

PARLIAMENTARY COMMISSIONER AMENDMENT (REPORTABLE CONDUCT) BILL 2021

AMENDED EXPLANATORY MEMORANDUM

Introduction

The Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2021 (**the Bill**) seeks to establish a legislated reportable conduct scheme in Western Australia (**the Scheme**). In doing so, the Bill implements recommendations 7.9, 7.10, 7.11 and 7.12 of the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse (**the Royal Commission**) recommending that:

State and territory governments should establish nationally consistent legislative schemes (reportable conduct schemes), based on the approach adopted in New South Wales, which oblige heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees.¹

In seeking to establish the Scheme, the Bill amends the *Parliamentary Commissioner Act 1971* (**the Act**). The Act creates an office of the Parliamentary Commissioner for Administrative Investigations (also referred to as the Ombudsman) (**the Commissioner**). The Commissioner is an independent, impartial officer of Parliament.

The Scheme will provide independent oversight of how organisations handle allegations of, and convictions for, child abuse. The Bill will compel heads of government and non-government organisations to notify the Commissioner of abuse involving children within their organisation (employees, volunteers and contractors) so that the Commissioner can then review investigation findings or undertake investigations on their own motion.

The Scheme will apply to organisations that exercise a high degree of responsibility for children and where there is a heightened risk of child abuse. An estimated 4000 organisations in Western Australia will be covered by the Scheme, including accommodation and residential services; religious institutions; childcare services; child protection and out-of-home care services; disability services; education services; health services; and justice and detention services.

The Scheme will be phased in, with childcare services, child protection and out-of-home care services, education services, health services and justice and detention services covered in the first year and the remaining services after 12 months of operation of the Scheme. The type of conduct will also be phased in, with sexual offences, sexual misconduct, physical assault and other prescribed offences covered by the Scheme in the first year and the remaining types of conduct after 12 months of operation of the Scheme.

Importantly, the Bill provides that the Commissioner, and any other person performing functions under the Scheme, must regard the best interests of children as the paramount consideration.

To minimise the impact on children, the Bill provides mechanisms to minimise duplication of interviews and investigations, including providing for consultation and sharing of information between the Commissioner and other investigatory or oversight bodies, such as the Western Australia Police Force. It also includes the capacity for the Commissioner to exempt an organisation from an investigation, where the matter is being, or has been, investigated by another appropriate person or body. These mechanisms also prevent duplication of effort for the organisations covered by the Scheme.

¹ *Royal Commission into Institutional Responses to Child Sexual Abuse – Final Report volume 7 Improving institutional responding and reporting, 15 December 2017, page 283*

To support the disclosure of information relating to reportable allegations and reportable convictions, the Bill provides protection from liability and victimisation for people giving a report, notification or information to the Commissioner, the head of the organisation or an investigator for the purposes of an investigation under the Scheme.

Part 1 — Preliminary

Clause 1 Short Title

Once enacted, the short title of the Bill will be the *Parliamentary Commissioner Amendment (Reportable Conduct) Act 2021 (Amendment Act)*.

Clause 2 Commencement

Clause 2 provides that Part 1 comes into operation on the day on which the Amendment Act receives the Royal Assent; Part 2 Division 2 – Additional Amendments comes into operation on the day after the period of 12 months beginning on the day on which section 7 comes into operation (clause 7 inserts Part III Division 3B – Reportable conduct scheme); and the rest of the Amendment Act on a day fixed by proclamation.

Clause 3 Act amended

Clause 3 provides that the Amendment Act amends the Act.

Part 2 — *Parliamentary Commissioner Act 1971* amended

Division 1 — General amendments

Clause 4 Long title amended

Clause 4 amends the long title of the Act to include reference to the reportable conduct scheme. Once enacted, the long title will be “An Act to provide for the appointment of a Parliamentary Commissioner for Administrative Investigations with functions relating to the investigation of administrative action taken by or on behalf of certain departments and authorities, to the deaths of certain children and to the reportable conduct scheme”.

Clause 5 Section 4 amended

Clause 5 amends section 4 of the Act and inserts definitions for terms relevant to the Scheme, that apply to both Part III Division 3B of the Act – Reportable conduct scheme and provisions in other parts of the Act that have been amended to provide for the Scheme.

The terms ‘Commissioner of Police’, ‘investigator’, ‘religious body’ and ‘reportable conduct scheme’ are defined in section 4. The term ‘CCS Act’ is also defined in section 4, having been relocated from another part of the Act.

CCS Act means the *Children and Community Services Act 2004*;

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

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

religious body means a body established or operated for a religious purpose that operates under the auspices of 1 or more religious denominations or faiths;

reportable conduct scheme means the scheme established under Part III Division 3B.

For the definitions of key terms, section 4 provides a reference to relevant sections in Part III Division 3B which provide detailed definitions. These key terms are 'head, of a relevant entity' (referred to new section 19E), 'relevant entity' (referred to new section 19I), 'reportable allegation' (referred to new section 19F), 'reportable conduct' (referred to new section 19G) and 'reportable conviction' (referred to new section 19H). Further explanation of these definitions is provided under these new sections.

Clause 6 Section 19A amended

Clause 6 amends section 19A(1) of the Act and deletes the definition, 'CCS Act', from section 19A(1) of the Act as the term is now defined in section 4 of the Act.

Clause 7 Part III Division 3B inserted

This new division establishes the reportable conduct scheme by inserting Part III Division 3B of the Act – Reportable conduct scheme, which includes new sections 19C to 19ZK of the Act.

Subdivision 1 – Preliminary

Section 19C. Terms used

Clause 7 creates a new section 19C of the Act and defines the terms relevant to the Scheme. The new terms defined within section 19C include 'child', 'commencement day', 'investigation', 'investigation information', 'physical assault', 'sexual misconduct' and 'sexual offence' as set out below.

For the term 'employee', section 19C provides a reference to new section 19D in Part III Division 3B which provides a detailed definition. Further explanation of this definition is provided under section 19D.

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

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

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

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;

sexual misconduct —

- (a) includes misconduct against, with or in the presence of, a child that is sexual in nature; but
- (b) does not include a sexual offence;

sexual offence —

- (a) means an offence of a sexual nature under a law of this State, another State, a Territory or the Commonwealth, committed against, with or in the presence of, a child; and
- (b) includes, without limitation —
 - (i) an offence under *The Criminal Code* Chapter XXXI committed against, with or in the presence of, a child; and
 - (ii) an offence of a sexual nature under *The Criminal Code* Chapter XXV; and
 - (iii) an offence of a sexual nature under any other provision of *The Criminal Code* committed against, with or in the presence of, a child; and
 - (iv) an offence under a law of another State, a Territory or the Commonwealth the elements of which, if they had occurred in this State, would have constituted an offence of a kind referred to in subparagraph (i), (ii) or (iii); and
 - (v) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind referred to in subparagraphs (i) to (iv) or paragraph (a); and
 - (vi) an offence that, at the time it was committed (whether before, on or after commencement day), was an offence of a kind referred to in paragraph (a).

The definitions of physical assault, sexual misconduct and sexual offence are relevant to the definition of reportable conduct in new section 19G of the Act, which sets out the conduct that is intended to be captured by the Scheme. The definition of investigation information is relevant to new section 19R (Head of an entity must ensure systems in place), which provides for ‘a system for the receipt, handling and disclosure of investigation information’ and new section 19W (Head of relevant entity must respond to reportable allegation or reportable conviction), which provides that ‘the Commissioner may, in writing, request the head of a relevant entity to provide investigation information to the Commissioner’.

The definition of ‘sexual misconduct’ is intended to protect children from harm by capturing a broad range of inappropriate behaviours of a sexual nature that occur against, with or in the presence of a child. The definition is also intended to be consistent with the relevant recommendations of the Royal Commission and for national consistency. The comparative legislation in New South Wales provides examples of sexual misconduct, including:

- descriptions of sexual acts without a legitimate reason to provide the descriptions;
- sexual comments, conversations or communications; and
- comments to a child that express a desire to act in a sexual manner towards the child or another child.

The definition of sexual offence is intended to capture a broad range of offences 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 includes offences of attempting, or of conspiracy or incitement, to commit such an offence and offences committed before, on or after the commencement of the reportable conduct scheme.

Section 19D. Employees of relevant entities

Clause 7 creates a new section 19D of the Act and defines an employee of a relevant entity for the purposes of the Scheme.

