

Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2021

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Act amended	2

Part 2 — *Parliamentary Commissioner Act 1971* amended

Division 1 — General amendments

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

Division 3B — Reportable conduct scheme

Subdivision 1 — Preliminary

19C.	Terms used	4
19D.	Employees of relevant entities	7
19E.	Head of a relevant entity	8
19F.	Reportable allegation	9
19G.	Reportable conduct	10
19H.	Reportable conviction	11
19I.	Entities to which reportable conduct scheme applies	12
19J.	Object and principles	12
19K.	Paramount consideration	13
19L.	Certain provisions not applicable if entity is agent of Crown	13

Subdivision 2 — Role of Commissioner

19M.	Functions of Commissioner in relation to scheme	13
19N.	Commissioner may exempt conduct	15
19O.	Commissioner may exempt entities	15

Contents

19P.	Commissioner may exempt investigations	16
19Q.	Commissioner may approve head of relevant entity in certain circumstances	17
Subdivision 3 — Systems to deal with reportable conduct		
19R.	Head of relevant entity must ensure systems in place	18
19S.	Commissioner may require information about systems	19
Subdivision 4 — Notice, investigation and reporting		
19T.	Report of reportable allegation or reportable conviction	19
19U.	Head of relevant entity must notify Commissioner	20
19V.	Information may be disclosed to Commissioner or head of entity	22
19W.	Head of relevant entity must respond to reportable allegation or reportable conviction	23
19X.	Informing employee of certain matters and giving employee opportunity to make submissions	25
19Y.	Commissioner must be notified of matters affecting investigation	26
19Z.	Head of relevant entity must report outcome of investigation to Commissioner	27
19ZA.	Head of relevant entity must report outcome of investigation to employee if employee informed of investigation	29
19ZB.	Commissioner may conduct own investigation	29
19ZC.	Notice to head of relevant entity of Commissioner's investigation	32
19ZD.	Provisions relating to investigation under section 19ZB(1)(a)	32
19ZE.	Provision relating to investigation under section 19ZB(1)(b) or (c)	34
19ZF.	Application to State Administrative Tribunal for review	35
19ZG.	Concurrent investigations or proceedings	35
Subdivision 5 — Disclosure of information		
19ZH.	Disclosure of information to child, parent, guardian or other person with parental responsibility	37
19ZI.	Commissioner may request information about reportable convictions	38
19ZJ.	Prohibition on publishing certain information	39

Subdivision 6 — Review of amendments made by Parliamentary Commissioner Amendment (Reportable Conduct) Act 2021		
19ZK.	Review of amendments made by <i>Parliamentary Commissioner Amendment (Reportable Conduct) Act 2021</i>	40
8.	Section 19 amended	41
9.	Section 20 amended	41
10.	Section 21 amended	43
11.	Section 22A amended	43
12.	Section 22AA inserted	44
	22AA. Consultation in relation to reportable conduct scheme	44
13.	Section 22B amended	46
14.	Section 22C inserted	46
	22C. Disclosure of certain information in relation to reportable conduct scheme	46
15.	Section 23 amended	48
16.	Section 23A amended	50
17.	Section 25 amended	50
18.	Section 28 inserted	51
	28. Annual report to include report on reportable conduct scheme	51
19.	Section 29 amended	52
20.	Section 29A inserted	52
	29A. Delegation by Commissioner of Police	52
21.	Section 30AA inserted	53
	30AA. Protection from liability for giving information: reportable conduct scheme	53
22.	Section 30B amended	54
23.	Section 33 replaced	55
	33. Regulations	55
24.	Schedule 1 amended	55
25.	Schedule 2 inserted	56
Schedule 2 — Relevant entities to which this Act applies		
Division 2 — Additional amendments		
26.	Section 19G amended	57
27.	Schedule 2 amended	58

Western Australia

LEGISLATIVE ASSEMBLY

**Parliamentary Commissioner Amendment
(Reportable Conduct) Bill 2021**

A Bill for

An Act to amend the *Parliamentary Commissioner Act 1971*.

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 2021*.

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 2 — 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.

3. Act amended

This Act amends the *Parliamentary Commissioner Act 1971*.

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

3 **Division 1 — General amendments**

4 **4. Long title amended**

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

7
8 **authorities, to the deaths of certain children and to the**
9 **reportable conduct scheme**

10
11 **5. Section 4 amended**

12 In section 4 insert in alphabetical order:

13
14 *CCS Act* means the *Children and Community Services*
15 *Act 2004*;

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

19 *head*, of a relevant entity, has the meaning given in
20 section 19E;

21 *investigator*, conducting an investigation under Part III
22 Division 3B, means a person or body conducting the
23 investigation under that Division on behalf of the head
24 of a relevant entity for the purposes of the reportable
25 conduct scheme;

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

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;

1 *reportable allegation* has the meaning given in
2 section 19F;

3 *reportable conduct* has the meaning given in
4 section 19G;

5 *reportable conduct scheme* means the scheme
6 established under Part III Division 3B;

7 *reportable conviction* has the meaning given in
8 section 19H;

9

10 **6. Section 19A amended**

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

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

13 After Part III Division 3A insert:
14

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

16 **Subdivision 1 — Preliminary**

17 **19C. Terms used**

18 In this Division —

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

20 *commencement day* means the day on which the
21 *Parliamentary Commissioner Amendment (Reportable
22 Conduct) Act 2021* section 7 comes into operation;

23 *employee*, of a relevant entity, has the meaning given
24 in section 19D;

25 *investigation*, of a matter, includes any preliminary or
26 other inquiry into, or examination of, the matter;

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investigation information means information —

- (a) relating to a reportable allegation or a reportable conviction involving an employee of a relevant entity; or
- (b) obtained as a result of an investigation into a reportable allegation or reportable conviction conducted by the Commissioner or a relevant entity; or
- (c) relating to any of the following —
 - (i) the progress, conduct or findings of an investigation referred to in paragraph (b);
 - (ii) any disciplinary or other action taken or not taken in relation to an employee of a relevant entity as a result of the findings of an investigation referred to in paragraph (b);
 - (iii) any action taken, or proposed to be taken, by a relevant entity, as a result of the findings of an investigation referred to in paragraph (b), 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;

physical assault means —

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

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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

- 1 (vi) an offence that, at the time it was
2 committed (whether before, on or after
3 commencement day), was an offence of
4 a kind referred to in paragraph (a).

5 **19D. Employees of relevant entities**

- 6 (1) An *employee*, of a relevant entity, is an individual who
7 has reached 18 years of age and is —
8 (a) an officer or employee of the relevant entity,
9 whether or not the individual's work is in
10 connection with any work or activities of the
11 entity that relate to children; or
12 (b) engaged by the entity to provide services to
13 children, including as a volunteer or contractor;
14 or
15 (c) engaged by another person or body to provide
16 services to children on behalf of the entity,
17 including as a volunteer or contractor; or
18 (d) engaged by the entity as a carer (as defined in
19 the CCS Act section 3), whether for payment or
20 not; or
21 (e) a family day care educator or family day care
22 educator assistant (as those terms are defined in
23 the Education and Care Services National Law
24 (Western Australia) section 5(1)) engaged by or
25 registered with the entity.
- 26 (2) For the purposes of subsection (1)(a), if the relevant
27 entity is a religious body, a reference to an officer or
28 employee —
29 (a) includes a reference to a minister of religion
30 and a religious leader of the religious body; but

- 1 (b) does not include a reference to a person only
2 because the person participates in worship.
- 3 (3) For the purposes of subsection (1)(a), if the relevant
4 entity is the Police Force of Western Australia, a
5 reference to an officer or employee includes a reference
6 to a person appointed under the *Police Act 1892* Part I
7 as an officer or constable of the Police Force.
- 8 (4) For the purposes of subsection (1)(b) and (c), a
9 reference to a contractor includes a reference to the
10 following —
- 11 (a) an officer of, or a person employed or engaged
12 to work for, a contractor;
- 13 (b) a subcontractor of a contractor;
- 14 (c) an officer of, or a person employed or engaged
15 to work for, a subcontractor;
- 16 (d) a volunteer working for a contractor or a
17 subcontractor.

