

Reportable Conduct Scheme

Background

The *Royal Commission into Institutional Responses to Child Sexual Abuse* (**the Royal Commission**) highlighted the numerous times and ways in which children reported abuse and were not believed, or no action was taken. The Royal Commission recommended that States and Territories establish Reportable Conduct Schemes to prevent harm to children by holding organisations accountable for the conduct of their staff.

Reportable Conduct Schemes support people to speak up about concerning behaviours, helps prevent child abuse and improve systems and processes of organisations for preventing and dealing with complaints and reports of abuse about their staff.

Western Australia's Reportable Conduct Scheme (**Scheme**) commenced on 1 January 2023, following amendments to the *Parliamentary Commissioner Act 1971* (**Act**).

The Scheme makes Western Australian children safer.

The Scheme compels heads of organisations that exercise care, supervision or authority over children to notify allegations of, or convictions for, child abuse by their employees to the Ombudsman and then investigate these allegations. The Ombudsman monitors, oversees and reviews these investigations. The requirement for the head of the organisation to undertake an investigation and take appropriate action protects children by ensuring their complaints are not dismissed, minimised, ignored or mishandled and, where appropriate, action is taken to prevent further reportable conduct. It will further reinforce the responsibility that institutions must take to ensure the safety of children.

The Ombudsman will also be able to share information where appropriate to better prevent and protect children from abuse, this includes with the Working with Children Screening Unit of the Department of Communities, relevant regulators and the WA Police Force.

Over 2,800 organisations across Western Australia have this reporting obligation.

The Scheme implements key recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and provides that child abuse in organisations will be:

- notified to an impartial and independent body;
- investigated fully; and
- dealt with to ensure children are protected from abuse within institutions.

Information regarding reporting

This chapter of the Annual Report provides information regarding the first six months of the operation of the Scheme. The annual reporting of the work of the Office on the Scheme will be developed and considerably expanded over future annual reports. This will include deidentified case studies and extensive further information and systemic analysis over time arising from the Scheme. This approach is consistent with the commencement of the Child Death Review and Family and Domestic Violence Fatality Reviews functions by the office of the Ombudsman, which now, properly, at nearly 120 pages, constitute over 40% of the Office's Annual Report.

What is the Reportable Conduct Scheme?

The Scheme compels heads of organisations that exercise care, supervision or authority over children to notify allegations of, or convictions for, child abuse by their employees to the Ombudsman and then investigate these allegations. The Ombudsman will monitor, oversee and review these investigations.

The objects of the Scheme are set out in section 19J(1) of the Act, as follows:

- (1) The object of this Division is protect children from harm by establishing and implementing a scheme for: -
 - (a) preventing reportable conduct;
 - (b) reporting, notifying and investigating reportable allegations and reportable convictions; and
 - (c) taking appropriate action in response to findings of reportable conduct.

'Reportable conduct' is defined in section 19G of the Act as follows:

- (1) **Reportable conduct** is the following conduct, whether or not a criminal proceeding in relation to the conduct has been commenced or concluded and whether the conduct occurred before, on or after commencement day –
 - (a) a sexual offence;
 - (b) sexual misconduct;
 - (c) a physical assault committed against, with or in the presence of, a child;
 - (d) an offence prescribed by the regulations for the purposes of this paragraph.
- (2) However, **reportable conduct** does not include conduct that is –
 - (e) reasonable for the discipline, management or care of a child or of another person in the presence of a child, having regard to –

- (i) the characteristics of the child, including the age, health and developmental stage of the child; and
 - (ii) any relevant code of conduct or professional standard that at the time applied to the discipline, management or care of the child or the other person;
- or
- (f) trivial or negligible and that has been or will be investigated and recorded as part of another workplace procedure; or
 - (g) of a class or kind exempt from being reportable conduct under section 19N(1).
- (3) For the purposes of this section, conduct includes an act or omission.

The terms 'reportable allegation' and 'reportable conviction' are defined in sections 19F and 19H of the Act, respectively, as set out below:

19F. Reportable allegation

- (1) A **reportable allegation** is any information that leads a person to form the belief on reasonable grounds that an employee of a relevant entity has engaged in reportable conduct or conduct that may involve reportable conduct, whether or not the conduct is alleged to have occurred in the course of the employee's employment.
- (2) However, a **reportable allegation** does not include information relating to a reportable conviction.