This section is intended to define 'employee of a relevant entity' broadly to capture a wide range of individuals over the age of 18 including paid employees, volunteers, contractors and ministers of religion. This is consistent with the Royal Commission finding that reportable conduct schemes should require reporting of conduct by any individual engaged by an institution to provide services to children, whether or not they are a paid employee. The broad definition will include:

- (a) an officer or employee of the relevant entity, whether or not the individual's work is in connection with any work or activities of the entity that relate to children; or
- (b) engaged by the entity to provide services to children, including as a volunteer or contractor; or
- (c) engaged by another person or body to provide services to children on behalf of the entity, including as a volunteer or contractor; or
- (d) engaged by the entity as a carer (as defined in the *Children and Community Services Act 2004* section 3), whether for payment or not; or
- (e) a family day care educator or family day care educator assistant (as those terms are defined in the *Education and Care Services National Law (Western Australia)* section 5(1)) engaged by or registered with the entity.

Section 19D(2) provides that for the purposes of section 19D(1)(a), if the relevant entity is a religious body, a reference to an officer or employee:

- (i) includes a reference to a minister of religion and a religious leader of the religious body; but
- (ii) does not include a reference to a person only because the person participates in worship.

Section 19D(3) provides that for the purposes of section 19D(1)(a), if the relevant entity is the Police Force of Western Australia, a reference to an officer or employee includes a reference to a person appointed under the *Police Act 1892* Part I as an officer or constable of the Police Force.

Section 19D(4) provides that for the purposes of section 19D(1)(b) and (c), a reference to a contractor includes a reference to the following:

- (a) an officer of, or a person employed or engaged to work for, a contractor;
- (b) a subcontractor of a contractor;
- (c) an officer of, or a person employed or engaged to work for, a subcontractor;
- (d) a volunteer working for a contractor or a subcontractor.

Section 19E. Head of a relevant entity

Clause 7 creates a new section 19E of the Act and defines the head of a relevant entity for the purposes of the Scheme.

Section 19E(1) provides that the head of a relevant entity that is a department or an organisation as defined in the *Public Sector Management Act 1994* section 3(1) is the chief executive officer or chief employee of the department or organisation; or the delegate of the chief executive officer or chief employee of the department or organisation.

Section 19E(2) provides that the head of a relevant entity that is an authority, other than a department or organisation as referred to in section 19E(1) is the chief executive officer of the authority; or if there is no chief executive officer, the president, chairperson or other principal or presiding member of the authority, or if the authority is constituted by a single person, that person; or the delegate of any of these people.

Section 19E(3) provides that the head of a relevant entity that is not a department, organisation or authority referred to in sections 19E(1) or (2), is the chief executive officer of the relevant entity (however described); or if there is no chief executive officer, the principal officer of the relevant entity (however described); or if there is no chief executive officer or principal officer of the relevant entity, a person or the holder of a position in the relevant entity nominated by the entity and approved by the Commissioner under new section 19Q (Commissioner may approve head of relevant entity in certain circumstances); or the delegate of any of these people.

Sections 19E(4) and (5) provide that the regulations may prescribe a person or class of persons to be the head of a relevant entity and that these regulations have effect despite sections 19E(1), (2) or (3).

This section is intended to provide a specified head of an entity who is responsible for an entity's compliance with the Scheme.

Section 19F. Reportable allegation

Clause 7 creates a new section 19F of the Act and defines reportable allegation for the purposes of the Scheme.

Section 19F(1) provides that a reportable allegation is any information that leads a person to form the belief on reasonable grounds that an employee of a relevant entity has engaged in reportable conduct (as defined in new section 19G) 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.

Section 19F(2) provides that a reportable allegation does not include information relating to a reportable conviction (defined in new section 19H).

It is intended that the threshold of 'belief on reasonable grounds' for a reportable allegation is used to be consistent with the terminology used for mandatory reporting under the *Children and Community Services Act 2004*.

This section is intended to maximise clarity for employees who may be required to make both a mandatory report under the *Children and Community Services Act 2004* and a report to the head of a relevant entity under the Scheme.

Conduct is included whether or not the conduct is alleged to have occurred in the course of the employee's employment. It is intended that this will capture conduct that occurred in a past workplace

and provide for situations where the employee has multiple workplaces (such as contractors and volunteers) as well as alleged abuse of a child that occurs outside of any workplace.

Section 19G. Reportable conduct

Clause 7 creates a new section 19G of the Act and defines reportable conduct for the purposes of the Scheme.

Section 19G(1) defines reportable conduct as the following conduct, whether or not a criminal proceeding in relation to the conduct has been commenced or concluded and whether the conduct occurred before, on or after the commencement of the Scheme:

- a sexual offence;
- sexual misconduct;
- a physical assault committed against, with or in the presence of, a child; and
- an offence prescribed by the regulations.

Section 19G(2) provides that reportable conduct does not include conduct that is:

- reasonable for the discipline, management or care of a child or of another person in the presence of a child, having regard to:
 - the characteristics of the child, including the age, health and developmental stage of the child; and
 - any relevant code of conduct or professional standard that at the time applied to the discipline, management or care of the child or the other person; or
- trivial or negligible and that has been or will be investigated and recorded as part of another workplace procedure; or
- of a class or kind exempt from being reportable conduct under section 19N(1) (Commissioner may exempt conduct).

Section 19G(3) provides that for the purposes of this section, conduct includes an act or omission.

After 12 months of operation of the Scheme, the definition of reportable conduct under section 19G will include the conduct set out in clause 26:

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

The inclusion of 'significant neglect' in the definition of reportable conduct is intended to be consistent with the definition of reportable conduct in other relevant jurisdictions. The kind of conduct that constitutes significant neglect includes: supervisory neglect; physical neglect; educational neglect and emotional neglect.

The inclusion of 'any behaviour that causes significant emotional or psychological harm to a child' in the definition of reportable conduct is intended to be consistent with the definition of reportable conduct in other jurisdictions. The kind of conduct that constitutes any behaviour that causes significant emotional or psychological harm to a child includes: coercive or manipulative behaviour; or hostility towards, or rejection of, a child.

The phased implementation is intended to provide an appropriate amount of time for relevant entities to prepare for their reporting obligations, as well as enabling the Commissioner to provide effective guidance and assistance to entities over the implementation period.

This section is intended to be consistent with the relevant recommendations of the Royal Commission and nationally consistent, by including:

- a broad range of types of abuse for children at risk (as set out above); and
- conduct, whether or not a criminal proceeding in relation to the conduct has commenced or concluded.

Section 19H. Reportable conviction

Clause 7 creates a new section 19H of the Act and defines the term reportable conviction for the purposes of the Scheme.

Section 19H(1) defines a reportable conviction as a conviction that occurred before, on or after the commencement of the Scheme for an offence under a law of this State, another State, a Territory or the Commonwealth where the offence is an offence referred to in section 19G(1)(a)(a sexual offence) or section 19G(1)(d) (an offence prescribed by the regulations).

Section 19H(2) provides that for the purposes of section 19H(1), a conviction for an offence committed by a person is a reference to:

- a court making a finding of guilt in relation to the offence;
- if there has been no formal finding of guilt before conviction, a court convicting the person of the offence;
- a court accepting a plea of guilty from the person in relation to the offence;
- a court acquitting the person following a finding under *The Criminal Code* section 27 that the person is not guilty on account of unsoundness of mind or an acquittal following an equivalent finding under a law of another State, a Territory or the Commonwealth.

Section 19H(3) provides that for the purposes of section 19H(1), a reference to a conviction includes a reference to a conviction that is a spent conviction.

Section 19H(4) provides that for the purposes of section 19H(3), an offence becomes spent if, under a law of this State, another State, a Territory or the Commonwealth, the person concerned is permitted not to disclose the fact that the person was convicted or found guilty of the offence.

Section 19H(5) provides that a conviction does not include a conviction that is subsequently quashed or set aside by a court.

The inclusion of reportable conviction is intended to capture current employees that have committed such offences involving a child and therefore may present a current risk to children.

Section 19I. Entities to which reportable conduct scheme applies

Clause 7 creates a new section 19I of the Act and sets out the entities to which the Scheme applies.

Section 19I provides that the Scheme applies to an entity set out in column 2 of Schedule 2 that exercises care, supervision or authority over children as part of its primary functions or otherwise; and, is not exempt from the Scheme by the Commissioner under section 19O(1) (Commissioner may exempt entities).