18 **19E. Head of a relevant entity**

- 19 (1) The *head* of a relevant entity that is a department or an
20 organisation, as those terms are defined in the *Public*
21 *Sector Management Act 1994* section 3(1), is —
- 22 (a) the chief executive officer or chief employee of
23 the department or organisation; or
- 24 (b) the delegate of the chief executive officer or the
25 chief employee of the department or
26 organisation.
- 27 (2) The *head* of a relevant entity that is an authority, other
28 than a department or an organisation referred to in
29 subsection (1) is —
- 30 (a) the chief executive officer of the authority; or

- 1 (b) if there is no chief executive officer — the
2 president, chairperson or other principal or
3 presiding member of the authority, or if the
4 authority is constituted by a single person, that
5 person; or
6 (c) the delegate of a person referred to in
7 paragraph (a) or (b).
- 8 (3) The *head* of a relevant entity that is not a department,
9 organisation or authority referred to in subsection (1)
10 or (2) is —
11 (a) the chief executive officer of the relevant entity
12 (however described); or
13 (b) if there is no chief executive officer — the
14 principal officer of the relevant entity (however
15 described); or
16 (c) if there is no chief executive officer or principal
17 officer of the relevant entity — a person, or the
18 holder of a position, in the relevant entity
19 nominated by the entity and approved by the
20 Commissioner under section 19Q; or
21 (d) the delegate of a person referred to in
22 paragraph (a), (b) or (c).
- 23 (4) The regulations may prescribe a person or class of
24 persons to be the head of a relevant entity.
- 25 (5) Regulations referred to in subsection (4) have effect
26 despite subsections (1), (2) and (3).

27 **19F. Reportable allegation**

- 28 (1) A *reportable allegation* is any information that leads a
29 person to form the belief on reasonable grounds that an
30 employee of a relevant entity has engaged in reportable
31 conduct or conduct that may involve reportable

1 conduct, whether or not the conduct is alleged to have
2 occurred in the course of the employee's employment.

3 (2) However, a *reportable allegation* does not include
4 information relating to a reportable conviction.

5 **19G. Reportable conduct**

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

- 11 (a) a sexual offence;
- 12 (b) sexual misconduct;
- 13 (c) a physical assault committed against, with or in
14 the presence of, a child;
- 15 (d) an offence prescribed by the regulations for the
16 purposes of this paragraph.

17 (2) However, *reportable conduct* does not include conduct
18 that is —

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

29 or

- 30 (b) trivial or negligible and that has been or will be
31 investigated and recorded as part of another
32 workplace procedure; or

1 (c) of a class or kind exempt from being reportable
2 conduct under section 19N(1).

3 (3) For the purposes of this section, *conduct* includes an
4 act or omission.

5 **19H. Reportable conviction**

6 (1) A *reportable conviction* is a conviction, whether
7 before, on or after commencement day, for an offence
8 under a law of this State, another State, a Territory or
9 the Commonwealth that is an offence referred to in
10 section 19G(1)(a) or (d).

11 (2) For the purposes of subsection (1), a *conviction* for an
12 offence committed by a person is a reference to any of
13 the following —

14 (a) a court making a formal finding of guilt in
15 relation to the offence;

16 (b) if there has been no formal finding of guilt
17 before conviction — a court convicting the
18 person of the offence;

19 (c) a court accepting a plea of guilty from the
20 person in relation to the offence;

21 (d) a court acquitting the person following a
22 finding under *The Criminal Code* section 27
23 that the person is not guilty of the offence on
24 account of unsoundness of mind or an acquittal
25 following an equivalent finding under a law of
26 another State, a Territory or the
27 Commonwealth.

28 (3) For the purposes of subsection (1), a reference to a
29 *conviction* includes a reference to a conviction that is a
30 spent conviction.

31 (4) For the purposes of subsection (3), an offence becomes
32 spent if, under a law of this State, another State, a

1 Territory or the Commonwealth, the person concerned
2 is permitted not to disclose the fact that the person was
3 convicted or found guilty of the offence.

4 (5) For the purposes of subsection (1), a reference to a
5 **conviction** does not include a reference to a conviction
6 that is subsequently quashed or set aside by a court.

7 **19I. Entities to which reportable conduct scheme applies**

8 The reportable conduct scheme applies to an entity set
9 out in column 2 of Schedule 2 that —

- 10 (a) exercises care, supervision or authority over
11 children as part of its primary functions or
12 otherwise; and
13 (b) is not exempt under section 19O(1).

14 **19J. Object and principles**

15 (1) The object of this Division is to protect children from
16 harm by establishing and implementing a scheme
17 for —

- 18 (a) preventing reportable conduct; and
19 (b) reporting, notifying and investigating reportable
20 allegations and reportable convictions; and
21 (c) taking appropriate action in response to
22 findings of reportable conduct.

23 (2) The reportable conduct scheme is based on the
24 principles that —

- 25 (a) if a child is able to form views on a matter
26 concerning a reportable allegation or reportable
27 conviction and it is appropriate in the
28 circumstances to consult the child —
29 (i) the child must be given the opportunity
30 to express the views freely; and

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

16 **19K. Paramount consideration**

17 The Commissioner and any other person performing
18 functions under this Division must regard the best
19 interests of children as the paramount consideration.

20 **19L. Certain provisions not applicable if entity is agent
21 of Crown**

22 Sections 19U(6), 19W(7), 19Z(4) and 19ZC(4) do not
23 apply if the relevant entity is an agent of the Crown.

24 **Subdivision 2 — Role of Commissioner**

25 **19M. Functions of Commissioner in relation to scheme**

- 26 (1) The Commissioner has the following functions in
27 relation to the reportable conduct scheme —
- 28 (a) to oversee and monitor the reportable conduct
29 scheme;

- 1 (b) to educate and provide advice to relevant
2 entities in order to assist them to identify and
3 prevent reportable conduct and to notify and
4 investigate reportable allegations and reportable
5 convictions;
- 6 (c) to support relevant entities to make continuous
7 improvement in the identification and
8 prevention of reportable conduct and the
9 reporting, notification and investigation of
10 reportable allegations and reportable
11 convictions;
- 12 (d) to monitor the investigation of reportable
13 allegations and reportable convictions by
14 relevant entities;
- 15 (e) if the Commissioner considers it to be in the
16 public interest to do so — to investigate
17 reportable allegations and reportable
18 convictions;
- 19 (f) if the Commissioner considers it to be in the
20 public interest to do so — to investigate
21 whether reportable allegations or reportable
22 convictions have been appropriately handled or
23 investigated or responded to by the head of a
24 relevant entity;
- 25 (g) to make recommendations to relevant entities in
26 relation to the findings of the investigations
27 referred to in paragraph (e) or (f);
- 28 (h) to monitor the compliance of relevant entities
29 with the reportable conduct scheme and
30 whether appropriate and timely action is taken
31 by a relevant entity;

- 1 (i) to monitor a relevant entity's systems for
2 preventing, notifying and dealing with
3 reportable conduct;
- 4 (j) to report to Parliament on the reportable
5 conduct scheme;
- 6 (k) to perform any other function conferred on the
7 Commissioner under this Division.
- 8 (2) Without limiting the Commissioner's investigation
9 powers under this Act, the Commissioner may exercise
10 any power and perform any function the Commissioner
11 has under Divisions 3 and 4 for the purpose of
12 performing the Commissioner's functions under this
13 Division.

