

# WESTERN AUSTRALIA

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## 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](mailto:reportableconduct@ombudsman.wa.gov.au)

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



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

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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:

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**Part 1 — Preliminary**

**1. Short title**

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

**2. Commencement**

This Act comes into operation as follows —

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

1 **6. Section 19A amended**

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

3 **7. Part III Division 3B inserted**

4 After Part III Division 3A insert:

5

6 **Division 3B — Reportable conduct scheme**

7 **Subdivision 1 — Preliminary**

8 **19C. Terms used**

9 In this Division —

10 *assault* means —

11 (a) the intentional or reckless application of  
12 physical force without lawful justification or  
13 excuse; or

14 (b) any act that intentionally or recklessly causes  
15 another person to apprehend immediate and  
16 unlawful violence;

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

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

19 *contractor* includes —

20 (a) an officer of, or a person employed or engaged  
21 to work for, a contractor; and

22 (b) a subcontractor of a contractor; and

23 (c) an officer of, or a person employed or engaged  
24 to work for, a subcontractor; and

25 (d) a volunteer working for a contractor or a  
26 subcontractor;

27 *employee*, of a relevant entity —

28 (a) means an individual who has reached 18 years  
29 of age and is —

30 (i) an officer or employee of the relevant  
31 entity, whether or not the individual's  
32 work is in connection with any work or  
33 activities of the entity that relate to  
34 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;

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*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).

- 1           **19D. Conviction**
- 2           (1) For the purposes of this Division, a reference to a
- 3           *conviction* in relation to an offence committed by a
- 4           person is a reference to any of the following —
- 5           (a) a court making a formal finding of guilt in
- 6           relation to the offence;
- 7           (b) if there has been no formal finding of guilt
- 8           before conviction — a court convicting the
- 9           person of the offence;
- 10          (c) a court accepting a plea of guilty from the
- 11          person in relation to the offence;
- 12          (d) a court acquitting the person following a
- 13          finding under *The Criminal Code* section 27
- 14          that the person is not guilty of the offence on
- 15          account of unsoundness of mind or an acquittal
- 16          following an equivalent finding under a law of
- 17          another State, a Territory or the
- 18          Commonwealth.
- 19          (2) For the purposes of this Division, a reference to a
- 20          *conviction* includes a reference to a conviction that is a
- 21          spent conviction.
- 22          (3) For the purposes of subsection (2), an offence becomes
- 23          spent if, under a law of this State, another State, a
- 24          Territory or the Commonwealth, the person concerned
- 25          is permitted not to disclose the fact that the person was
- 26          convicted or found guilty of the offence.
- 27          (4) For the purposes of this Division, a reference to a
- 28          *conviction* does not include a reference to a conviction
- 29          that is subsequently quashed or set aside by a court.
- 30           **19E. Reportable allegation**
- 31           In this Act —
- 32           *reportable allegation* —
- 33           (a) means any information that leads a person to
- 34           form a suspicion on reasonable grounds that an
- 35           employee has committed reportable conduct or
- 36           conduct that may involve reportable conduct,
- 37           whether or not the conduct is alleged to have
- 38           occurred within the course of the employee’s
- 39           employment; but

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

**19F. Reportable conduct**

In this Act —

*reportable conduct* means —

(a) 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 the relevant commencement day —

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

but

(b) does not include conduct that is —

- (i) 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

- (ii) trivial or negligible and that has been or will be investigated and recorded as part of another workplace procedure; or
- (iii) of a class or kind exempt from being reportable conduct under 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 (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.