Column 2 of Schedule 2 of the Act includes the following relevant entities:

- A department.
- An authority.

- 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.
- 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).
- A provider of a mental health service as defined in the *Mental Health Act 2014* 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.
- A person who has entered into an agreement under the *Children and Community Services Act 2004* section 15(1) for the provision of placement services.
- An education and care service as defined in the *Education and Care Services National Law (Western Australia)* section 5(1).
- A child care service as defined in the *Child Care Services Act 2007* section 4.
- A provider of a detention centre as defined in the *Young Offenders Act 1994* section 3.
- A provider of community justice services funded by the department principally assisting in the administration of the *Young Offenders Act 1994*.

After 12 months of operation of the Scheme, column 2 of Schedule 2 will be amended to include the following relevant entities set out in clause 27:

- 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 —

- altar serving;
- art groups;
- bible study groups;
- choirs and music groups;
- creches and other child minding services;
- dance groups;
- faith-based children's and youth groups;
- multi-faith networks;
- open days;
- prayer groups;
- religious community engagement and outreach;
- religious festivals and celebrations;

- religious services;
 - sports teams;
 - Saturday schools, Sunday schools and after school religious education;
 - tutoring services;
 - youth camps.
- 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);
 - 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.

The phased implementation is intended to provide an appropriate amount of time for relevant entities to prepare for their reporting obligations, as well as enabling the Commissioner to provide effective guidance and assistance to entities over the implementation period.

Section 19J. Objects and principles

Clause 7 creates a new section 19J of the Act and outlines the objects and principles upon which the Scheme is based.

Section 19J(1) provides that the object of the Scheme is to protect children from harm by establishing and implementing a scheme for preventing reportable conduct; reporting, notifying and investigating reportable allegations and reportable convictions; and taking appropriate action in response to findings of reportable conduct.

Section 19J(2) provides that the Scheme is based on the following principles:

- Child participation, namely, if a child is able to form views on a matter concerning a reportable allegation or reportable conviction and it is appropriate in the circumstances to consult the child, the child must be given the opportunity to express their views freely and their views are to be given due weight in the investigation in accordance with their developmental capacity and the circumstances;
- Criminal conduct or suspected criminal conduct should be reported to the police;
- The Commissioner 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 being investigated are entitled to be afforded natural justice in investigations into their conduct.

These principles are intended to serve as a guide to the Commissioner and relevant entities in interpreting and applying the Act but not to create any new obligations.

Section 19K. Paramount consideration

Clause 7 creates a new section 19K of the Act and provides that the Commissioner and any other person performing functions under the Scheme must regard the best interests of children as the paramount consideration.

The requirement to regard the best interests of children as the paramount consideration is intended to guide the decision making of the Commissioner and relevant entities as it is the approach that will be most protective of children at risk and to ensure consistency with relevant child protection legislation in Western Australia, namely, the *Children and Community Services Act 2004* and the *Working with Children (Criminal Record Checking) Act 2004*.

Section 19L. Certain provisions not applicable if entity is agent of Crown

Clause 7 creates a new section 19L of the Act and provides that sections 19U(6), 19W(7), 19Z(4) and 19ZC(4) do not apply if the relevant entity is an agent of the Crown. These sections relate to offences which cannot be enforced against the Crown.

Subdivision 2 – Role of the Commissioner

Section 19M. Functions of Commissioner in relation to scheme

Clause 7 creates a new section 19M of the Act and provides that the Commissioner has the following functions in relation to the Scheme:

- to oversee and monitor the Scheme;
- to educate and provide advice to relevant entities to assist them to identify and prevent reportable conduct and to notify and investigate reportable allegations and reportable convictions;
- to support relevant entities to make continuous improvement in the identification and prevention of reportable conduct and the reporting, notification and investigation of reportable allegations and convictions;
- to monitor the investigation of reportable allegations and reportable convictions by relevant entities;
- if the Commissioner considers it to be in the public interest to do so, to investigate reportable allegations and reportable convictions;
- if the Commissioner considers it to be in the public interest to do so, to investigate whether reportable allegations or reportable convictions have been appropriately handled or investigated or responded to by the head of a relevant entity;
- to make recommendations to relevant entities in relation to section 19M(1)(e) (the findings of an investigation conducted by the Commissioner into reportable allegations or reportable convictions) or section 19M(1)(f) (the findings of an investigation into the handling of an investigation into reportable allegations or reportable convictions by the head of a relevant entity);
- to monitor the compliance of relevant entities with the Scheme and whether appropriate and timely action is taken by a relevant entity;
- to monitor a relevant entity's systems for preventing, notifying and dealing with reportable conduct;
- to report to Parliament on the Scheme; and
- to perform any other function conferred on the Commissioner under the Scheme.

Section 19M(2) provides that without limiting the Commissioner's investigation powers under the Act, the Commissioner may exercise any power and perform any function the Commissioner has under Division 3 – Conduct of investigations and Division 4 – Action on investigations for the purpose of performing the Commissioner's functions under the Scheme.

The inclusion of the Commissioner's powers and functions under Divisions 3 and 4 of the Act are intended to provide for the Commissioner's established investigatory powers and functions to be applied to the Commissioner's new functions under the Scheme.

Section 19N. Commissioner may exempt conduct

Clause 7 creates a new section 19N of the Act and provides that the Commissioner may exempt conduct.

Section 19N(1) provides that the Commissioner may, in accordance with the regulations, exempt a class or kind of conduct of employees of a relevant entity, or a class or kind of relevant entity, from being reportable conduct.

Section 19N(2) provides that the Commissioner must publish the details of an exempt class or kind of conduct on its website.

This section is intended to enable future exemption of a class or kind of conduct where it was inadvertently included in, or it is no longer appropriate or necessary for, the conduct to be captured by, the Scheme. It is also intended that this clause will minimise any inappropriate or unnecessary regulatory burden in relation to specified conduct which does not create a heightened risk for children, while maintaining protection for children from conduct that puts them at risk; to be consistent with the relevant recommendations of the Royal Commission; and for national consistency.

This section will also reduce the notification burden for entities which have established, effective investigation processes and demonstrated ability to respond to investigations to an appropriate standard.

Section 19N, in interaction with section 19O which provides that the Commissioner may exempt entities, is intended to reduce regulatory burden on agencies while still ensuring that the Scheme is protective of children.

Section 19O. Commissioner may exempt entities

Clause 7 creates a new section 19O of the Act and provides that the Commissioner may exempt an entity from the Scheme.

Sections 19O(1) and (2) provide that the Commissioner may exempt an entity from the Scheme and that the Commissioner must give written notice to an entity of an exemption that relates to the entity.

Section 19O(3) provides that the exemption continues until the Commissioner gives the entity written notice that the exemption is revoked.

The Commissioner's power to exempt entities is intended to enable future exemption of entities where they were inadvertently included in, or it is no longer appropriate or necessary for the entity to be captured by, the Scheme.

Section 19P. Commissioner may exempt investigations

Clause 7 creates a new section 19P of the Act and provides that the Commissioner may exempt investigations.

Section 19P(1) provides that the Commissioner may exempt the head of a relevant entity from commencing or continuing an investigation.

Section 19(2) provides that an exemption under section 19P(1) may be for a specified period.

Section 19P(3) provides that, without limiting the Commissioner's power to exempt investigations under section 19P(1), the Commissioner may exempt the head of the relevant entity if:

- the matter is already being dealt with or investigated by another appropriate person or body; or
- the Commissioner is of the opinion that the report of the matter to the relevant entity under section 19T (Report of reportable allegation or reportable conviction) is frivolous or vexatious or not made in good faith; or
- the head of the relevant entity has made a request for the exemption in a notice under section 19Y (Commissioner must be notified of matters affecting investigation).

Section 19P(4) provides that the Commissioner must give written notice to the head of the relevant entity of an exemption under section 19P(1) that relates to the entity.

Section 19P(5) provides that an exemption under section 19P(1) continues until the Commissioner gives the head of the relevant entity written notice that the exemption is revoked, or, if the exemption is for a specified period, the end of the specified period.

Section 19P(6) provides that the head of the relevant entity is not required to provide a report of an investigation under section 19Z(1) (Head of relevant entity must report outcome of investigation to Commissioner) if the investigation is exempt.