14 **19N. Commissioner may exempt conduct**

- 15 (1) The Commissioner may, in accordance with the
16 regulations, exempt a class or kind of conduct of
17 employees of a relevant entity, or a class or kind of
18 relevant entity, from being reportable conduct.
- 19 (2) The Commissioner must publish the details of an
20 exempt class or kind of conduct on the Commissioner's
21 website.

22 **19O. Commissioner may exempt entities**

- 23 (1) The Commissioner may exempt an entity from the
24 reportable conduct scheme.
- 25 (2) The Commissioner must give written notice to an
26 entity of an exemption under subsection (1) that relates
27 to the entity.

- 1 (3) An exemption under subsection (1) continues until the
2 Commissioner gives the entity written notice that the
3 exemption is revoked.

4 **19P. Commissioner may exempt investigations**

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

1 (6) The head of the relevant entity is not required to
2 provide a report of an investigation under
3 section 19Z(1) if the investigation is exempt under this
4 section.

5 **19Q. Commissioner may approve head of relevant entity**
6 **in certain circumstances**

- 7 (1) This section applies to a relevant entity if —
- 8 (a) the entity is not a department or an
9 organisation, as those terms are defined in the
10 *Public Sector Management Act 1994*
11 section 3(1), or an authority; and
- 12 (b) there is no chief executive officer of the entity
13 (however described) or principal officer of the
14 entity (however described); and
- 15 (c) the regulations do not prescribe a person to be
16 the head of the entity.
- 17 (2) The relevant entity must nominate a person or the
18 holder of a position in the entity to be the head of the
19 entity.
- 20 (3) The nomination must be in writing and given to the
21 Commissioner.
- 22 (4) The Commissioner may, by written notice given to the
23 relevant entity, approve the person or holder of the
24 position in the entity nominated by the entity under
25 subsection (2) to be the head of the entity.
- 26 (5) The Commissioner may, by written notice given to the
27 entity, revoke an approval under subsection (4).

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

2 **19R. Head of relevant entity must ensure systems in**
3 **place**

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

- 6 (a) a system for preventing reportable conduct by
7 employees of the relevant entity in the course
8 of their employment; and
- 9 (b) a system for enabling any person, including an
10 employee of the relevant entity, to report to the
11 head of the relevant entity a reportable
12 allegation or reportable conviction involving an
13 employee of the relevant entity; and
- 14 (c) a system for enabling any person, including an
15 employee of the relevant entity, to report to the
16 Commissioner a reportable allegation or
17 reportable conviction involving the head of the
18 relevant entity; and
- 19 (d) a system for notifying the Commissioner of a
20 report to the head of the relevant entity of a
21 reportable allegation or reportable conviction
22 involving an employee of the relevant entity;
23 and
- 24 (e) a system for investigating a reportable
25 allegation or reportable conviction relating to
26 an employee of the relevant entity and taking
27 appropriate action in response to a finding of
28 reportable conduct; and
- 29 (f) a system for the receipt, handling and
30 disclosure of investigation information.

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19S. Commissioner may require information about systems

- (1) The Commissioner may request the head of a relevant entity to provide to the Commissioner any information about a system referred to in section 19R.
- (2) The head of a relevant entity must comply with a request under subsection (1).
- (3) The Commissioner may make recommendations for action to be taken by the head of a relevant entity in relation to a system referred to in section 19R and may provide the head of the relevant entity with any necessary information relating to the recommendations.

Subdivision 4 — Notice, investigation and reporting

19T. Report of reportable allegation or reportable conviction

- (1) This section applies if a person becomes aware of —
 - (a) information that leads the 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; or
 - (b) a reportable conviction involving an employee of a relevant entity.
- (2) If the person is a relevant employee of the relevant entity, the person must, as soon as practicable —
 - (a) report the matter to the head of the relevant entity; or

- 1 (b) if the matter relates to the head of the relevant
2 entity — report the matter to the
3 Commissioner.
- 4 (3) If the person is not a relevant employee of the relevant
5 entity, the person may —
- 6 (a) report the matter to the head of the relevant
7 entity; or
- 8 (b) if the matter relates to the head of the relevant
9 entity — report the matter to the
10 Commissioner.
- 11 (4) For the purposes of subsections (2) and (3), a person is
12 a *relevant employee* of a relevant entity if the person is
13 an employee of the relevant entity under
14 section 19D(1)(a).
- 15 (5) 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 **19U. 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 or alias)
32 of the employee;

- 1 (c) the date of birth of the employee;
- 2 (d) the identifying number of any application made
- 3 by the employee for an assessment notice under
- 4 the *Working with Children (Criminal Record*
- 5 *Checking) Act 2004* or any current assessment
- 6 notice issued to the employee under that Act;
- 7 (e) whether the police have been contacted about
- 8 the reportable allegation or reportable
- 9 conviction;
- 10 (f) the risk assessment made and the risk
- 11 management action taken, or proposed to be
- 12 taken, by the relevant entity;
- 13 (g) the name, address and telephone number of the
- 14 relevant entity;
- 15 (h) the name of the head of the relevant entity;
- 16 (i) how the head of the relevant entity intends to
- 17 proceed with the matter;
- 18 (j) any information prescribed by the regulations.
- 19 (3) The head of the relevant entity is only required to
- 20 provide information under subsection (2)(a), (b), (c),
- 21 (d), (e) and (j) of which the head of the relevant entity
- 22 is aware.
- 23 (4) The Commissioner, at the request of the head of the
- 24 relevant entity, may, in writing —
- 25 (a) extend the time for giving a notice under this
- 26 section; or
- 27 (b) exempt the relevant entity from providing
- 28 information that the entity would otherwise be
- 29 required to provide under this section.
- 30 (5) This section does not apply in relation to conduct of
- 31 employees of a relevant entity that is of a class or kind
- 32 that is exempt under section 19N(1).

- 1 (6) It is an offence for the head of a relevant entity to fail,
2 without reasonable excuse, to comply with
3 subsection (2).
4 Penalty for this subsection: a fine of \$5 000.
- 5 (7) It is a defence to a charge for an offence against
6 subsection (6) for the person charged to prove that the
7 person honestly and reasonably believed that another
8 person had notified the Commissioner of the reportable
9 allegation or reportable conviction in accordance with
10 subsection (2).
- 11 **19V. Information may be disclosed to Commissioner or**
12 **head of entity**
- 13 (1) The head of a relevant entity may disclose any
14 information to the Commissioner that the head of the
15 relevant entity believes on reasonable grounds —
16 (a) reveals reportable conduct involving an
17 employee of the relevant entity; or
18 (b) is otherwise relevant to a reportable allegation
19 involving an employee of the relevant entity.
- 20 (2) A person may disclose any information to the
21 Commissioner that the person believes on reasonable
22 grounds —
23 (a) reveals reportable conduct involving the head
24 of a relevant entity; or
25 (b) is otherwise relevant to a reportable allegation
26 involving the head of a relevant entity.
- 27 (3) A person who makes a report to the head of a relevant
28 entity under section 19T may disclose any information
29 to the head of the relevant entity that the person
30 believes on reasonable grounds —
31 (a) reveals reportable conduct involving an
32 employee of the relevant entity; or

1 (b) is otherwise relevant to a reportable allegation
2 involving an employee of the relevant entity.

