

## What is the Reportable Conduct Scheme?

The Reportable Conduct Scheme (**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 will monitor, oversee and review these investigations.

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

- Notified to an impartial and independent body;
- Investigated fully; and
- Dealt with to ensure children are protected from abuse within institutions.

The Scheme commenced in Western Australia on 1 January 2023.

## What types of conduct need to be reported?

Conduct covered by the Scheme in the first year includes:

- Sexual offences;
- Sexual misconduct;
- Physical assault; and
- Other prescribed offences.

After 12 months of the operation of the Scheme, conduct will also include:

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

## What is a reportable allegation?

A reportable allegation is any information that leads a person to form the belief on reasonable grounds that an employee of an organisation covered by the Scheme has engaged in reportable conduct, whether or not the conduct is alleged to have occurred in the course of the employee's employment.

### What is a reportable conviction?

A reportable conviction is a conviction for an offence of a sexual nature committed against, with, or in the presence of a child, or other prescribed offences.

### Is historical conduct included?

Historical conduct of an employee is covered by the Scheme. It must be conduct that occurred in the past by a current employee. The Scheme does not cover historical conduct of former employees.

The Royal Commission found that even if conduct is historical, given that the nature of the conduct is abuse of children, it still requires that it be reported and investigated. This will ensure that any current risks to children presented by a current employee are considered and addressed.

### What about conduct that forms part of normal professional duties, such as restraining a child to prevent them hurting themselves or others? Is it excluded from the definition?

Conduct that forms part of normal professional duties is not included in reportable conduct. This includes conduct that is reasonable for the discipline, management or care of a child or another person in the presence of a child, having regard to the characteristics of the child and any relevant code of conduct or professional standard that applied at the time.

### What is an employee?

Given that the Scheme is about preventing child abuse, it is important that as many employees as possible are included. This includes the following persons over 18 years of age:

- Paid employees
- Volunteers;
- Contractors;
- Ministers of religion;
- Certain types of carers; and
- Family day care educators and assistants.

A volunteer or contractor is only considered an employee under the Scheme if they have been engaged by an organisation covered by the Scheme to provide services to children.

### What types of carers are covered by the Scheme?

The definition of employee includes persons who provide care for a child under a placement arrangement under the *Children and Community Services Act 2004*. This includes, for example, foster and family carers for a child in the CEO's care.

This definition does not include unregistered carers in an 'informal' care arrangement where the placement of the child is not arranged by the CEO of the Department of Communities, for example, an informal grandcarer or someone who informally cares for a child with disability.

### What organisations are covered by the Scheme?

The organisations covered by the Scheme reflect those recommended by the Royal Commission, namely:

- Western Australian government departments and authorities, including local governments;
- Child protection and out-of-home care services;
- Childcare services;
- Education services;
- Health services;
- Justice and detention services;
- Accommodation and residential services;
- Religious institutions; and
- Disability services.

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

### When will the Scheme commence?

The Scheme commenced on 1 January 2023. There will be a phased commencement of the Scheme over two years, to assist organisations to prepare for the new requirements.

The types of organisations covered by the Scheme in the first year include:

- Western Australian government departments and authorities, including local governments;
- Child protection and out-of-home care services;
- Childcare services;
- Education services;
- Health services; and
- Justice and detention services.

After 12 months of operation of the Scheme, the types of organisations covered also include:

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

### What do organisations need to do?

The heads of organisations covered by the Scheme are required to:

- Notify the Ombudsman of allegations of, or convictions for, child abuse by their employees;
- Investigate the allegation; and
- Provide a report to the Ombudsman on the outcome of the investigation and any action taken.

Organisations will also be required to have systems in place to enable them to better protect against, and respond to, reportable conduct.

### What is the Ombudsman's role?

The Ombudsman is an impartial officer who serves Parliament and is independent of the Government of the day. The office of the Ombudsman has particular expertise in investigating matters involving the safety and welfare of children, including its longstanding child death review and family and domestic violence review functions.

The Ombudsman will monitor, oversee and review investigations undertaken by organisations into allegations of, and convictions for, abuse of children involving any of the organisation's employees. The Ombudsman may also at any time investigate matters of their own motion.

In certain circumstances, the Ombudsman will notify the Department of Communities of a finding that reportable conduct has been committed, or a finding of a reportable conviction, for the purposes of a Working with Children Check reassessment under the *Working with Children (Criminal Record Checking) Act 2004*.