The Commissioner's power to exempt relevant entities from commencing or continuing an investigation is intended to enable future exemption of investigations where it is no longer appropriate or necessary for the entity to investigate or continue to investigate. It is further intended to prevent duplication of investigations or to enable investigations to be suspended or ceased during investigations by other bodies such as the Western Australia Police Force or registration bodies.

Section 19Q. Commissioner may approve head of relevant entity in certain circumstances

Clause 7 creates a new section 19Q of the Act and provides that the Commissioner may approve the head of a relevant entity in certain circumstances.

Section 19Q(1) provides that this section applies to a relevant entity if:

- the entity is not a department or an organisation, as those terms are defined in the *Public Sector Management Act 1994* section 3(1), or an authority; and
- there is no chief executive officer of the entity (however described) or principal officer of the entity (however described); and
- the regulations do not prescribe a person to be the head of the entity.

Sections 19Q(2) and (3) provide that the relevant entity must nominate a person or the holder of a position in the entity to be the head of the entity and that the nomination must be given to the Commissioner in writing.

Section 19Q(4) provides that the Commissioner may, by written notice given to the relevant entity, approve the person or holder of the position in the entity nominated by the entity under section 19Q(2) to be the head of the entity.

Section 19Q(5) provides that the Commissioner may, by written notice given to the entity, revoke an approval under section 19Q(4).

The head of a relevant entity is responsible for an entity's compliance with the Scheme and therefore has a critical role in protecting children from harm. This clause is intended to prevent a relevant entity from avoiding their obligations under the Scheme, and therefore placing children at increased risk, by not having a designated head of the entity.

Subdivision 3 – Systems to deal with reportable conduct

Section 19R. Head of relevant entity must ensure systems in place

Clause 7 creates a new section 19R of the Act and provides that the head of a relevant entity must have systems in place to deal with reportable conduct.

Section 19R provides that the head of a relevant entity must ensure that the relevant entity has in place:

- a system for preventing reportable conduct by employees of the relevant entity in the course of their employment; and
- a system for enabling any person, including an employee of the relevant entity, to report to the head of the relevant entity a reportable allegation or reportable conviction involving an employee of the relevant entity; and
- a system for enabling any person, including an employee of the relevant entity, to report to the Commissioner a reportable allegation or reportable conviction involving the head of the relevant entity; and
- a system for notifying the Commissioner of a report to the head of the relevant entity of a reportable allegation or reportable conviction involving an employee of the relevant entity; and
- a system for investigating a reportable allegation or reportable conviction relating to an employee of the relevant entity and taking appropriate action in response to a finding of reportable conduct; and
- a system for the receipt, handling and disclosure of investigation information.

The requirement for the head of a relevant entity to ensure that the relevant entity has systems in place is intended to address the findings of the Royal Commission and promote appropriate handling of reportable allegations and reportable convictions by relevant entities.

Section 19S. Commissioner may require information about systems

Clause 7 creates a new section 19S of the Act and provides that the Commissioner may require information about systems referred to in section 19R (Head of relevant entity must ensure systems in place).

Sections 19S(1) and (2) provide that 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 and that the head of a relevant entity must comply with this request.

Section 19S(3) provides that 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.

Section 19S of the Act is intended to enable the Commissioner to seek further information about a relevant entity's systems and, should a concern be identified, recommend improvements.

As the Commissioner may request information about systems in the absence of a reportable allegation, reportable conviction or reportable conduct finding, this section is further intended to enable the Commissioner to proactively identify and seek to address issues with the systems of relevant entities.

Section 19T. Report of reportable allegation or reportable conviction

Clause 7 creates a new section 19T of the Act and provides for a report of a reportable allegation (as defined in section 19F) or reportable conviction (as defined in section 19H) to be made to the head of a relevant entity or the Commissioner.

Section 19T(1) provides that this section applies if a person becomes aware of 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, a reportable conviction involving an employee of a relevant entity.

Section 19T(2) provides that if the person is a relevant employee of the relevant entity, the person must, as soon as practicable, report the matter to the head of the relevant entity or, if the matter relates to the head of the relevant entity, report the matter to the Commissioner.

Section 19T(3) provides that if the person is not a relevant employee of the relevant entity, the person may report the matter to the head of the relevant entity or, if the matter relates to the head of the relevant entity, report the matter to the Commissioner.

Section 19T(4) provides that for the purposes of sections 19T(3) and (4), a person is a relevant employee of a relevant entity if the person is an employee of the relevant entity under section 19D(1)(a) (an officer or employee of the relevant entity, whether or not the individual's work is in connection with any work or activities of the entity that relate to children).

Section 19T(5) provides that a person who has made a report to the head of the relevant entity under this section may report the matter to the Commissioner if the person is not satisfied with the response of the head of the relevant entity to the report.

This section is intended to strengthen institutional reporting by requiring all relevant employees report a reportable conduct matter to their employer, or if it concerns their employer, to the Commissioner, and allowing all persons who are not relevant employees to report a reportable conduct matter to an employer or, if the matter concerns the head of a relevant entity, to the Commissioner. This section is intended to further strengthen the Scheme by enabling a person to escalate a matter to the Commissioner if they are concerned that the matter is not being appropriately responded to by the head of a relevant entity.

Section 19U. Head of relevant entity must notify Commissioner

Clause 7 creates a new section 19U of the Act and provides that the head of a relevant entity must notify the Commissioner of a reportable allegation or reportable conviction.

Section 19U(1) provides that this section applies if the head of a relevant entity becomes aware of a reportable allegation or a reportable conviction involving a person who is an employee of the relevant entity.

Section 19U(2) provides that the head of the relevant entity must give written notice to the Commissioner of the following information within 7 working days after becoming aware of the reportable allegation or reportable conviction:

- details of the reportable allegation or reportable conviction;
- the name (including any former name or alias) of the employee;
- the date of birth of the employee;
- the identifying number of any application made by the employee for an assessment notice under the *Working with Children (Criminal Record Checking) Act 2004* or any current assessment notice issued to the employee under that Act;
- whether the police have been contacted about the reportable allegation or reportable conviction;
- the risk assessment made and the risk management action taken, or proposed to be taken, by the relevant entity;
- the name, address and telephone number of the relevant entity;
- the name of the head of the relevant entity;
- how the head of the relevant entity intends to proceed with the matter;
- any information prescribed by the regulations.

Section 19U(3) provides that the head of the relevant entity is only required to provide certain information set out above, including details of the matter, the name (including any former name or alias) of the employee, the date of birth of the employee, the identifying number of any application made by the employee for an assessment notice under the *Working with Children (Criminal Record Checking) Act 2004* or any current assessment notice issued to the employee under that Act, whether police have been contacted about the matter and any information prescribed by the regulations, of which the head of the relevant entity is aware.

Section 19U(4) provides that the Commissioner, at the request of the head of the relevant entity, may, in writing, extend the time for giving a notice under this section or exempt them from providing information that they would otherwise be required to provide under this section.

Section 19U(5) provides that this section does not apply in relation to conduct of employees of a relevant entity that is of a class or kind that is exempt under section 19N(1) (Commissioner may exempt conduct).

Section 19U(6) provides that it is an offence for the head of a relevant entity to fail, without reasonable excuse, to comply with section 19U(2), with the penalty for this offence a fine of \$5 000.

Section 19U(7) provides that it is a defence to a charge for an offence against section 19U(6) for the person charged to prove that they honestly and reasonably believed that another person had notified the Commissioner of the reportable allegation or reportable conviction in accordance with section 19U(2).

This section is intended to ensure that the Commissioner is made aware of these matters so that the Commissioner can monitor and provide oversight of the handling and response by the relevant entity.

It is further intended to strike a balance between the importance of responding expeditiously to serious matters, while also allowing sufficient time for the notice to be prepared. Provisions requiring the relevant entity to only provide information of which they are aware, to request an extension for providing the written notice or an exemption from providing certain information in the written notice are further intended to assist the heads of relevant entities to meet their obligations under this section where certain information is not known or readily available. This section also includes an offence for failing to comply with these notification requirements.

Section 19V. Information may be disclosed to Commissioner or head of entity

Clause 7 creates a new section 19V of the Act and provides that information may be disclosed to the Commissioner or the head of a relevant entity.

Section 19V(1) provides that the head of a relevant entity may disclose any information to the Commissioner that the head of the relevant entity believes on reasonable grounds:

- reveals reportable conduct involving an employee of the relevant entity; or
- is otherwise relevant to a reportable allegation involving an employee of the relevant entity.