19H. Reportable conviction

- (1) A **reportable conviction** is a conviction, whether before, on or after commencement day, for an offence under a law of this State, another State, a Territory or the Commonwealth that is an offence referred to in section 19G(1)(a) or (d).
- (2) For the purposes of subsection (1), a **conviction** for 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.
- (3) For the purposes of subsection (1), a reference to a **conviction** includes a reference to a conviction that is a spent conviction.
- (4) For the purpose of subsection (3), 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.
- (5) For the purposes of subsection (1), a reference to a **conviction** does not include a reference to a conviction that is subsequently quashed or set aside by a court.

The role of the Ombudsman under the Reportable Conduct Scheme

The role of the Ombudsman under the Scheme is comprised of the following functions, set out in section 19M(1) of the Act:

- (a) to oversee and monitor the reportable conduct scheme;
- (b) to educate and provide advice to relevant entities in order to assist them to identify and prevent reportable conduct and to notify and investigate reportable allegations and reportable convictions;
- (c) to support relevant entities to make continuous improvement in the identification and prevention of reportable conduct and the reporting, notification and investigation of reportable allegations and reportable convictions;
- (d) to monitor the investigation of reportable allegations and reportable convictions by relevant entities;
- (e) if the Commissioner considers it to be in the public interest to do so – to investigate reportable allegations and reportable convictions;
- (f) if the Commissioner considers it to be in the public interest to do so – to investigate whether reportable allegations or reportable convictions have been appropriately handled or investigated or responded to by the head of a relevant entity;
- (g) to make recommendations to relevant entities in relation to the findings of the investigations referred to in paragraph (e) or (f);
- (h) to monitor the compliance of relevant entities with the reportable conduct scheme and whether appropriate and timely action is taken by a relevant entity;
- (i) to monitor a relevant entity's systems for preventing, notifying and dealing with reportable conduct;
- (j) to report to Parliament on the reportable conduct scheme;
- (k) to perform any other function conferred on the Commissioner under this Division.

In undertaking his role under the Scheme, the Ombudsman is required to regard the best interests of children as the paramount consideration, under section 19K of the Act:

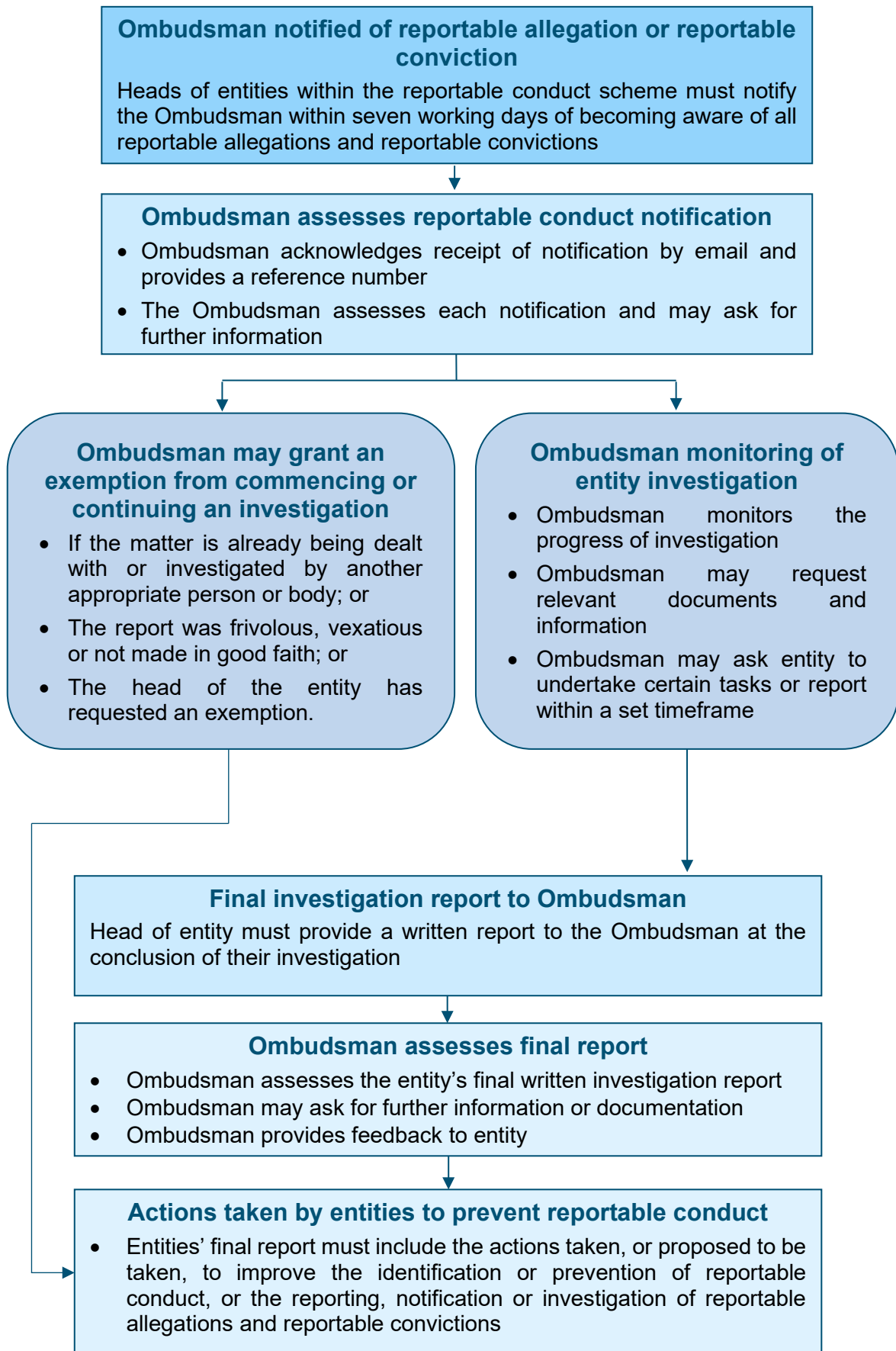
19K. Paramount consideration

The Commissioner [Ombudsman] and any other person performing functions under this Division must regard the best interest of children as the paramount consideration.

'Employee' is defined broadly under the Scheme, and includes contractors, volunteers, carers of children in placement arrangements under the *Children and Community Services Act 2004*, family day care educators and educator assistants, police officers, and people otherwise engaged by the relevant entity to provide services to children.

If the head of a relevant entity becomes aware of a reportable allegation or conviction involving an employee, they must provide an initial written notification to the Ombudsman within seven working days. Organisations also have additional reporting obligations on completion of their reportable conduct investigation. The Office may require further information from an organisation; can exercise investigation powers; and can receive and investigate complaints about the way in which organisations respond to reportable allegations or convictions.

The Reportable Conduct Process



Reportable allegations and convictions

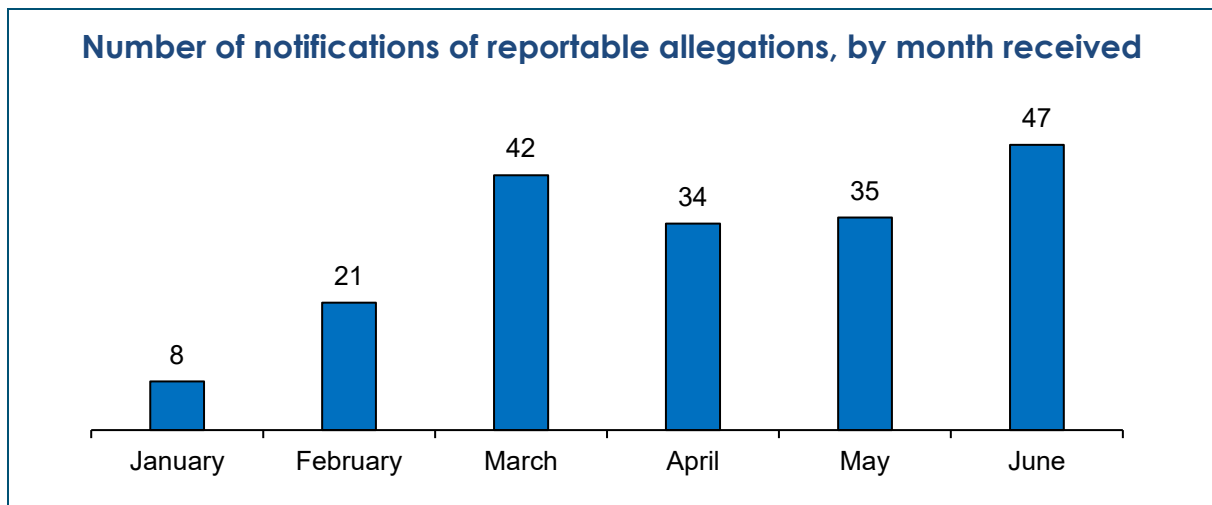
Organisations within the scope of the Scheme are required to notify the Ombudsman within seven working days of becoming aware of:

- a **reportable allegation** (namely, matters that include “any information that leads a person to form the belief on reasonable grounds that an employee of a relevant entity has engaged in reportable conduct or conduct that may involve reportable conduct”); and
- a **reportable conviction** (that are matters involving “a conviction, whether before, on or after commencement day, for an offence under a law of this State, another State, a Territory or the Commonwealth that is an offence referred to in section 19G(1)(a) [a sexual offence] or (d) [an offence prescribed by the regulations for the purposes of this paragraph].”

During 2022-23, the Office received 194 notifications of reportable allegations under the Scheme.

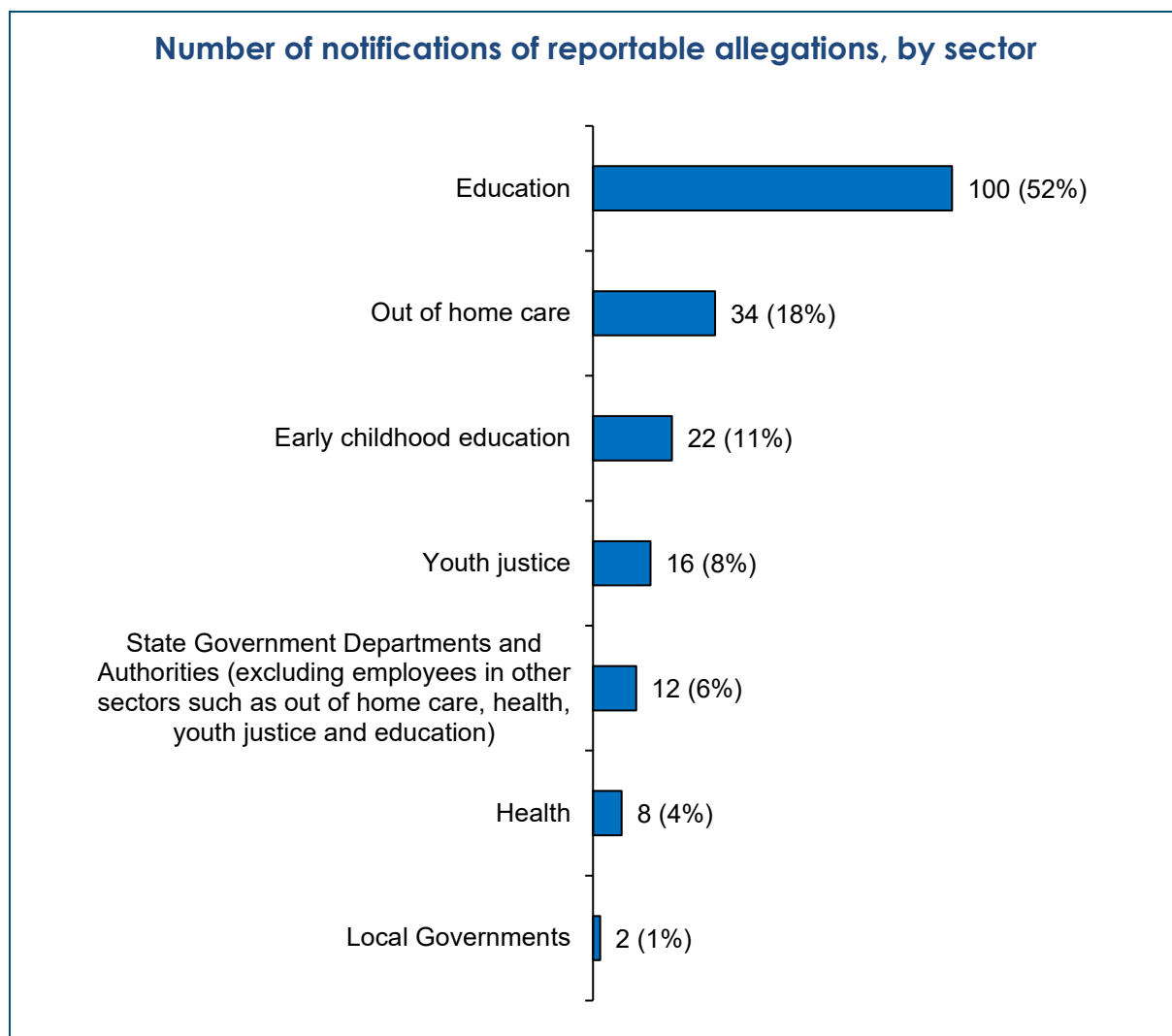
Notifications of reportable allegations

Since the commencement of the Scheme on 1 January 2023, the Office has received 194 notifications of reportable allegations. The Office did not receive any notifications of reportable convictions from 1 January 2023 to 30 June 2023.



Notifications by sector