### What will be available for organisations to assist them in meeting their obligations and compliance with the Scheme?

The Ombudsman is working closely and cooperatively with stakeholders in key sectors and individual organisations included in the Scheme to provide education, advice and guidance to assist in building their capacity to meet their reporting obligations and comply with the Scheme.

This includes:

- Developing tailored guidance and support materials and education programs for each sector, in collaboration with peak bodies for the sector; and
- Providing advice and guidance to organisations to assist them in their handling of individual investigations.

### Can reports of reportable allegations and reportable convictions be made directly to the Ombudsman?

The Scheme provides for reports of a reportable allegation or reportable conviction relating to an employee of an organisation to be made to the head of the organisation.

To encourage employees to report information where they might feel uncomfortable reporting to the head of the organisation, reports can also be made directly to the Ombudsman where:

- The matter relates to the head of the organisation; or
- A person has made a report to the head of the organisation and is not satisfied with their response.

A person may also make a complaint to the Ombudsman about any of the following that affect a person in their personal capacity:

- The handling or investigation by the head of the organisation of a reportable allegation or reportable conviction involving an employee of the organisation;
- A finding of reportable conduct in relation to an employee of the organisation; and
- Any action taken or not taken by the head of the organisation in response to a finding of reportable conduct in relation to an employee of the organisation.

### Who 'must' report and who 'may' report?

Relevant employees who 'must' report a reportable allegation or reportable conviction, of which they become aware, include:

- An officer or employee of the organisation;
- A Minister of religion or religious leader of a religious body; and
- A police officer or constable.

These employees are those that through induction, ongoing training and established reporting systems provided by the organisation, can be expected to be aware of their obligations to report. Making reporting obligatory for these employees will increase protection for children by increasing the likelihood that reports will be made.

Other people, including contractors and volunteers, 'may' report a reportable allegation or reportable conviction of which they become aware.

To further support reporting by employees and other persons:

- The head of an organisation must ensure that the organisation has systems for enabling any person, including an employee of the organisation, to report to the head of the organisation or the Ombudsman; and
- A person who makes a report to the head of the organisation or the Ombudsman, may disclose any information that the person believes on reasonable grounds reveals reportable conduct or is otherwise relevant to a reportable allegation.

### What protections are there for people who report?

There are protections under the *Parliamentary Commissioner Act 1971* for providing information under the Scheme, including:

- Protection from liability for giving information;
- Protection from victimisation; and
- A prohibition on publishing information that identifies or is likely to identify a person who has made a report under the Scheme.

### How long does a head of an organisation have to notify the Ombudsman of a reportable allegation or reportable conviction?

The head of the organisation must notify the Ombudsman within seven working days after they become aware of a reportable allegation or reportable conviction. The investigation does not need to have been completed or even commenced prior to notification.

The timeframe of seven working days for notification was selected to strike a balance between the importance of responding expeditiously to serious matters, while also allowing sufficient time for the organisation to form the view that the allegation is a reportable allegation and prepare the notice.

Following the notification, the outcome of the investigation and any action taken must be reported to the Ombudsman as soon as practicable.

### **Why is it necessary to require investigation and action by the head of the organisation?**

The requirement for the head of the organisation to undertake an investigation and take appropriate action, which is subject to monitoring by the Ombudsman, is intended to protect 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.

### **What procedural fairness processes are available to employees subject to allegations?**

Employees will have a full entitlement to the Australian law of procedural fairness (or natural justice), namely, the right to be heard and that the Ombudsman must be impartial, and not biased.

Further strengthening these common law rights, the Scheme will ensure that:

- The Ombudsman and others involved in the Scheme should work in collaboration to ensure a fair process is used in the investigation of reportable allegations and reportable convictions; and
- Employees who are the subject of reportable allegations are entitled to be afforded natural justice in investigations into their conduct.

The Scheme further provides for procedural fairness for the employee by providing them with the opportunity to make submissions at three critical stages of an investigation by the head of the organisation. These are:

- Before any adverse finding is made, the head of the organisation must:
  - Inform the employee that they are the subject of an investigation and of the reportable allegation made, or reportable conviction being investigated, and give them the opportunity to make submissions; and
  - After considering any submission made by the employee, inform the employee of any proposed adverse finding and give them an opportunity to make submissions.
- Before any disciplinary or other action is taken in relation to the employee as the result of the findings of the investigation, inform the employee of the action that is proposed to be taken, and give the employee an opportunity to make submissions.