Section 19V(2) provides that a person may disclose any information to the Commissioner that the person believes on reasonable grounds:

- reveals reportable conduct involving the head of a relevant entity; or
- is otherwise relevant to a reportable allegation involving the head of a relevant entity.

Section 19V(3) provides that a person who makes a report to the head of a relevant entity under section 19T (Report of reportable allegation or reportable conviction) may disclose any information to the head of the relevant entity that the person believes on reasonable grounds:

- reveals reportable conduct involving an employee of the relevant entity; or
- is otherwise relevant to a reportable allegation involving an employee of the relevant entity.

Section 19V(4) provides that a person who has made a report to the head of the relevant entity under section 19T and is not satisfied with the response of the head of the relevant entity to the report may disclose any information to the Commissioner that the person believes on reasonable grounds:

- reveals reportable conduct involving an employee of the relevant entity; or
- is otherwise relevant to a reportable allegation involving an employee of the relevant entity.

This section is intended to support the appropriate reporting of reportable conduct matters so that they can be responded to accordingly. Further protections for providing information under the reportable conduct scheme is contained in sections 30AA (Protection from liability for giving information: reportable conduct scheme) and 30B (Victimisation).

Section 19W. Head of relevant entity must respond to reportable allegation or reportable conviction

Clause 7 creates a new section 19W of the Act and requires the head of a relevant entity to respond to a reportable allegation or reportable conviction.

Section 19W(1) provides that as soon as practicable after the head of a relevant entity becomes aware of a reportable allegation or reportable conviction involving an employee of the relevant entity, the head of the relevant entity must:

- investigate the reportable allegation or reportable conviction; or

- arrange for an employee of the relevant entity to investigate the reportable allegation or reportable conviction on behalf of the head of the relevant entity; or
- engage a person or body as an independent investigator to investigate the reportable allegation or reportable conviction on behalf of the head of the relevant entity; and
- must inform the Commissioner of the name and contact details of the person or body, or position or unit in the relevant entity, responsible for conducting the investigation on behalf of the relevant entity.

Section 19W(2) provides that the head of a relevant entity must take all reasonable steps to ensure that an investigation under section 19W(1) is carried out in a timely way.

Section 19W(3) provides that as soon as practicable after conducting an investigation in relation to an employee under section 19W(1), the head of a relevant entity must either:

- make a finding of reportable conduct in relation to the employee if the head of the relevant entity has formed the view, on reasonable grounds, that reportable conduct involving the employee has occurred; or
- make a finding that there are no grounds, or no reasonable grounds, for the head of the relevant entity to form the view that reportable conduct involving the employee has occurred.

Section 19W(4) provides that as soon as practicable after making a finding of reportable conduct in relation to an employee under the Act, the head of the relevant entity must ensure that appropriate action is taken in relation to the employee in response to the finding and, if the head of the relevant entity has formed the view that it is needed, appropriate action is taken to improve the identification or prevention of reportable conduct or the reporting, notification and investigation of reportable allegations or reportable convictions involving employees of the relevant entity.

Section 19W(5) provides that the Commissioner may, in writing, request the head of a relevant entity to provide investigation information (as defined in section 19C) to the Commissioner and section 19W(6) provides that the head of a relevant entity must comply with this request.

Section 19W(7) provides that it is an offence for the head of a relevant entity to fail, without reasonable excuse, to comply with sections 19W(1) or (6), with the penalty for this offence a fine of \$5 000.

This section is intended to address the findings and recommendations of the Royal Commission by requiring institutions to investigate reportable conduct matters and to facilitate the Commissioner's monitoring of the progress and handling of investigations.

Section 19X. Informing employee of certain matters and giving employee opportunity to make submissions

Clause 7 creates a new section 19X of the Act and requires the head of a relevant entity to inform employees of certain matters and give employees an opportunity to make submissions in relation to an investigation into a reportable allegation or reportable conviction.

Section 19X(1) provides that this section applies if an employee of a relevant entity is the subject of an investigation under section 19W(1) (Head of relevant entity must respond to reportable allegation or reportable conviction).

Section 19X(2) provides that before any adverse finding in relation to the employee is made as a result of the investigation, the head of the relevant entity must:

- inform the employee that they are the subject of the investigation; and

- inform the employee of the reportable allegation or reportable conviction being investigated; and
- give the employee an opportunity to make submissions to the head of the relevant entity setting out their response to the matter being investigated; and
- after complying with the above requirements to inform the employee and to give the employee an opportunity to make submissions and considering any submissions made by the employee, inform the employee of the proposed adverse finding and give them an opportunity to make submissions to the head of the relevant entity setting out their responses in relation to the proposed adverse finding.

Section 19X(3) provides that before any disciplinary or other action is taken in relation to the employee as a result of the findings of the investigation, the head of the relevant entity must inform the employee of the action that is proposed to be taken and give the employee an opportunity to make submissions to the head of the relevant entity setting out the employee's response in relation to the action that is proposed to be taken.

This clause is intended to provide procedural fairness for employees and is consistent with the principle of affording natural justice in investigations into employee conduct under section 19J(d).

Section 19Y. Commissioner must be notified of matters affecting investigation

Clause 7 creates a new section 19Y of the Act and provides that the Commissioner must be notified of matters affecting an investigation.

Section 19Y(1) provides that the head of a relevant entity must, as soon as practicable, notify the Commissioner if, in relation to a matter being investigated under section 19W(1) (Head of relevant entity must respond to reportable allegation or reportable conviction), the head of the relevant entity:

- forms the view on reasonable grounds that:
 - the matter does not constitute reportable conduct; or
 - the report of the matter to the relevant entity under section 19T (Report of reportable allegation or reportable conviction) is frivolous or vexatious or not made in good faith; or
- becomes aware that another appropriate person or body is dealing with or investigating the matter; or
- is required by law to comply with the directions of another person or body in relation to the investigation of the matter; or
- is requested or directed by another appropriate person or body to cease, or discontinue for a period, the investigation of the matter.

Section 19Y(2) provides that the notice must be given in writing and be in the form approved by the Commissioner (if any) and contain the information required by the Commissioner.

Section 19Y(3) provides that the head of the relevant entity may, in the notice, request the Commissioner to exempt the head of the relevant entity under section 19P(1) (Commissioner may exempt investigations) from the requirement to continue the investigation.

This section provides for investigations to be discontinued in circumstances where the matter does not constitute reportable conduct or where continuing the investigation is unnecessary because another appropriate body is dealing with, or investigating the matter, is contrary to law, or potentially prejudicial to an investigation undertaken by another body. This section relates to section 19P(1) by providing that the head of a relevant entity may request an exemption and the Commissioner has the power to exempt the head of a relevant entity from commencing or continuing the investigation.

Section 19Z. Head of relevant entity must report outcome of investigation to Commissioner

Clause 7 creates a new section 19Z of the Act and provides that the head of a relevant entity must report the outcome of an investigation to the Commissioner.

Section 19Z(1) provides that the head of a relevant entity must, as soon as practicable after the end of an investigation under section 19W(1) (Head of relevant entity must respond to reportable allegation or reportable conviction), give the Commissioner a written report setting out:

- the findings of the investigation and the reasons for those findings; and
- any submissions made by the employee under section 19X (Informing employee of certain matters and giving employee opportunity to make submissions); and
- any disciplinary or other action taken, or proposed to be taken, in relation to the employee as a result of the findings of the investigation; and
- if the entity does not propose to take any disciplinary or other action in relation to the employee, the reasons why no action is to be taken; and
- any action taken, or proposed to be taken, as a result of the findings of the investigation, to improve the identification or prevention of reportable conduct, or the reporting, notification or investigation of reportable allegations and reportable convictions, involving employees of the relevant entity; and
- any other information that the head of the relevant entity considers relevant to the report.

Section 19Z(2) provides that after receiving the report and other information, the Commissioner may, by written notice given to the head of the relevant entity, request any additional information specified in the notice that the Commissioner considers relevant to determine whether the reportable allegation or reportable conviction was properly investigated and appropriate action was taken as a result of the investigation.

Section 19Z(3) provides that the head of a relevant entity must comply with a request under section 19Z(2).

Section 19Z(4) provides that it is an offence for the head of a relevant entity to fail, without reasonable excuse, to comply with sections 19Z(1) or (3), with the penalty for this offence a fine of \$5 000.