In 2022-23, the education, out of home care and early childhood education sectors reported most frequently to the Office (52 per cent, 18 per cent and 11 per cent, respectively), as shown in the chart below:



From 1 January 2024, the Scheme will be expanded to include the following organisations:

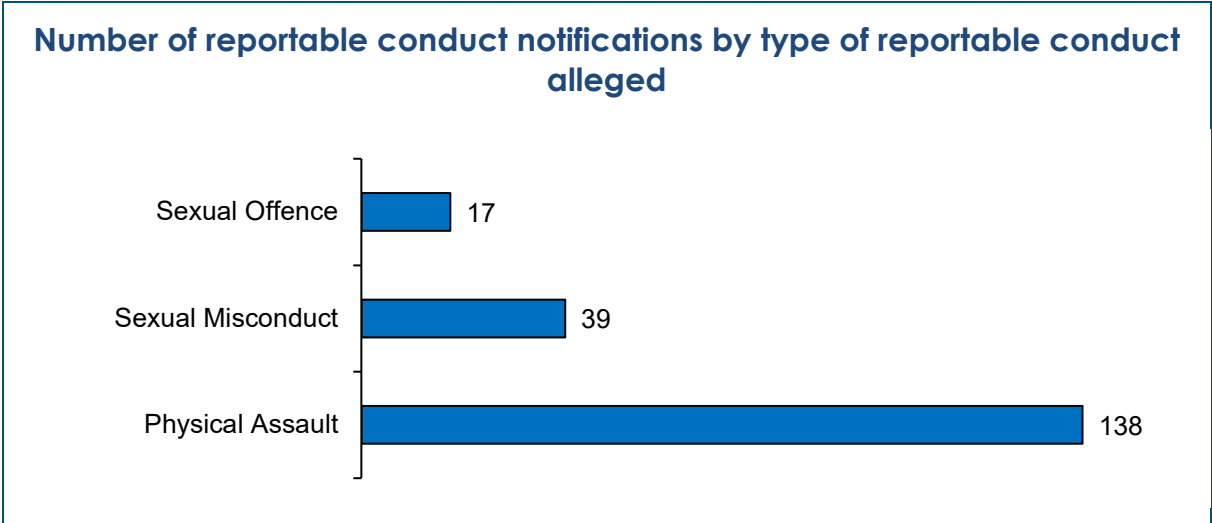
- Accommodation and residential services;
- Religious institutions; and
- Disability services.

Reportable conduct notifications by reportable allegation type

Under the Act, there are three types of allegations of reportable conduct that must be reported to the Ombudsman:

- Sexual offences (against, with or in the presence of, a child);
- Sexual misconduct (against, with or in the presence of, a child); and
- Physical assault (against, with or in the presence of, a child).

The majority of notifications received in 2022-23 involved allegations of physical assault (128 notifications, 71 per cent), as shown in the chart below:



There is a phased commencement of the Scheme over two years. From 1 January 2024, reportable conduct will also include:

- Significant neglect of a child; and
- Any behaviour that causes significant emotional or psychological harm to a child.