3 (4) A person who has made a report to the head of the
4 relevant entity under section 19T and is not satisfied
5 with the response of the head of the relevant entity to
6 the report may disclose any information to the
7 Commissioner that the person believes on reasonable
8 grounds —

9 (a) reveals reportable conduct involving an
10 employee of the relevant entity; or

11 (b) is otherwise relevant to a reportable allegation
12 involving an employee of the relevant entity.

13 **19W. Head of relevant entity must respond to reportable**
14 **allegation or reportable conviction**

15 (1) As soon as practicable after the head of a relevant
16 entity becomes aware of a reportable allegation or
17 reportable conviction involving an employee of the
18 relevant entity, the head of the relevant entity —

19 (a) must —

20 (i) investigate the reportable allegation or
21 reportable conviction; or

22 (ii) arrange for an employee of the relevant
23 entity to investigate the reportable
24 allegation or reportable conviction on
25 behalf of the head of the relevant entity;
26 or

27 (iii) engage a person or body as an
28 independent investigator to investigate
29 the reportable allegation or reportable
30 conviction on behalf of the head of the
31 relevant entity;

32 and

- 1 (b) must inform the Commissioner of the name and
2 contact details of the person or body, or
3 position or unit in the relevant entity,
4 responsible for conducting the investigation on
5 behalf of the relevant entity.
- 6 (2) The head of a relevant entity must take all reasonable
7 steps to ensure that an investigation under
8 subsection (1) is carried out in a timely way.
- 9 (3) As soon as practicable after conducting an
10 investigation in relation to an employee under
11 subsection (1), the head of a relevant entity must
12 either —
- 13 (a) make a finding of reportable conduct in relation
14 to the employee if the head of relevant entity
15 has formed the view, on reasonable grounds,
16 that reportable conduct involving the employee
17 has occurred; or
- 18 (b) make a finding that there are no grounds, or no
19 reasonable grounds, for the head of the relevant
20 entity to form the view that reportable conduct
21 involving the employee has occurred.
- 22 (4) As soon as practicable after making a finding of
23 reportable conduct in relation to an employee under
24 this Act, the head of the relevant entity must ensure
25 that —
- 26 (a) appropriate action is taken in relation to the
27 employee in response to the finding; and
- 28 (b) if the head of the relevant entity has formed the
29 view that it is needed, appropriate action is
30 taken to improve the identification or
31 prevention of reportable conduct or the
32 reporting, notification or investigation of
33 reportable allegations and reportable

1 convictions involving employees of the relevant
2 entity.

3 (5) The Commissioner may, in writing, request the head of
4 a relevant entity to provide investigation information to
5 the Commissioner.

6 (6) The head of a relevant entity must comply with a
7 request under subsection (5).

8 (7) It is an offence for the head of a relevant entity to fail,
9 without reasonable excuse, to comply with
10 subsection (1) or (6).

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

12 **19X. Informing employee of certain matters and giving**
13 **employee opportunity to make submissions**

14 (1) This section applies if an employee of a relevant entity
15 is the subject of an investigation under section 19W(1).

16 (2) Before any adverse finding in relation to the employee
17 is made as a result of the investigation, the head of the
18 relevant entity —

19 (a) must —

20 (i) inform the employee that the employee
21 is the subject of the investigation; and

22 (ii) inform the employee of the reportable
23 allegation or reportable conviction being
24 investigated; and

25 (iii) give the employee an opportunity to
26 make submissions to the head of the
27 relevant entity setting out the
28 employee's response in relation to the
29 reportable allegation or reportable
30 conviction being investigated;

31 and

- 1 (b) must, after complying with paragraph (a) and
2 considering any submissions made by the
3 employee —
- 4 (i) inform the employee of the proposed
5 adverse finding; and
- 6 (ii) give the employee an opportunity to
7 make submissions to the head of the
8 relevant entity setting out the
9 employee's responses in relation to the
10 proposed adverse finding.
- 11 (3) Before any disciplinary or other action is taken in
12 relation to the employee as a result of the findings of
13 the investigation, the head of the relevant entity
14 must —
- 15 (a) inform the employee of the action that is
16 proposed to be taken; and
- 17 (b) give the employee an opportunity to make
18 submissions to the head of the relevant entity
19 setting out the employee's response in relation
20 to the action that is proposed to be taken.

21 **19Y. Commissioner must be notified of matters affecting**
22 **investigation**

- 23 (1) The head of a relevant entity must, as soon as
24 practicable, notify the Commissioner if, in relation to a
25 matter being investigated under section 19W(1), the
26 head of the relevant entity —
- 27 (a) forms the view on reasonable grounds that —
- 28 (i) the matter does not constitute reportable
29 conduct; or
- 30 (ii) the report of the matter to the relevant
31 entity under section 19T is frivolous or
32 vexatious or not made in good faith;

- 1 or
- 2 (b) becomes aware that another appropriate person
- 3 or body is dealing with or investigating the
- 4 matter; or
- 5 (c) is required by law to comply with the directions
- 6 of another person or body in relation to the
- 7 investigation of the matter; or
- 8 (d) is requested or directed by another appropriate
- 9 person or body to cease, or discontinue for a
- 10 period, the investigation of the matter.
- 11 (2) The notice must —
- 12 (a) be given in writing and be in the form approved
- 13 by the Commissioner (if any); and
- 14 (b) contain the information required by the
- 15 Commissioner.
- 16 (3) The head of the relevant entity may, in the notice,
- 17 request the Commissioner to exempt the head of the
- 18 relevant entity under section 19P(1) from the
- 19 requirement to continue the investigation.

20 **19Z. Head of relevant entity must report outcome of**

21 **investigation to Commissioner**

- 22 (1) The head of a relevant entity must, as soon as
- 23 practicable after the end of an investigation under
- 24 section 19W(1), give the Commissioner —
- 25 (a) a written report setting out —
- 26 (i) the findings of the investigation and the
- 27 reasons for those findings; and
- 28 (ii) any submissions made by the employee
- 29 under section 19X; and

- 1 (iii) any disciplinary or other action taken, or
2 proposed to be taken, in relation to the
3 employee as a result of the findings of
4 the investigation; and
- 5 (iv) if the entity does not propose to take any
6 disciplinary or other action in relation to
7 the employee — the reasons why no
8 action is to be taken; and
- 9 (v) any action taken, or proposed to be
10 taken, as a result of the findings of the
11 investigation, to improve the
12 identification or prevention of
13 reportable conduct, or the reporting,
14 notification or investigation of
15 reportable allegations and reportable
16 convictions, involving employees of the
17 relevant entity;
- 18 and
- 19 (b) any other information that the head of the
20 relevant entity considers relevant to the report.
- 21 (2) After receiving the report and other information, the
22 Commissioner may, by written notice given to the head
23 of the relevant entity, request any additional
24 information specified in the notice that the
25 Commissioner considers relevant to determine
26 whether —
- 27 (a) the reportable allegation or reportable
28 conviction was properly investigated; and
- 29 (b) appropriate action was taken as a result of the
30 investigation.
- 31 (3) The head of a relevant entity must comply with a
32 request 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 **19ZA. Head of relevant entity must report outcome of**
6 **investigation to employee if employee informed of**
7 **investigation**

- 8 (1) This section applies if an employee of a relevant entity
9 is the subject of an investigation under section 19W(1)
10 and the head of the relevant entity has informed the
11 employee of the investigation.