1           **19N.   Commissioner may exempt investigations**

- 2           (1) The Commissioner may exempt the head of a relevant  
3           entity from commencing or continuing an  
4           investigation.
- 5           (2) An exemption under subsection (1) may be for a  
6           specified period.
- 7           (3) Without limiting subsection (1), the Commissioner  
8           may exempt the head of the relevant entity if —  
9           (a) the matter is already being dealt with or  
10           investigated by another appropriate person or  
11           body; or  
12           (b) the head of the relevant entity has made a  
13           request for the exemption in a notice under  
14           section 19U.
- 15           (4) The Commissioner must give written notice to the head  
16           of the relevant entity of an exemption under  
17           subsection (1) that relates to the entity.
- 18           (5) An exemption under subsection (1) continues until —  
19           (a) the Commissioner gives the head of the  
20           relevant entity written notice that the exemption  
21           is revoked; or  
22           (b) if the exemption is for a specified period — the  
23           end of the specified period.
- 24           (6) The head of the relevant entity is not required to  
25           provide a report of an investigation under  
26           section 19V(1) if the investigation is exempt under this  
27           section.

28           **Subdivision 3 — Systems to deal with reportable conduct**

29           **19O.   Head of relevant entity must ensure systems in**  
30           **place**

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

- 33           (a) a system for preventing reportable conduct by  
34           an employee of the relevant entity in the course  
35           of the person’s employment; and  
36           (b) a system for enabling any person, including an  
37           employee of the relevant entity, to notify the  
38           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.

- 1           **19Y. Provisions relating to investigation under**  
2           **section 19W(3)(a)**
- 3           (1) This section applies if the Commissioner decides to  
4           conduct an investigation referred to in  
5           section 19W(3)(a).
- 6           (2) The Commissioner must give the employee who is the  
7           subject of the investigation written notice stating —  
8               (a) that the Commissioner intends to carry out an  
9               investigation under this section; and  
10              (b) particulars of the investigation.
- 11          (3) As soon as practicable after the investigation ends, the  
12          Commissioner —  
13              (a) must give the head of the relevant entity written  
14              notice stating that the investigation has ended;  
15              and  
16              (b) must report to the head of the relevant entity —  
17                  (i) the findings of the investigation; and  
18                  (ii) the reasons for the findings;  
19              and  
20              (c) may make any recommendations that the  
21              Commissioner thinks fit.
- 22          (4) The head of a relevant entity must not take any action  
23          to implement a recommendation of the Commissioner  
24          under subsection (3)(c) involving an employee of the  
25          relevant entity until the later of the following —  
26              (a) the end of the period under section 19Z(2) for  
27              the employee to apply for a review of the  
28              finding;  
29              (b) if the employee makes an application under  
30              section 19Z(1) for a review of the finding —  
31              the final determination of the review.
- 32          (5) As soon as practicable after the investigation ends, the  
33          Commissioner must —  
34              (a) give the employee who is the subject of the  
35              investigation written notice stating that the  
36              investigation has ended; and

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

4           **19Z. Application to State Administrative Tribunal for**  
5           **review**

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

21          **19ZA. Relevant entities that are agents of Crown**

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

24          **19ZB. Concurrent investigations or proceedings**

- 25          (1) This section applies if —  
26                   (a) the Commissioner of Police advises the  
27                   Commissioner or the head of a relevant entity  
28                   that an investigation or finding under this  
29                   Division is likely to compromise a police  
30                   investigation; or  
31                   (b) another person or body with authority to  
32                   investigate the conduct of an employee of a  
33                   relevant entity advises the Commissioner or the  
34                   head of the relevant entity that an investigation  
35                   or finding under this Division is likely to  
36                   compromise an investigation by that person or  
37                   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.

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**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 5<sup>th</sup>  
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 5<sup>th</sup> 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.

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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  
5  
6  
7  
8  
9

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

10 **20. Section 29A inserted**

11 After section 29 insert:

12  
13

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

14  
15  
16  
17  
18  
19  
20  
21

- (1) The Commissioner of Police may delegate any power or duty of the Commissioner of Police under section 19ZB, 22AA or 22C(2) to the following persons —

- (a) a specified police officer;
- (b) police officers of a specified rank or class;
- (c) another person appointed or employed under the *Police Act 1892*.