Enquiries

The Office has a dedicated reportable conduct enquiries line and email address as an important part of its function to provide information and education about the Scheme. During 2022-23, the Office received 126 enquiries.

Findings and outcomes of entity investigations of reportable conduct

Section 19Z of the Act requires organisations to provide the Office with a written report of the outcomes of all reportable conduct investigations, including the actions taken, as set out below:

- (1) The head of a relevant entity must, as soon as practicable after the end of an investigation under section 19W(1), give the Commissioner –
 - (a) a written report setting out –
 - (i) the findings of the investigation and the reasons for those findings; and
 - (ii) any submissions made by the employee under section 19X; and
 - (iii) any disciplinary or other action taken, or proposed to be taken in relation to the employee as a result of the findings of the investigation; and
 - (iv) if the entity does not propose to take any disciplinary or other action in relation to the employee – the reasons why no action is to be taken; and
 - (v) any action taken, or proposed to be taken, as a result of the findings of the investigation, to improve the identification or prevention of reportable conduct, or the reporting, notification or investigation of reportable allegations and reportable convictions, involving employees of the relevant entity.
 - and
 - (b) any other information that the head of the relevant entity considers relevant to the report.
- (2) After receiving the report and other information, the Commissioner may, by written notice given to the head of the relevant entity, request any additional information specified in the notice that the Commissioner considers relevant to determine whether –
 - (a) the reportable allegation or reportable conviction was properly investigated; and
 - (b) appropriate action was taken as a result of the investigation.
- (3) The head of a relevant entity must comply with a request under subsection (2).
- (4) It is an offence for the head of a relevant entity to fail, without reasonable excuse, to comply with subsection (1) or (3).

Penalty for this subsection: a fine of \$5 000.

The Office assesses each investigation report against the requirements of the Act and may seek further information regarding an entity's response to a reportable allegation. A relevant entity may also be provided with advice or education to assist it in improving its systems for preventing, identifying and responding to reportable conduct.

Of the investigations undertaken by organisations, and monitored by the Office, in 2022-23, all were found to be compliant with the requirements of the Act. In 2022-23, the Office received 20 investigation reports.

Exempt investigations

The Ombudsman may exempt the head of a relevant entity from commencing or continuing an investigation in certain circumstances, including when:

- the matter is already being dealt with or investigated by another appropriate person or body; or
- the head of the relevant entity has made a request for the exemption in a notice under section 19Y of the Act.

During 2022-23, the Office received 17 requests from a relevant entity requesting an exemption from continuing an investigation:

- Two requests were later withdrawn by the relevant entity;
- Ten exemptions were granted; and
- Five requests for an exemption were under consideration on 30 June 2023.

Exempt organisations

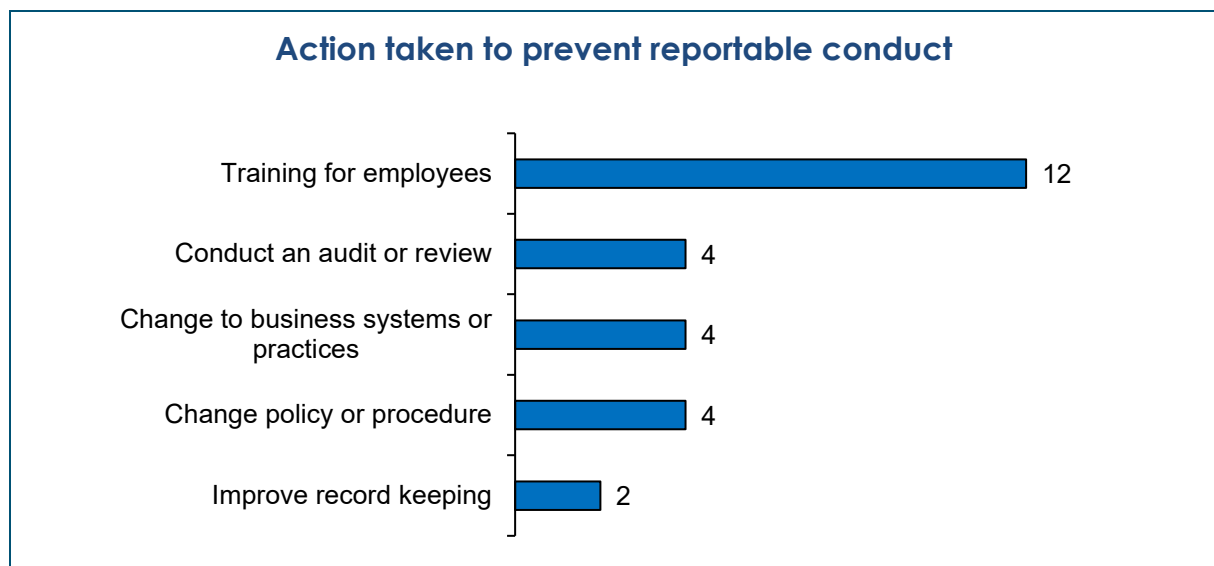
The Ombudsman may also exempt an organisation from the Scheme, by written notice given pursuant to section 19O of the Act.

