuse involving employees of certain organisations; and
- taking appropriate action in response to findings of child abuse.

The proposed Reportable Conduct Scheme is based on the principles that:

- the protection and best interests of children are paramount considerations; and
- if a child is able to form views on an allegation or conviction of child abuse and it is appropriate to consult the child —
 - the child must be given the opportunity to express their views freely; and
 - their views are to be given due weight in accordance with the child's development and the circumstances; and
- criminal conduct or suspected criminal conduct should be reported to the police; and
- the Ombudsman and others involved in the reportable conduct scheme should work in collaboration to ensure a fair process is used in the investigation of allegations and convictions of child abuse; and
- employees who are the subject of allegations of child abuse are entitled to be afforded natural justice in investigations into their conduct.

What is Reportable Conduct?

The conduct of an employee that must be notified to the Ombudsman is:

- a sexual offence or sexual misconduct against, with or in the presence of a child;
- physical assault committed against, with, or in the presence of a child;
- significant neglect of a child;
- any behaviour that causes significant emotional or psychological harm to a child; and
- other offences that might be decided by Parliament after the introduction of the Reportable Conduct Scheme.

What organisations are covered?

The types of organisations covered by the proposed scheme will include:

- accommodation and residential services;
- religious institutions;
- childcare services;
- child protection and out-of-home care services;
- disability services;
- education services;
- health services; and
- justice and detention services.

The scheme will not apply to organisations that do not have care, supervision or authority over children.

Who are Employees?

For an organisation covered by the proposed scheme, an 'employee' will include:

- any officer or employee of the organisation;
- a volunteer, contractor or subcontractor who provides services to children;
- for a religious body, a minister of religion or a religious leader; and
- a carer under the *Children and Community Services Act 2004*.

What is the Ombudsman's role?

The Ombudsman will work with organisations covered by the proposed scheme to build on existing procedures and reporting requirements. The Ombudsman will:

- assist organisations to identify, notify and investigate reportable conduct by their employees;
- provide oversight of the organisation's investigation of reportable conduct by an employee and the action taken if a finding of reportable conduct is made;
- if it is in the public interest to do so, undertake their own investigation and make recommendations to the organisation;
- monitor the organisations' systems for preventing, notifying and dealing with reportable conduct; and
- report to Parliament on the scheme.

The Ombudsman will also share information with police and key institutions to better protect children from abuse, including informing the Chief Executive Officer of the Department of Communities of a finding of reportable conduct to enable an assessment or re-assessment of a person who has a Working with Children Check card.

What does an organisation need to do?

The proposed Reportable Conduct Scheme will require heads of organisations that are covered by the scheme to:

- have certain systems in place, including systems for preventing, notifying and dealing with any allegations or convictions of child abuse involving an employee;
- notify the Ombudsman about any allegations or convictions of child abuse involving an employee;
- investigate any allegations or convictions of child abuse involving an employee and provide a report to the Ombudsman at the end of the investigation on any findings made and actions taken; and
- report to other bodies, such as WA Police, the Department of Communities or professional bodies as required.

How will the Reportable Conduct Scheme interact with the Working with Children Check Scheme?

The proposed Bill will also make amendments to the *Working with Children (Criminal Record Checking) Act 2004* (WA) so that reportable conduct findings can cause an assessment or re-assessment of a person who has a Working with Children Check card.

When would the proposed Reportable Conduct Scheme start?

If approved by Parliament, the scheme will be phased in, with childcare services, child protection and out-of-home care services, education services, health services and justice and detention services covered in the first year and the remaining services after 12 months of operation of the scheme. The phased commencement of the scheme over two years will assist organisations to prepare for the new requirements.

Can I have a say on the proposed Reportable Conduct Scheme?

Yes you can. For the proposed Reportable Conduct Scheme to start, Parliament must change the law. The first part of changing the law is introducing a Bill into Parliament. The Bill for the proposed Reportable Conduct Scheme is called a 'Green Bill' which allows for the public to be consulted about the Bill and provide submissions before the final Bill is introduced into Parliament. The Green Bill has been tabled in Parliament and can be viewed by any member of the public [here](#).

All submissions must be received by 31 January 2021.

Where can I get a copy of the Green Bill?

If you would like to read the *Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2020* that would create the Reportable Conduct Scheme please go to this [link](#).

How do I provide my submission?

You can provide your submission directly to the office of the Ombudsman. We want to make it as easy for you as possible, so you can provide your submission in an email to:

reportableconduct@ombudsman.wa.gov.au

What if I have read this Information Sheet but still have questions?

If you have any questions that are not answered by this Information Sheet you should not hesitate to contact our office on:

Telephone: (08) 9220 7471

Email: reportableconduct@ombudsman.wa.gov.au