- 12 (2) The head of a relevant entity must, as soon as
13 practicable after the end of an investigation under
14 section 19W(1), give the employee —

- 15 (a) written notice stating that the investigation has
16 ended; and
17 (b) a written report setting out the findings of the
18 investigation and the reasons for those findings.

19 **19ZB. Commissioner may conduct own investigation**

- 20 (1) The Commissioner may conduct an investigation into
21 any of the following —

- 22 (a) any reportable allegation or reportable
23 conviction involving an employee of a relevant
24 entity;
25 (b) the handling or investigation by the head of a
26 relevant entity of a reportable allegation or
27 reportable conviction involving an employee of
28 the relevant entity;
29 (c) any action taken or not taken by the head of a
30 relevant entity in response to a finding of
31 reportable conduct in relation to an employee of
32 the relevant entity.

- 1 (2) The Commissioner must not conduct an investigation
2 under this section unless the Commissioner considers
3 that it is in the public interest to do so.
- 4 (3) The Commissioner may decide to conduct an
5 investigation under this section —
- 6 (a) on the Commissioner’s own initiative; or
7 (b) in response to a report or disclosure under this
8 Division; or
9 (c) in response to a complaint made to the
10 Commissioner by an employee of a relevant
11 entity in relation to any of the following —
- 12 (i) the handling or investigation by the
13 head of a relevant entity under this
14 Division of a reportable allegation or
15 reportable conviction involving the
16 employee;
- 17 (ii) a finding of reportable conduct in
18 relation to the employee;
- 19 (iii) any action taken or not taken by the
20 head of a relevant entity in response to a
21 finding of reportable conduct in relation
22 to the employee;
- 23 or
- 24 (d) in response to a complaint made to the
25 Commissioner by any other person in relation
26 to any of the following that affects the person in
27 the person’s personal capacity —
- 28 (i) the handling or investigation by the
29 head of a relevant entity under this
30 Division of a reportable allegation or
31 reportable conviction involving an
32 employee of the relevant entity;

- 1 (ii) a finding of reportable conduct in
2 relation to an employee of the relevant
3 entity;
- 4 (iii) any action taken or not taken by the
5 head of a relevant entity in response to a
6 finding of reportable conduct in relation
7 to an employee of the relevant entity.
- 8 (4) The Commissioner may make the following findings
9 following an investigation under subsection (1)(a) —
- 10 (a) in the case of an investigation of a reportable
11 allegation involving an employee of a relevant
12 entity —
- 13 (i) that the Commissioner is of the opinion
14 that the employee has engaged in
15 reportable conduct; or
- 16 (ii) that there are no grounds, or no
17 reasonable grounds, for the
18 Commissioner to form the opinion that
19 the employee has engaged in reportable
20 conduct;
- 21 (b) in the case of an investigation of a reportable
22 conviction involving an employee of a relevant
23 entity —
- 24 (i) that the employee has a reportable
25 conviction; or
- 26 (ii) that the employee does not have a
27 reportable conviction.

- 1 **19ZC. Notice to head of relevant entity of Commissioner’s**
2 **investigation**
- 3 (1) If the Commissioner decides to conduct an
4 investigation under section 19ZB, the Commissioner
5 must give the head of the relevant entity written notice
6 stating —
- 7 (a) that the Commissioner intends to conduct an
8 investigation under section 19ZB; and
9 (b) the matters to be investigated; and
10 (c) whether the Commissioner requires the head of
11 the relevant entity not to commence, or to
12 suspend, an investigation into a matter the
13 Commissioner has decided to investigate.
- 14 (2) The Commissioner, on completing an investigation
15 under section 19ZB, may require the head of the
16 relevant entity to continue an investigation that is
17 suspended under subsection (1)(c).
- 18 (3) The head of a relevant entity must, as far as
19 practicable, comply with a requirement of the
20 Commissioner under subsection (1)(c) or (2).
- 21 (4) It is an offence for the head of a relevant entity to fail,
22 without reasonable excuse, to comply with
23 subsection (3).
- 24 Penalty for this subsection: a fine of \$5 000.
- 25 **19ZD. Provisions relating to investigation under**
26 **section 19ZB(1)(a)**
- 27 (1) This section applies if the Commissioner decides to
28 conduct an investigation under section 19ZB(1)(a).

- 1 (2) The Commissioner must give the employee who is the
2 subject of the investigation written notice stating —
3 (a) that the Commissioner intends to conduct an
4 investigation under section 19ZB(1)(a); and
5 (b) the reportable allegation or reportable
6 conviction to be investigated.
- 7 (3) As soon as practicable after the investigation ends, the
8 Commissioner —
9 (a) must give the head of the relevant entity —
10 (i) written notice stating that the
11 investigation has ended; and
12 (ii) a written report setting out the findings
13 of the investigation and the reasons for
14 those findings;
15 and
16 (b) may make any recommendations that the
17 Commissioner thinks fit.
- 18 (4) The head of a relevant entity must not take any action
19 to implement a recommendation of the Commissioner
20 under subsection (3)(b) involving an employee of the
21 relevant entity until the later of the following —
22 (a) the end of the period under section 19ZF(2) for
23 the employee to apply for a review of a finding
24 of the Commissioner on the investigation;
25 (b) if the employee makes an application under
26 section 19ZF(1) for a review of a finding of the
27 Commissioner on the investigation — the final
28 determination of the review.
- 29 (5) Nothing in subsection (4) prevents —
30 (a) the CEO as defined in the CCS Act section 3
31 from taking action under that Act to safeguard
32 or promote a child’s wellbeing; or

- 1 (b) the head of a relevant entity taking any action
2 that the head of the relevant entity considers
3 should be taken to safeguard or promote a
4 child's wellbeing.
- 5 (6) As soon as practicable after the investigation ends, the
6 Commissioner must give the employee who was the
7 subject of the investigation —
- 8 (a) written notice stating that the investigation has
9 ended; and
- 10 (b) a written report setting out —
- 11 (i) the findings of the investigation and the
12 reasons for those findings; and
- 13 (ii) any recommendation made under
14 subsection (3)(b) in relation to the
15 employee.

16 **19ZE. Provision relating to investigation under**
17 **section 19ZB(1)(b) or (c)**

- 18 As soon as practicable after an investigation referred to
19 in section 19ZB(1)(b) or (c) ends, the Commissioner —
- 20 (a) must give the head of the relevant entity —
- 21 (i) written notice stating that the
22 investigation has ended; and
- 23 (ii) a written report setting out the findings
24 of the investigation and the reasons for
25 those findings;
- 26 and
- 27 (b) may make any recommendations that the
28 Commissioner thinks fit.