This section is intended to strengthen the Scheme by requiring the head of a relevant entity to report the outcomes of an investigation into reportable conduct to the Commissioner and giving the Commissioner the power to request further information to determine whether the matter was properly investigated and appropriate action was taken as a result of the investigation. The section attracts a penalty for non-compliance by the head of a relevant entity reflecting the importance of these provisions to the seriousness of the Scheme. This is consistent with the Royal Commission finding that an oversight body under a reportable conduct scheme should have appropriate powers to facilitate the monitoring of investigations by institutions.

Section 19ZA. Head of relevant entity must report outcome of investigation to employee if employee informed of investigation

Clause 7 creates a new section 19ZA of the Act which provides that the head of a relevant entity must report the outcome of an investigation to an employee informed of the investigation.

Section 19ZA(1) provides that this section applies if an employee of a relevant entity is the subject of an investigation under section 19W(1) (Head of relevant entity must respond to reportable allegation or reportable conviction) and the head of the relevant entity has informed the employee of the investigation.

Section 19ZA(2) provides that the head of a relevant entity must, as soon as practicable after the end of an investigation under section 19W(1), give the employee written notice stating that the investigation has ended and a written report setting out the findings of the investigation and the reasons for those findings.

This section is intended to ensure the employee is notified of the conclusion of an investigation and to provide the employee with information that would enable the employee to submit a complaint to the Commissioner under section 19ZB (Commissioner may conduct own investigation).

Section 19ZB. Commissioner may conduct own investigation

Clause 7 creates a new section 19ZB of the Act and provides that the Commissioner may conduct an investigation into certain matters under the Scheme.

Section 19ZB(1) provides that the Commissioner may conduct an investigation into any of the following:

- any reportable allegation or reportable conviction involving an employee of a relevant entity;
- the handling or investigation by the head of a relevant entity of a reportable allegation or reportable conviction involving an employee of the relevant entity;
- any action taken or not taken by the head of a relevant entity in response to a finding of reportable conduct in relation to an employee of the relevant entity.

Section 19ZB(2) provides that the Commissioner must not conduct an investigation under this section unless the Commissioner considers that it is in the public interest to do so.

The 'public interest' can relate to the interests of the community as a whole, or at least to a large part of the community, or it can relate to individual interests, a small group or a part of the total population.

Section 19ZB(3) provides that the Commissioner may decide to conduct an investigation under this section:

- on the Commissioner's own initiative; or
 - in response to a report or disclosure under the Scheme; or
 - in response to a complaint made to the Commissioner by an employee of a relevant entity in relation to any of the following:
 - the handling or investigation by the head of a relevant entity under the Scheme of a reportable allegation or reportable conviction involving the employee;
 - a finding of reportable conduct in relation to the employee;
 - any action taken or not taken by the head of a relevant entity in response to a finding of reportable conduct in relation to the employee;
- or
- in response to a complaint made to the Commissioner by any other person in relation to any of the following that affects the person in the person's personal capacity:
 - the handling or investigation by the head of a relevant entity under the Scheme of a reportable allegation or reportable conviction involving an employee of the relevant entity;
 - a finding of reportable conduct in relation to an employee of the relevant entity;

- any action taken or not taken by the head of a relevant entity in response to a finding of reportable conduct in relation to an employee of the relevant entity.

Section 19ZB(4) provides that the Commissioner may make the following findings following an investigation into any reportable allegation or reportable conviction involving an employee of a relevant entity:

- in the case of an investigation of a reportable allegation involving an employee of a relevant entity:
 - that the Commissioner is of the opinion that the employee has engaged in reportable conduct; or
 - that there are no grounds, or no reasonable grounds, for the Commissioner to form the opinion that the employee has engaged in reportable conduct;
- in the case of an investigation of a reportable conviction involving an employee of a relevant entity:
 - that the employee has a reportable conviction; or
 - that the employee does not have a reportable conviction.

The Royal Commission recommended that the oversight body have powers and functions to conduct, on its own motion, investigations concerning any reportable conduct of which it has been notified or otherwise becomes aware.

This section is intended to provide for the Commissioner to conduct an investigation into reportable allegations or convictions where the head of the relevant entity is unable or unwilling to do so (for example, where the head of the relevant entity is the subject of the matter) and to investigate any inappropriate handling, or response to, a reportable allegation or reportable conviction.

As provided under new section 19M and section 20(1) of the Act, these investigations are undertaken with all the powers of a standing Royal Commission under the *Royal Commissions Act 1968*.

Section 19ZC. Notice to head of relevant entity of Commissioner’s investigation

Clause 7 creates a new section 19ZC of the Act and sets out provisions regarding the notice to the head of a relevant entity of the Commissioner’s investigation under section 19ZB (Commissioner may conduct own investigation).

Section 19ZC(1) provides that if the Commissioner decides to conduct an investigation under section 19ZB, the Commissioner must give the head of the relevant entity written notice stating:

- that the Commissioner intends to conduct an investigation under section 19ZB; and
- the matters to be investigated; and
- whether the Commissioner requires the head of the relevant entity not to commence, or to suspend, an investigation into a matter the Commissioner has decided to investigate.

Section 19ZC(2) provides that the Commissioner, on completing an investigation under section 19ZB, may require the head of the relevant entity to continue an investigation that is suspended due to a requirement of the Commissioner under section 19ZC(1).

Section 19ZC(3) provides that the head of a relevant entity must, as far as practicable, comply with a requirement of the Commissioner not to commence, or to suspend, an investigation into a matter the Commissioner has decided to investigate under section 19ZC(1) or to continue an investigation under section 19ZC(2).

Section 19ZC(4) provides that it is an offence for the head of a relevant entity to fail, without reasonable excuse, to comply with section 19ZC(3), with the penalty for this offence a fine of \$5 000.

This section is intended to ensure an investigation by a relevant entity does not interfere with an investigation by the Commissioner and that investigations are continued and finalised following a suspension. As a proper investigation is critical to the future protection of children, this section further includes an offence for failing to comply with these requirements of the Commissioner.

Section 19ZD. Provisions relating to investigation under section 19ZB(1)(a)

Clause 7 creates a new section 19ZD of the Act and sets out provisions relating to an investigation by the Commissioner under section 19ZB(1)(a) (into a reportable allegation or reportable conviction involving an employee of a relevant entity).

Section 19ZD(1) provides that this section applies if the Commissioner decides to conduct an investigation under section 19ZB(1)(a).

Section 19ZD(2) provides that the Commissioner must give the employee who is the subject of the investigation written notice stating that the Commissioner intends to conduct an investigation under section 19ZB(1)(a) and the reportable allegation or reportable conviction to be investigated.

Section 19ZD(3) provides that as soon as practicable after the investigation ends, the Commissioner must give the head of the relevant entity written notice stating that the investigation has ended; a written report setting out the findings of the investigation and the reasons for those findings; and, may make any recommendations that the Commissioner thinks fit.

Section 19ZD(4) provides that the head of a relevant entity must not take any action to implement a recommendation of the Commissioner after an investigation by the Commissioner into a reportable allegation or reportable conviction involving an employee of the relevant entity until the later of the following:

- the end of the period under section 19ZF(2) (28 days after the person is notified of the finding) for the employee to apply for a review to the State Administrative Tribunal of a finding of the Commissioner on the investigation;
- if the employee makes an application to the State Administrative Tribunal under section 19ZF(1) for a review of a finding of the Commissioner on the investigation, the final determination of the review.

Section 19ZD(5) provides that nothing in section 19ZD(4) prevents:

- the CEO as defined in the *Children and Community Services Act 2004* section 3 from taking action under that Act to safeguard or promote a child's wellbeing; or
- the head of a relevant entity taking any action that the head of the relevant entity considers should be taken to safeguard or promote a child's wellbeing.

Section 19ZD(6) provides that as soon as practicable after the investigation ends, the Commissioner must give the employee who was the subject of the investigation written notice stating that the investigation has ended; a written report setting out the findings of the investigation and the reasons for those findings; and, any recommendation made under section 19ZD(3) in relation to the employee.

This section is intended to prevent the head of the relevant entity from undertaking disciplinary action against the employee, for example, where the matter may be, or is being, considered by the State Administrative Tribunal. However, for the avoidance of all doubt, and consistent with the best

interests of children being the paramount consideration (under new section 19K) this section clarifies that this does not prevent action being taken to safeguard or promote child wellbeing.