During 2022-23, no organisations were exempted from the Scheme.

Action taken to prevent reportable conduct

During 2022-23, a total of 26 actions were taken by organisations to prevent reportable conduct at the conclusion of a reportable conduct investigation.

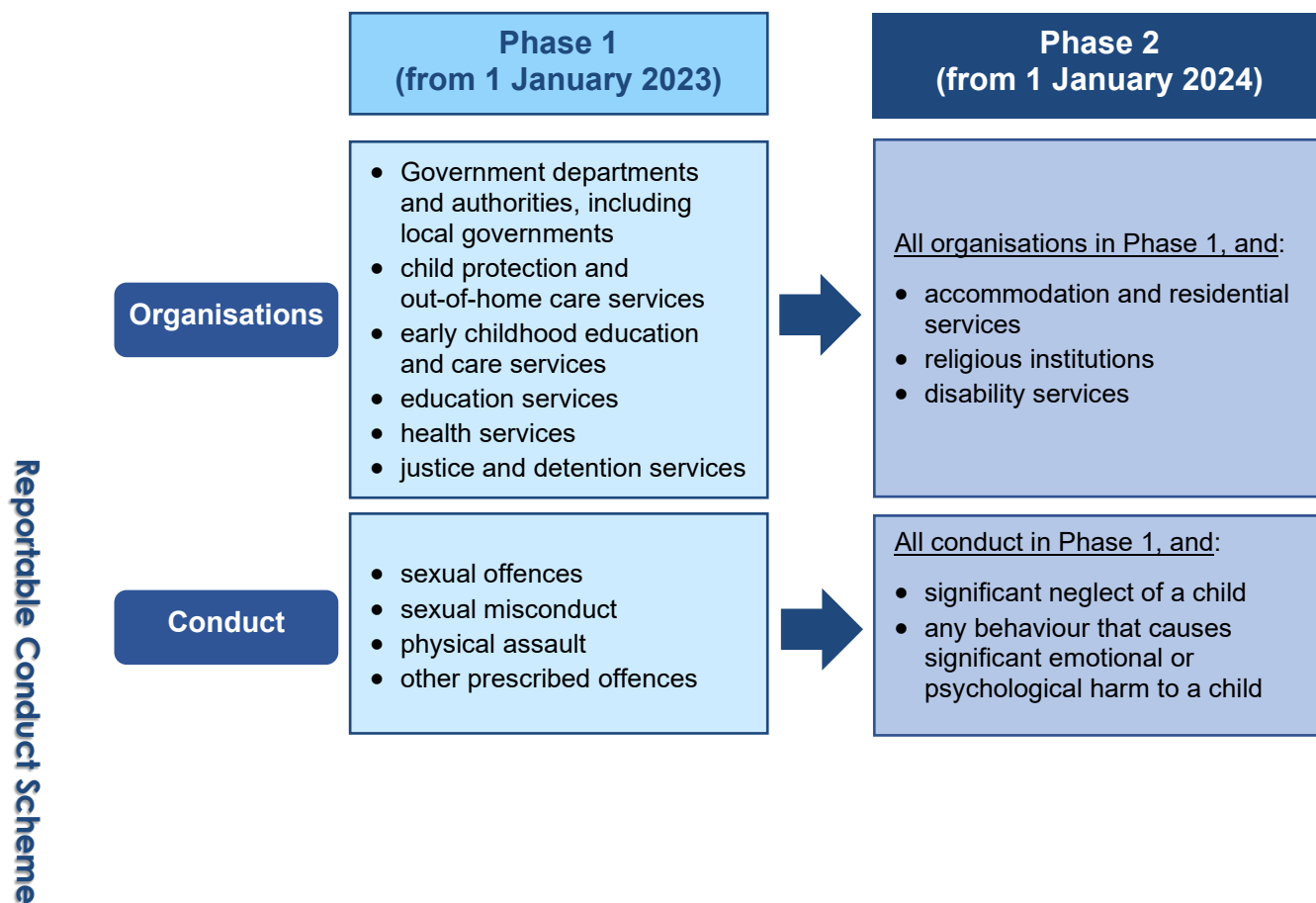
The chart below provides a summary of the types of actions taken to improve reportable conduct systems within organisations:



The Office collects a range of additional information about the improvement actions undertaken by organisations at all stages of the reportable conduct process, including actions taken prior to Ombudsman involvement and actions taken during the identification and notification of a reportable conduct matter regarding the safety of children.

Phased development of the Reportable Conduct Scheme

The Scheme commenced on 1 January 2023. There is a phased commencement of the Scheme over two years to assist organisations to prepare for the new requirements. The diagram below sets out how the phased commencement will work.



The types of organisations covered by the Reportable Conduct Scheme

The Scheme will only apply to organisations that exercise care, supervision or authority over children. The types of organisations covered by the Scheme include:

Phase 1 (from 1 January 2023):

- Western Australian government departments and authorities, including local governments;
- Child protection and out-of-home-care services:
 - Providers of approved foster carers and kinships carers;
 - Providers of residential care and family group homes;
- Early childhood education and care services:
 - Providers of approved education and care services and child care services;
 - Providers of an approved family day care service;
- Education services:
 - Government and non-government schools;
 - TAFE colleges;
 - Registered training organisations;
 - Universities;
- Health services:
 - Public health service providers;
 - Licensed private hospital service providers;
 - Mental health service providers that have inpatient beds for children;
 - Drug and alcohol treatment service providers that have inpatient beds for children;
 - Ambulance services;
- Justice and detention services:
 - A provider of a juvenile detention centre; and
 - A provider of community justice services funded by the Department of Justice.

Phase 2 (from 1 January 2024):

- Accommodation and residential services:
 - Providers of a homelessness service that provides overnight beds specifically for children as part of its primary activities and is funded by the Department of Communities;
 - Providers of boarding facilities for students who are children;
 - Organisations that provide overnight camps for children as part of its primary activity;
 - A provider of any other accommodation or respite services for children;
- Religious bodies; and
- Disability service providers.

Education and guidance

The Office undertakes its function of providing education and guidance through:

- Our dedicated enquiries line and reportable conduct email address;
- Providing information to organisations during reportable conduct investigations;
- Delivering in-person and online presentations to organisations; and
- Publishing a range of online guidance and support materials on our website.

During 2022-23, the Office worked closely and cooperatively with stakeholders in key sectors and organisations included in the Scheme to provide education and guidance to assist in building their capacity to meet their reporting obligations and comply with the Scheme. This included:

- Attending meetings with organisations and delivering workshops on the Scheme;
- Developing tailored guidance and support materials and education programs for each sector, in collaboration with peak bodies for the sector; and
- Providing information to organisations to assist them in their handling of individual investigations.

During 2022-23, the Office held a range of information sessions and workshops for organisations covered by the Scheme and other stakeholders. This included webinars for eight key sectors in November 2022, and a further 30 stakeholder presentations and meetings in the six months after the Scheme commenced on 1 January 2023.

In addition, the Office regularly liaised with a range of bodies in relation to the Scheme, including:

- The Department of Communities;
- The Department of Education;
- The Department of Health;
- The Department of Justice;
- WA Police Force; and
- The interjurisdictional forum for Reportable Conduct Schemes comprising the Office and the NSW Children's Guardian, the Victorian Commissioner for Children and Young People and the ACT Ombudsman.