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

18 **19ZG. Concurrent investigations or proceedings**

- 19 (1) This section applies if —
- 20 (a) the Commissioner of Police advises the
21 Commissioner or the head of a relevant entity
22 that an investigation or finding under this
23 Division is likely to compromise a police
24 investigation; or
- 25 (b) another person or body with authority to
26 investigate the conduct of an employee of a
27 relevant entity advises the Commissioner or the
28 head of the relevant entity that an investigation
29 or finding under this Division is likely to
30 compromise an investigation by that person or
31 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.
- 7 (3) Before making a decision under subsection (2)(a) about
8 whether to suspend or continue an investigation, the
9 Commissioner or the head of the relevant entity must
10 consult with, as the case requires —
- 11 (a) the Commissioner of Police or the officer in
12 charge of the police investigation; or
- 13 (b) the person or body conducting the relevant
14 investigation.
- 15 (4) Before making a decision under subsection (2)(b) about
16 the steps to be taken to manage risks, the
17 Commissioner or the head of the relevant entity must
18 consult with, as the case requires —
- 19 (a) the Commissioner of Police or the officer in
20 charge of the police investigation; or
- 21 (b) the person or body conducting the relevant
22 investigation.
- 23 (5) If the head of the relevant entity decides to suspend an
24 investigation or finding under this section, the head of
25 the relevant entity must advise the Commissioner of —
- 26 (a) the suspension; and
27 (b) the steps being taken to manage the risks.
- 28 (6) If the Commissioner or the head of the relevant entity
29 decides not to suspend the investigation, the
30 Commissioner or the head of the relevant entity must
31 ensure the investigation is conducted in a way that does

1 not compromise the police investigation or the relevant
2 investigation, as the case requires.

3 (7) This section does not affect the operation of any other
4 Act.

5 (8) In this section, a reference to a police investigation or
6 relevant investigation includes a reference to any court
7 proceeding (including an appeal) arising out of the
8 investigation.

9 **Subdivision 5 — Disclosure of information**

10 **19ZH. Disclosure of information to child, parent, guardian**
11 **or other person with parental responsibility**

12 (1) The Commissioner or the head of a relevant entity may
13 disclose information about the matters referred to in
14 subsection (2) to —

15 (a) a child who is the subject of conduct that forms
16 the basis of a reportable allegation or a
17 reportable conviction that is being, or has been,
18 investigated by the Commissioner or the head
19 of the relevant entity; or

20 (b) a parent or guardian of a child referred to in
21 paragraph (a), or a person who has parental
22 responsibility for the child.

23 (2) For the purposes of subsection (1), the matters are —

24 (a) the progress of the investigation; or

25 (b) the findings of the investigation; or

26 (c) any action taken as a result of the investigation.

- 1 (3) The Commissioner or the head of a relevant entity must
2 not disclose information under subsection (1) —
3 (a) if the disclosure would —
4 (i) put the wellbeing of the child, or the
5 safety of any other person, at risk; or
6 (ii) contravene the CCS Act section 124F
7 or 240; or
8 (iii) compromise an investigation under this
9 Act, a police investigation, a relevant
10 investigation referred to in
11 section 19ZG or an investigation under
12 another Act;
13 or
14 (b) if the disclosure would be to a parent, guardian
15 or other person referred to in subsection (1)(b)
16 and the Commissioner, or head of the relevant
17 entity, is satisfied that the child has sufficient
18 maturity and understanding to consent to the
19 disclosure and the child does not consent to the
20 disclosure; or
21 (c) in any circumstances prescribed by the
22 regulations.

23 **19ZI. Commissioner may request information about**
24 **reportable convictions**

- 25 (1) In this section —
26 **Registrar**, of a relevant court, means —
27 (a) in the case of the Supreme Court — the
28 Principal Registrar of the Supreme Court; or
29 (b) in the case of the District Court — the Principal
30 Registrar of the District Court; or

1 (c) in the case of the Magistrates Court — the
2 Principal Registrar of the Magistrates Court; or

3 (d) in the case of the Children’s Court — a
4 registrar of the Children’s Court;

5 *relevant court* means the Supreme Court, the District
6 Court, the Magistrates Court or the Children’s Court.

7 (2) The Commissioner may request a Registrar of a
8 relevant court to provide information relating to a
9 reportable conviction entered against an employee of a
10 relevant entity that the Commissioner reasonably
11 requires for the purposes of an investigation under the
12 reportable conduct scheme.

13 (3) The Commissioner is authorised to disclose
14 information obtained under this Division or Division 3
15 or 4 for the purpose of that request.

16 (4) A Registrar of a relevant court to whom a request for
17 information is made under subsection (2) is authorised
18 to disclose the information to the Commissioner for the
19 purposes of an investigation under the reportable
20 conduct scheme.

21 (5) This section applies despite section 13(2).

22 **19ZJ. Prohibition on publishing certain information**

23 (1) In this section —

24 *publish* means to disseminate to the public or a section
25 of the public by any means, including the following —

26 (a) in a book, newspaper, magazine or other
27 written publication;

28 (b) by radio broadcast, television, a website, an
29 online facility or other electronic means.

- 1 (2) A person must not publish, or cause to be published,
2 information that identifies, or is likely to lead to the
3 identification of, another person as a person who has
4 made a report under section 19T.
5 Penalty for this subsection: imprisonment for 2 years or
6 a fine of \$8 000.
- 7 (3) A person must not publish, or cause to be published,
8 information that identifies, or is likely to lead to the
9 identification of, another person as a child who is the
10 subject of conduct that forms the basis of —
11 (a) a report that has been made under section 19T;
12 or
13 (b) a finding of reportable conduct in relation to an
14 employee of a relevant entity that has been
15 made under this Act.
16 Penalty for this subsection: imprisonment for 2 years or
17 a fine of \$8 000.
- 18 (4) A person does not commit an offence under
19 subsection (2) or (3) if the publication of the
20 information is authorised under any other Act.

21 **Subdivision 6 — Review of amendments made by**
22 ***Parliamentary Commissioner Amendment (Reportable***
23 ***Conduct) Act 2021***

24 **19ZK. Review of amendments made by *Parliamentary***
25 ***Commissioner Amendment (Reportable Conduct)***
26 ***Act 2021***

- 27 (1) The Minister must review the operation and
28 effectiveness of the amendments made to this Act by
29 the *Parliamentary Commissioner Amendment*
30 *(Reportable Conduct) Act 2021*, and prepare a report
31 based on the review, as soon as practicable after the

- 1 5th anniversary of the day on which section 7 of that
2 Act comes into operation.
- 3 (2) The review must include consideration as to whether
4 the reportable conduct scheme should be expanded to
5 apply to any other entities.
- 6 (3) The Minister must cause the report to be laid before
7 each House of Parliament as soon as practicable after it
8 is prepared, but not later than 12 months after the
9 5th anniversary.
- 10

11 **8. Section 19 amended**

12 After section 19(8) insert:

13

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

27 **9. Section 20 amended**

28 (1) In section 20(2A) after “investigation” insert:

29

30 by the Commissioner

31

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

2

3 (2AA) No obligation to maintain secrecy or other restriction
4 upon the disclosure of information obtained by or
5 furnished to the head of a relevant entity or an
6 investigator conducting an investigation under
7 Division 3B, whether imposed by any enactment or by
8 any rule of law, applies to the disclosure of information
9 for the purposes of an investigation by the
10 Commissioner under this Act.
11

12 (3) In section 20(2B):

13 (a) delete “Crown or any authority to which this Act
14 applies” and insert:

15

16 Crown, any authority to which this Act applies or a
17 relevant entity

18

19 (b) delete “such investigation” insert:

20

21 investigation by the Commissioner under this Act
22

23 (4) In section 20(3):

24 (a) delete “(2A) and (2B), a person is not compelled for the
25 purposes of an investigation” and insert:

26

27 (2A), (2AA) and (2B), a person is not compelled for the
28 purposes of an investigation by the Commissioner
29

29

30 (b) delete “he” and insert:

31

32 the person
33

1 **10. Section 21 amended**

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

3

4 (1) For

5

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

7

8 (2) For the purposes of conducting an investigation under
9 Division 3B, the Commissioner may, at any time, enter
10 any premises occupied or used by any relevant entity,
11 and inspect those premises or any thing for the time
12 being in those premises.