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

Clause 7 creates a new section 19ZE of the Act and sets out provisions relating to an investigation by the Commissioner under section 19ZB(1)(b) (the handling or investigation by the head of a relevant entity of a reportable allegation or reportable conviction involving an employee of the relevant entity) or 19ZB(1)(c) (any action taken or not taken by the head of a relevant entity in response to a finding of reportable conduct in relation to an employee of the relevant entity).

Section 19ZE provides that as soon as practicable after an investigation referred to in section 19ZB(1)(b) or (c) ends, the Commissioner must give the head of the relevant entity written notice stating that the investigation has ended; a written report setting out the findings of the investigation and the reasons for those findings; and, may make any recommendations that the Commissioner thinks fit.

Section 19ZE is intended to provide for the head of the relevant entity to take appropriate actions following the receipt of this information, including taking action to implement recommendations.

Section 19ZF. Application to State Administrative Tribunal for review

Clause 7 creates a new section 19ZF of the Act and provides for a person to apply to the State Administrative Tribunal for a review of a finding of the Commissioner on an investigation conducted by the Commissioner under section 19ZB(1)(a) (any reportable allegation or reportable conviction involving an employee of a relevant entity).

Section 19ZF(1) provides that a person aggrieved by a finding of the Commissioner on an investigation conducted under section 19ZB(1)(a) may apply to the State Administrative Tribunal for a review of the finding.

Section 19ZF(2) provides that an application under section 19ZF(1) must be made within 28 days after the person is notified of the finding for which the review is sought.

Section 19ZF(3) provides that for a review under this section, the State Administrative Tribunal must be constituted by a judicial member as defined in the *State Administrative Tribunal Act 2004* section 3(1) (the President or Deputy President of the State Administrative Tribunal).

Section 19ZF(4) provides that a finding of the Commissioner on an investigation conducted under section 19ZB(1)(a) is taken to be a decision for the purposes of the *State Administrative Tribunal Act 2004* Part 3 Division 3.

This section is intended to provide an independent review of a finding made by the Commissioner into a reportable allegation or reportable conviction. In providing this additional avenue for review, it is noted that this section, and the provisions of the Act more broadly, do not in any way replace or prevent access to existing established review mechanisms in relation to employment decisions, including the Public Sector Commission and any industrial law remedy.

Section 19ZG. Concurrent investigations or proceedings

Clause 7 creates a new section 19ZG of the Act and sets out provisions regarding concurrent investigations or proceedings.

Section 19ZG(1) provides that this section applies if the Commissioner of Police advises the Commissioner or the head of a relevant entity that an investigation or finding under the Scheme is

likely to compromise a police investigation; or, another person or body with authority to investigate the conduct of an employee of a relevant entity advises the Commissioner or the head of the relevant entity that an investigation or finding under the Scheme is likely to compromise an investigation by that person or body (a relevant investigation).

Section 19ZG(2) provides that the Commissioner or the head of the relevant entity may suspend the investigation or finding until otherwise advised and take steps to manage any risks while the investigation or finding is suspended.

Sections 19ZG(3) and (4) provide that before making a decision about whether to suspend or continue an investigation or about the steps to be taken to manage risks, the Commissioner or the head of the relevant entity must consult with, as the case requires, the Commissioner of Police or the officer in charge of the police investigation; or, the person or body conducting the relevant investigation.

Section 19ZG(5) provides that if the head of the relevant entity decides to suspend an investigation or finding under this section, the head of the relevant entity must advise the Commissioner of the suspension and the steps being taken to manage the risks.

Section 19ZG(6) provides that if the Commissioner or the head of the relevant entity decides not to suspend the investigation, the Commissioner or the head of the relevant entity must ensure the investigation is conducted in a way that does not compromise the police investigation or the relevant investigation, as the case requires.

Section 19ZG(7) provides that this section does not affect the operation of any other Act.

Section 19ZG(8) provides that in this section, a reference to a police investigation or relevant investigation includes a reference to any court proceeding (including an appeal) arising out of the investigation.

Section 19ZG is intended is to prevent investigations and findings under the Scheme from compromising investigations or proceedings by other bodies. This is consistent with the principle set out under new section 19J (Object and principles) that the Commissioner and others should work in collaboration to ensure a fair process is used in the investigation of reportable allegations and reportable convictions.

Subdivision 5 – Disclosure of information

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

Clause 7 creates a new section 19ZH of the Act and provides for the disclosure of information to a child, parent, guardian or other person with parental responsibility.

Section 19ZH(1) provides that the Commissioner or the head of a relevant entity may disclose information about matters referred to in section 19ZH(2) to a child who is the subject of conduct that forms the basis of a reportable allegation or a reportable conviction that is being, or has been, investigated by the Commissioner or the head of the relevant entity; or, the child's parent, guardian or a person who has parental responsibility for the child.

Section 19ZH(2) provides that for the purposes of section 19ZH(1), the matters are:

- the progress of the investigation; or
- the findings of the investigation; or
- any action taken as a result of the investigation.

Section 19ZH(3) provides that the Commissioner or the head of a relevant entity must not disclose information under section 19ZH(1):

- if the disclosure would put the wellbeing of the child, or the safety of any other person, at risk; or, contravene the *Children and Community Services Act 2004* section 124F (Confidentiality of reporter's identity) or 240 (Restrictions on disclosing notifier's identity); or, compromise an investigation under this Act, a police investigation, a relevant investigation referred to in section 19ZG (Concurrent investigations or proceedings) or an investigation under another Act; or
- if the disclosure would be to a parent or guardian of a child who is the subject of conduct that forms the basis of a reportable allegation or a reportable conviction that is being, or has been, investigated by the Commissioner or the head of the relevant entity, or a person who has parental responsibility for the child and the Commissioner, or head of the relevant entity, is satisfied that the child has sufficient maturity and understanding to consent to the disclosure and the child does not consent to the disclosure; or
- in any circumstances prescribed by the regulations.

Section 19ZH is intended to authorise the disclosure of specified investigation information to a child, parent, guardian or person with parental responsibility. It is further intended to encourage the participation of a child the subject of a reportable allegation or reportable conviction to an appropriate extent. This is consistent with the principle of child participation set out under section 19J (Object and principles).

Section 19ZI. Commissioner may request information about reportable convictions

Clause 7 creates a new section 19ZI of the Act and provides for the Commissioner to request information about reportable convictions.

Section 19ZI(1) provides that in this section, Registrar, of a relevant court, means:

- in the case of the Supreme Court — the Principal Registrar of the Supreme Court; or
- in the case of the District Court — the Principal Registrar of the District Court; or
- in the case of the Magistrates Court — the Principal Registrar of the Magistrates Court; or
- in the case of the Children's Court — a registrar of the Children's Court;

Section 19ZI(1) further provides that in this section, relevant court means the Supreme Court, the District Court, the Magistrates Court or the Children's Court.

Section 19ZI(2) provides that the Commissioner may request a Registrar of a relevant court to provide information relating to a reportable conviction entered against an employee of a relevant entity that the Commissioner reasonably requires for the purposes of an investigation under the Scheme.

Section 19ZI(3) provides that the Commissioner is authorised to disclose information obtained under the Scheme or Division 3 (Conduct of investigations) or 4 (Action on investigations) for the purpose of that request.

Section 19ZI(4) provides that a Registrar of a relevant court to whom a request for information is made under section 19ZI(2) is authorised to disclose the information to the Commissioner for the purposes of an investigation under the Scheme.

Section 19ZI(5) provides that this section applies despite section 13(2) of the Act (Departments and authorities subject to investigation).

This section is intended to authorise access by the Commissioner, to information that may not otherwise be available, for the purpose of an investigation under the Scheme.

Section 19ZJ. Prohibition on publishing certain information

Clause 7 creates a new section 19ZJ of the Act and places prohibitions on publishing certain information.

Section 19ZJ(1) provides that in this section, publish means to disseminate to the public or a section of the public by any means, including in a book, newspaper, magazine or other written publication, by radio broadcast, television, a website, an online facility or other electronic means.

Section 19ZJ(2) provides that a person must not publish, or cause to be published, information that identifies, or is likely to lead to the identification of, another person as a person who has made a report under section 19T (Report of reportable allegation or reportable conviction), with a penalty of imprisonment for 2 years or a fine of \$8 000.