These employee submissions must be included when the head of the organisation gives the Ombudsman their written report on the outcome of their investigation.

### **Why must the head of the organisation report the outcome of their investigation to the Ombudsman?**

The proper handling of investigations of child abuse, and taking appropriate action in response to a finding of reportable conduct, is vital for the success of the Scheme and ensures children are protected. For this reason, the Ombudsman must be able to monitor the outcome of these investigations.

More specifically, the report of the organisation on the outcome of their investigation enables the Ombudsman to:

- Assess independently, the handling of the investigation, the findings made and the action taken by the organisation;
- Refer a substantiated reportable conduct allegation or reportable conviction to the Working With Children Check Screening Unit; and
- Where necessary, take appropriate remedial action.

Further information may be needed from the organisation to enable this assessment to be made.

Remedial action that may be taken by the Ombudsman to protect children and prevent child abuse may include:

- Education, advice and support to the organisation to make continuous improvement in preventing, notifying and dealing with allegations of, and convictions for, abuse of children;
- Recommendations for improvements to the organisation's systems for preventing, notifying and dealing with allegations of, and convictions for, abuse of children;
- An investigation by the Ombudsman into whether the investigation by the head of the organisation was properly investigated and whether appropriate action was taken, with recommendations where appropriate; and
- A referral to another appropriate body such as WA Police for further consideration.

### **How will the Scheme prevent duplication of investigations by other bodies and/or investigations by other bodies being compromised?**

To minimise the impact on children and ensure criminal investigations or other high priority investigations are not compromised, the Scheme provides for:

- The Ombudsman or the head of the organisation to suspend the reportable conduct investigation or finding and take steps to manage any risks while it is suspended;
- Consultation with police or another body undertaking a concurrent investigation about the suspension and management of risks;
- The head of the organisation to inform the Ombudsman of the suspension and steps taken to manage risk if the head suspends the investigation; and
- If the Ombudsman or the head of the organisation decide not to suspend the investigation, ensuring it is conducted in a way that will not compromise the police or another investigation.

The head of the organisation may also seek an exemption from an investigation either permanently or for a defined period.

The Ombudsman has a function to educate and provide advice to organisations to assist them to investigate reportable allegations and reportable convictions, including their management of concurrent investigations.

When there are concurrent investigations, the Ombudsman will facilitate collaboration between their office, WA Police and the organisation to ensure there is no unnecessary duplication, the priority investigation is not compromised and sharing of information.

### Why are organisations required to have systems in place?

Organisations are required to have systems in place to enable them to better protect against, and respond to, reportable conduct.

These include systems to:

- Prevent the abuse of children in the organisation;
- Report allegations of, and convictions for, child abuse involving an employee to the head of the organisation;
- Notify the Ombudsman of a report made to the head of the organisation of an allegation of, or conviction for, child abuse; and
- Investigate an allegation of, or conviction for, child abuse involving an employee of the organisation and take appropriate action in response to the findings of the investigation.

### What protections are in place to prevent identification of a child who is the subject of reportable conduct and a person who makes a report of a reportable allegation or reportable conviction?

A person must not publish identifying information for a:

- Child who is the subject of reportable conduct; or
- Person making a report of a reportable allegation or reportable conviction to the head of the organisation or the Ombudsman.

The seriousness of publishing such information is reflected in the penalty of 2 years imprisonment or \$8,000. This is consistent with the existing penalty for victimisation under the *Parliamentary Commissioner Act 1971*.

Protection of the identity of the child or a person making a report complements other protections under the Act relating to:

- The ability to disclose information to the Ombudsman or the head of the organisation;
- Protection from liability for giving a report, notification or information to the Ombudsman or the head of the organisation or information to an investigator; and
- Protection from victimisation for making a report or notification, providing information for the purpose of an investigation or exercising a power or performing a duty under the *Parliamentary Commissioner Act 1971* in relation to the Scheme.

### How does the Reportable Conduct Scheme interact with the Working With Children Check Screening Unit?

- The Ombudsman may report a substantiated reportable conduct allegation, or reportable conviction, to the Working With Children Screening Unit. The Working With Children Screening Unit may ultimately decide to conduct a reassessment of a person's Working With Children Check, having regard to that finding.

### Where can I get help?

If you have any questions about the Scheme, please contact us on:

- Telephone: (08) 9220 7471
- Email: [reportableconduct@ombudsman.wa.gov.au](mailto:reportableconduct@ombudsman.wa.gov.au)

Further information is also available on the Ombudsman's website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au)