13

14 **11. Section 22A amended**

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

17

18 concerning —

19 (a) any complaint under this Act; or

20 (b) any investigation under this Act, other than an
21 investigation conducted for the purposes of the
22 reportable conduct scheme.

23

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

25 **Consultation other than in relation to reportable conduct scheme**

1 **12. Section 22AA inserted**

2 After section 22A insert:

3

4 **22AA. Consultation in relation to reportable conduct**
5 **scheme**

- 6 (1) The Commissioner may consult any of the persons or
7 bodies specified in subsection (2) concerning —
8 (a) a reportable allegation or reportable conviction;
9 or
10 (b) any investigation under this Act conducted for
11 the purposes of the reportable conduct scheme;
12 or
13 (c) any other matter that is relevant to the functions
14 of the Commissioner under the reportable
15 conduct scheme.
- 16 (2) For the purposes of subsection (1), the persons and
17 bodies are —
18 (a) the Corruption and Crime Commission;
19 (b) the Public Sector Commissioner;
20 (c) the Inspector of Custodial Services;
21 (d) the Director of Public Prosecutions;
22 (e) a person or body that has functions under the
23 law of another State, a Territory or the
24 Commonwealth that substantially correspond to
25 the functions of the Commissioner under the
26 reportable conduct scheme.
- 27 (3) The Commissioner or the head of a relevant entity may
28 consult any of the persons or bodies specified in
29 subsection (4) concerning —
30 (a) a reportable allegation or reportable conviction;
31 or

- 1 (b) any investigation under this Act conducted for
2 the purposes of the reportable conduct scheme;
3 or
4 (c) any other matter that is relevant to the functions
5 of the Commissioner or the head of the relevant
6 entity under the reportable conduct scheme.
- 7 (4) For the purposes of subsection (3), the persons and
8 bodies are —
9 (a) the Commissioner of Police;
10 (b) the Commissioner for Children and Young
11 People;
12 (c) the CEO as defined in the CCS Act section 3;
13 (d) the CEO as defined in the *Working with*
14 *Children (Criminal Record Checking) Act 2004*
15 section 4.
- 16 (5) Information obtained by the Commissioner, the Deputy
17 Commissioner or a member of the Commissioner's
18 staff under this Act for the purposes of the reportable
19 conduct scheme may be disclosed for the purposes of
20 any consultation by the Commissioner under
21 subsection (1) or (3).
- 22 (6) Information obtained by the head of a relevant entity or
23 an investigator conducting an investigation under
24 Division 3B for the purposes of the reportable conduct
25 scheme may be disclosed for the purposes of any
26 consultation by the head of the relevant entity under
27 subsection (3).
28

1 **13. Section 22B amended**

2 In section 22B:

3 (a) after “this Act” insert:

4

5 (other than an investigation conducted for the purposes
6 of the reportable conduct scheme)

7

8 (b) in paragraph (e)(ii) delete “Commissioner,” and insert:

9

10 Commissioner for Children and Young People,

11

12 Note: The heading to amended section 22B is to read:

13 **Disclosure of certain information other than in relation to**
14 **reportable conduct scheme**

15 **14. Section 22C inserted**

16 After section 22B insert:

17

18 **22C. Disclosure of certain information in relation to**
19 **reportable conduct scheme**

20 (1) In this section —

21 *reportable conduct information* means information
22 obtained by the Commissioner, the Deputy
23 Commissioner or a member of the Commissioner’s
24 staff for the purposes of the reportable conduct scheme.

25 (2) The Commissioner, the Deputy Commissioner or a
26 member of the Commissioner’s staff authorised for the
27 purposes of this section by the Commissioner or the

1 Deputy Commissioner may disclose reportable conduct
2 information if —

3 (a) the information —

4 (i) is disclosed to a person referred to in
5 section 22B(aa), (b), (c), (d) or (ea); and

6 (ii) concerns a matter of a kind for which
7 information can be disclosed to that
8 person under section 22B;

9 or

10 (b) the information —

11 (i) is disclosed to the Commissioner of
12 Police; and

13 (ii) concerns a matter that is relevant to the
14 functions of the Commissioner of
15 Police;

16 or

17 (c) the information —

18 (i) is disclosed to the Commissioner for
19 Children and Young People or a
20 member of the staff of the
21 Commissioner for Children and Young
22 People authorised for the purposes of
23 this subparagraph by the Commissioner
24 for Children and Young People; and

25 (ii) concerns a matter that is relevant to the
26 functions of the Commissioner for
27 Children and Young People under the
28 *Commissioner for Children and Young
29 People Act 2006*;

30 or

31 (d) the information —

32 (i) is disclosed to the CEO as defined in the
33 CCS Act section 3 or a member of the

- 1 staff of the Department as defined in
2 that section; and
- 3 (ii) concerns a matter that is relevant to the
4 functions of the CEO under that Act;
- 5 or
- 6 (e) the information —
- 7 (i) is disclosed to the CEO as defined in the
8 *Working with Children (Criminal*
9 *Record Checking) Act 2004* section 4 or
10 an officer of the Department as defined
11 in that section; and
- 12 (ii) concerns a matter that is relevant to the
13 functions of the CEO under that Act.
14

15 **15. Section 23 amended**

16 (1) In section 23(1):

17 (a) after “an investigation” (1st occurrence) insert:

18

19 by the Commissioner

20

21 (b) in paragraph (c) delete “section 22A or 22B.” and insert:

22

23 Division 3B or section 22A, 22AA, 22B or 22C(2).

24

25 (2) In section 23(1a) delete “relates, and a person to whom such a
26 direction is given shall” and insert:

27

28 relates or any other purpose specified in the direction, and a
29 person to whom such a direction is given must

30

- 1 (3) In section 23(1b):
2 (a) delete “his opinion,” and insert:
3
4 the Commissioner’s opinion,
5
6 (b) delete “applies or of any person,” and insert:
7
8 applies, of any person or of the proper operation of the
9 reportable conduct scheme,
10
- 11 (4) In section 23(1d)(a) delete “department or authority” and insert:
12
13 department, authority or relevant entity
14
- 15 (5) In section 23(1e):
16 (a) delete “he shall,” and insert:
17
18 the Commissioner must,
19
20 (b) after section 23(1e)(a) insert:
21
22 (aa) if the opinions relate to a relevant entity, the
23 head of the relevant entity; or
24
25 (c) delete “before him” and insert:
26
27 before the Commissioner
28

1 **16. Section 23A amended**

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

3

4 (1) Any

5

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

7

8 (2) Subsection (1) does not apply to a document sent to the
9 Commissioner, the Deputy Commissioner or a member
10 of the Commissioner’s staff or by the Commissioner,
11 the Deputy Commissioner or a member of the
12 Commissioner’s staff in the course of, or for the
13 purposes of —

14 (a) an investigation by the head of a relevant entity
15 under section 19W(1); or

16 (b) an investigation by the Commissioner under
17 section 19ZB(1)(a).