22  
23  
24  
25  
26  
27  
28  
29

- (2) The delegation must be in writing signed by the Commissioner of Police.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

30  
31  
32  
33

- (5) Nothing in this section limits the ability of the Commissioner of Police to perform a function through an officer or agent.

1 **21. Section 30AA inserted**

2 After section 30A insert:

3

4 **30AA. Protection from liability for giving information:**  
5 **reportable conduct scheme**

- 6 (1) This section applies if a person acting in good faith —
- 7 (a) gives a report, notification or information to the  
8 Commissioner under Part III Division 3B or in  
9 the course of, or for the purposes of, an  
10 investigation into a reportable allegation or  
11 reportable conviction under this Act; or
- 12 (b) gives a report, notification or information to the  
13 head of a relevant entity under Part III  
14 Division 3B; or
- 15 (c) gives information to an investigator carrying  
16 out an investigation under Part III Division 3B.
- 17 (2) The report, notification or information may be given  
18 despite any other enactment, law or agreement that  
19 prohibits or restricts its disclosure.
- 20 (3) In giving the information or making the report or  
21 notification the person —
- 22 (a) does not incur any civil or criminal liability or  
23 liability to be punished for a contempt of court;  
24 and
- 25 (b) is not to be taken to have breached any duty of  
26 confidentiality or secrecy imposed by law; and
- 27 (c) is not to be taken to have breached any  
28 professional ethics or standards or any  
29 principles of conduct applicable to the person's  
30 employment or to have engaged in  
31 unprofessional conduct.
- 32 (4) Civil proceedings cannot be brought against a person in  
33 respect of an act referred to in subsection (1)(a), (b)  
34 or (c) without the leave of the Supreme Court, and the  
35 Supreme Court must not give leave unless it is satisfied  
36 that there is substantial ground for the contention that  
37 the person to be proceeded against has acted in bad  
38 faith.
- 39

1 **22. Section 30B amended**

2 After section 30B(1)(e) insert:

3

- 4 (ea) has provided, is providing or will or may in the  
5 future provide information in the course of, or  
6 for the purpose of, an investigation of a  
7 reportable allegation or reportable conviction to  
8 the Commissioner or the head of a relevant  
9 entity under this Act; or

10

11 **23. Section 33 replaced**

12 Delete section 33 and insert:

13

14 **33. Regulations**

15 The Governor may make regulations —

- 16 (a) amending Schedule 1 or 2; or  
17 (b) prescribing all matters that are required or  
18 permitted by this Act to be prescribed, or are  
19 necessary or convenient to be prescribed, for  
20 giving effect to the reportable conduct scheme.

21

22 **24. Schedule 1 amended**

23 In Schedule 1 delete the item relating to the *State Administrative*  
24 *Tribunal Act 2004*.

25 **25. Schedule 2 inserted**

26 After Schedule 1 insert:

27

28 **Schedule 2 — Relevant entities to which this Act**  
29 **applies**

30

[s. 19H]

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**Column 1**

**Column 2**

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Public bodies

A department.

An authority.

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

**Part 2** Parliamentary Commissioner Act 1971 amended

**Division 2** General amendments

**s. 25**

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<b>Column 1</b>	<b>Column 2</b>
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

11

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

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;

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

**Part 2** Parliamentary Commissioner Act 1971 amended

**Division 3** Additional amendments

**s. 27**

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- (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.

1

**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**

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- 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**

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1 **33. Part 3A inserted**

2 After section 34 insert:  
3

4 **Part 3A — Information gathering and sharing**

5 **34A. Exchange of information with Parliamentary**  
6 **Commissioner or head of relevant entity**

7 (1) In this section —

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

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

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

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

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

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

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

30 (5) Information may be disclosed under this section despite  
31 any other enactment, law or agreement that prohibits or  
32 restricts its disclosure.  
33

34

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