18

19 Note: The heading to amended section 23A is to read:

20 **Certain documents sent to or by Commissioner not admissible**

21 **17. Section 25 amended**

22 After section 25(7) insert:

23

24 (8) This section applies in relation to an investigation by
25 the Commissioner for the purposes of the reportable
26 conduct scheme as follows —

27 (a) any reference to the appropriate authority is
28 taken to be a reference to the relevant entity;

29 (b) any reference to the principal officer of the
30 appropriate authority is taken to be a reference
31 to the head of the relevant entity;

- 1 (c) subsection (3) applies only if the investigation
2 relates to a relevant entity that is a department
3 or authority;
- 4 (d) for the purposes of an investigation referred to
5 in section 19ZB(1)(a) —
- 6 (i) subsections (1) and (2) do not apply;
7 and
- 8 (ii) a reference in subsections (3) to (5) to a
9 recommendation under subsection (2) is
10 taken to be a reference to a
11 recommendation under
12 section 19ZD(3)(b).
13

14 **18. Section 28 inserted**

15 At the end of Part III Division 5 insert:
16

17 **28. Annual report to include report on reportable**
18 **conduct scheme**

- 19 (1) The annual report of the accountable authority of the
20 Parliamentary Commissioner for Administrative
21 Investigations under the *Financial Management*
22 *Act 2006* Part 5 must include a report about the
23 operation of the reportable conduct scheme in the
24 financial year to which the report relates, including the
25 following —
- 26 (a) a description of the activities of the
27 Commissioner in relation to the reportable
28 conduct scheme;
- 29 (b) an evaluation of the response of relevant
30 entities to the recommendations of the
31 Commissioner under the reportable conduct
32 scheme;

- 1 (c) a description of matters relating to the
2 reportable conduct scheme, including trends,
3 notifications and investigations.
- 4 (2) A report under subsection (1) must not include
5 information that could lead to the identification of a
6 child or a person investigated under the reportable
7 conduct scheme.
- 8 (3) This section does not limit the power of the
9 Commissioner under section 27(1) to also, at any time,
10 lay before each House of Parliament a report in relation
11 to the reportable conduct scheme.
12

13 **19. Section 29 amended**

14 After section 29(2) insert:
15

- 16 (3) References in this section, in relation to an
17 investigation for the purposes of the reportable conduct
18 scheme, to the party subject to the investigation include
19 references to the relevant entity or the head of the
20 relevant entity.
21

22 **20. Section 29A inserted**

23 After section 29 insert:
24

25 **29A. Delegation by Commissioner of Police**

- 26 (1) The Commissioner of Police may delegate any power
27 or duty of the Commissioner of Police under
28 section 19ZG, 22AA or 22C(2)(b) to the following
29 persons —
30 (a) a specified police officer;

- 1 (b) police officers of a specified rank or class;
2 (c) another person appointed or employed under
3 the *Police Act 1892*.
- 4 (2) The delegation must be in writing signed by the
5 Commissioner of Police.
- 6 (3) A person to whom a power or duty is delegated under
7 this section cannot delegate that power or duty.
- 8 (4) A person exercising or performing a power or duty that
9 has been delegated to the person under this section is
10 taken to do so in accordance with the terms of the
11 delegation unless the contrary is shown.
- 12 (5) Nothing in this section limits the ability of the
13 Commissioner of Police to perform a function through
14 an officer or agent.
15

16 **21. Section 30AA inserted**

17 After section 30A insert:
18

19 **30AA. Protection from liability for giving information:**
20 **reportable conduct scheme**

- 21 (1) This section applies if a person acting in good faith —
22 (a) gives a report, notification or information to the
23 Commissioner under Part III Division 3B or in
24 the course of, or for the purposes of, an
25 investigation into a reportable allegation or
26 reportable conviction under this Act; or
27 (b) gives a report, notification or information to the
28 head of a relevant entity under Part III
29 Division 3B; or
30 (c) gives information to an investigator conducting
31 an investigation under Part III Division 3B.

- 1 (2) The report, notification or information may be given
2 despite any other enactment, law or agreement that
3 prohibits or restricts its disclosure.
- 4 (3) In giving the information or making the report or
5 notification the person —
- 6 (a) does not incur any civil or criminal liability or
7 liability to be punished for a contempt of court;
8 and
- 9 (b) is not to be taken to have breached any duty of
10 confidentiality or secrecy imposed by law; and
- 11 (c) is not to be taken to have breached any
12 professional ethics or standards or any
13 principles of conduct applicable to the person's
14 employment or to have engaged in
15 unprofessional conduct.
- 16 (4) Civil proceedings cannot be brought against a person in
17 respect of an act referred to in subsection (1)(a), (b)
18 or (c) without the leave of the Supreme Court, and the
19 Supreme Court must not give leave unless it is satisfied
20 that there is substantial ground for the contention that
21 the person to be proceeded against has acted in bad
22 faith.

23

24 **22. Section 30B amended**

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

- 26
- 27 (ea) has made or will or may in the future make a
28 report to the head of a relevant entity or the
29 Commissioner under section 19T or give a
30 notification to the Commissioner under Part III
31 Division 3B; or

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

8 **23. Section 33 replaced**

9 Delete section 33 and insert:
10

11 **33. Regulations**

12 The Governor may make regulations —

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

19 **24. Schedule 1 amended**

20 In Schedule 1 delete the item relating to the *State Administrative*
21 *Tribunal Act 2004*.

1 **25. Schedule 2 inserted**

2 After Schedule 1 insert:

3

4 **Schedule 2 — Relevant entities to which this Act**
5 **applies**

6

[s. 19I]

Column 1

Column 2

Public bodies

A department.
An authority.

Providers of education services

A school as defined in the *School Education Act 1999* section 4.

A college or other vocational education and training institution as those terms are defined in the *Vocational Education and Training Act 1996* section 5(1).

A registered training provider as defined in the *Vocational Education and Training Act 1996* section 5(1).

A university established under a written law.

An Australian university college, an authorised non-university institution or a recognised overseas university as those terms are defined in the *Higher Education Act 2004* section 3.

Providers of health services

A health service provider as defined in the *Health Services Act 2016* section 6.

A private hospital service provider as defined in the *Private Hospitals and Health Services Act 1927* section 2(1).

Column 1

Column 2

	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.
	A provider of a drug and alcohol treatment service that has inpatient beds for children.
	An ambulance service.
Providers of out-of-home care services	A person who has entered into an agreement under the CCS Act section 15(1) for the provision of placement services.
Providers of child care services	An education and care service as defined in the <i>Education and Care Services National Law (Western Australia)</i> section 5(1).
	A child care service as defined in the <i>Child Care Services Act 2007</i> section 4.
Providers of youth justice services	A provider of a detention centre as defined in the <i>Young Offenders Act 1994</i> section 3.
	A provider of community justice services funded by the department principally assisting in the administration of the <i>Young Offenders Act 1994</i> .

1

2

Division 2 — Additional amendments

3

26. Section 19G amended

4

After section 19G(1)(c) insert:

5

6

(ca) significant neglect of a child;

7

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

8

9

1 **27. Schedule 2 amended**

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

4

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) creches and other child minding services;
- (f) dance groups;
- (g) faith-based children's and youth groups;
- (h) multi-faith networks;
- (i) open days;
- (j) prayer groups;
- (k) religious community engagement and outreach;
- (l) religious festivals and celebrations;
- (m) religious services;
- (n) sports teams;
- (o) Saturday schools, Sunday schools and after school religious education;
- (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 specifically for children as part of its primary activities 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 as part of its primary activity.

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

1

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