Section 19ZJ(3) provides that a person must not publish, or cause to be published, information that identifies, or is likely to lead to the identification of, another person as a child who is the subject of conduct that forms the basis of a report that has been made under section 19T or a finding of reportable conduct in relation to an employee of a relevant entity that has been made under this Act, with a penalty of imprisonment for 2 years or a fine of \$8 000.

Section 19ZJ(4) provides that a person does not commit an offence under section 19ZJ(2) or (3) if the publication of the information is authorised under any other Act.

Section 19ZJ is intended to support the reporting of reportable allegations (with additional protections set out in clause 22). Consistent with the best interests of children being the paramount consideration (under section 19K), this section is also intended to protect children and promote their wellbeing by maintaining their anonymity.

Subdivision 6 – Review of amendments made by Parliamentary Commissioner Amendment (Reportable Conduct) Act 2021

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

Clause 7 creates a new section 19ZK of the Act and provides for the review of amendments made by the *Parliamentary Commissioner Amendment (Reportable Conduct) Act 2021*.

Section 19ZK(1) provides that the Minister must review the operation and effectiveness of the amendments made to the Act by the *Parliamentary Commissioner Amendment (Reportable Conduct) Act 2021*, and prepare a report based on the review, as soon as practicable after the 5th anniversary of the day on which section 7 of that Act comes into operation (Section 7 inserts Part III Division 3B – Reportable conduct scheme).

Section 19ZK(2) provides that the review must include consideration as to whether the Scheme should be expanded to apply to any other entities.

Section 19ZK(3) provides that the Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary.

Section 19ZK is intended to give effect to the recommendation of the Royal Commission and to provide for the Scheme to adapt to changes in circumstances and risk levels of institutions not currently within the scope of the Scheme.

Clause 8 Section 19 amended

Clause 8 amends section 19 of the Act – Proceedings on investigations.

Clause 8 inserts a new section 19(9) of the Act which sets out the extent to which section 19 applies to an investigation by the Commissioner for the purposes of the Scheme.

Section 19(9) provides that sections 19(1) and 19(1a) do not apply. This amendment is intended to establish that the Commissioner does not need to notify the principal officer or responsible Minister of a department or authority of the Commissioner's intention to conduct an investigation for the purposes of the Scheme, as would otherwise be required if the Commissioner was conducting an investigation for the purposes of the Act.

This is so because provisions for the Commissioner to notify a relevant entity of an investigation under the Scheme are set out in Division 3B (Reportable conduct scheme).

Sections 19(9)(b) and (c) provide that a reference to a department or authority is taken to be a reference to a relevant entity; and a reference to the principal officer of a department or authority is taken to be a reference to the head of a relevant entity. This amendment is intended to clarify that, other than sections 19(1) and 19(1a) and the limitation imposed by section 19(7)(b) below, the provisions of section 19, which provides for proceedings on investigations conducted by the Commissioner for the purposes of the Act, also apply to investigations conducted for the purposes of the Scheme.

Section 19(9)(d) provides that section 19(7)(b) applies only if an investigation relates to a relevant entity that is a department or authority. This amendment is intended to clarify that section 19(7)(b), which requires the Commissioner to provide a report to the responsible Minister if, in the Commissioner's opinion, there is evidence of 'any breach of duty or misconduct on the part of any member, officer, or employee of any department or authority to which this Act applies' also applies to an investigation that relates to a relevant entity under the Scheme, but only where the relevant entity is a department or authority.

This section is intended to provide for the Commissioner's established existing proceedings on investigation.

Clause 9 Section 20 amended

Clause 9 amends section 20 of the Act – Commissioner has powers under the *Royal Commissions Act 1968*; privilege and secrecy provisions.

Clause 9 amends section 20(2A) by inserting "by the Commissioner" after "investigation". This amendment is intended to clarify that a reference to an investigation in section 20(2A) is a reference to an investigation by the Commissioner under the Act.

Clause 9 inserts a new section 20(2AA). This amendment is intended to establish that no obligation to maintain secrecy, or other legal restriction upon the disclosure and use of information obtained by

or given to the head of a relevant entity or an investigator conducting an investigation under the Scheme, applies to the disclosure of information to the Commissioner for the purposes of an investigation by the Commissioner under the Act.

Clause 9 amends section 20(2B) by deleting “Crown or any authority to which this Act applies” and inserting “Crown, any authority to which this Act applies or a relevant entity”. Clause 9 further amends section 20(2B) by deleting “such investigation” and inserting “investigation by the Commissioner under the Act”. These amendments are intended to establish that, in addition to the Crown, and authorities to which the Act applies, relevant entities are not entitled to claim any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings (but are not compelled for the purposes of an investigation under the Act to give any evidence or produce any document that they could not be compelled to give or produce in proceedings before a court: section 20(3)).

Clause 9 amends section 20(3) by deleting “(2A) and (2B) a person is not compelled for the purposes of an investigation” and inserting “(2A), (2AA) and (2B), a person is not compelled for the purposes of an investigation by the Commissioner”. This amendment is intended to clarify that a reference to an investigation in section 20(3) is a reference to an investigation by the Commissioner under the Act.

Clause 9 further amends section 20(3) by deleting “he” and inserting: “the person”. This amendment is intended to ensure consistency.

Clause 10 Section 21 amended

Clause 10 amends section 21 of the Act – Power to enter premises.

Clause 10 inserts a new section 21(1) by deleting “For” and inserting “(1) For” and inserts a new section 21(2). New section 21(2) broadens the Commissioner’s existing power to, for the purpose of an investigation under the Act, enter premises used by any department or authority to which the Act applies, and inspect those premises and anything within the premises, to also apply to an investigation by the Commissioner under the Scheme.

Clause 11 Section 22A amended

Clause 11 amends section 22A of the Act – Consultation.

Clause 11 deletes “concerning any complaint under this Act or any investigation under this Act” and inserts:

concerning —

(a) any complaint under this Act; or

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

This amendment is intended to establish that the Commissioner’s power to consult the bodies prescribed in section 22A(1) of the Act, concerning any complaint under the Act or any investigation under the Act, does not apply to an investigation conducted for the purposes of the Scheme.

Clause 12 Section 22AA inserted

Clause 12 inserts a new section 22AA of the Act – Consultation in relation to a reportable conduct scheme.

Sections 22AA(1) and (2) provide that the Commissioner may consult any of the persons or bodies specified below concerning a reportable allegation or reportable conviction; any investigation under the Act conducted for the purposes of the Scheme; or any other matter that is relevant to the functions of the Commissioner under the Scheme:

- the Corruption and Crime Commission;
- the Public Sector Commissioner;
- the Inspector of Custodial Services;
- the Director of Public Prosecutions;
- a person or body that has functions under the law of another State, a Territory or the Commonwealth that substantially correspond to the functions of the Commissioner under the Scheme.

Sections 22AA(3) and (4) provide that the Commissioner or the head of a relevant entity may consult any of the persons or bodies specified below concerning a reportable allegation or reportable conviction; or any investigation under the Act conducted for the purposes of the Scheme; or any other matter that is relevant to the functions of the Commissioner or the head of the relevant entity under the Scheme:

- the Commissioner of Police;
- the Commissioner for Children and Young People;
- the CEO as defined in the *Children and Community Services Act 2004* section 3;
- the CEO as defined in the *Working with Children (Criminal Record Checking) Act 2004* section 4.

Section 22AA(5) provides that information obtained by the Commissioner, the Deputy Commissioner or a member of the Commissioner’s staff under the Act for the purposes of the Scheme may be disclosed for the purposes of any consultation by the Commissioner under sections 22AA(1) or (3).

Section 22AA(6) provides that information obtained by the head of a relevant entity or an investigator conducting an investigation for the purposes of the Scheme may be disclosed for the purposes of any consultation by the head of the relevant entity under section 22AA(3).

Clause 12 is intended to provide for consultation by the Commissioner and the heads of entities with other bodies responsible for children’s safety and wellbeing.

Clause 13 Section 22B amended

Clause 13 amends section 22B of the Act – Disclosure of certain information.

Clause 13 amends section 22B by inserting: “(other than an investigation conducted for the purposes of the reportable conduct scheme)” after “this Act”. This amendment is made to exclude investigations conducted for the purposes of the Scheme from section 22B of the Act, which provides for the disclosure by the Commissioner of information obtained in the course of or for the purpose of an investigation under the Act to the persons prescribed in sections 22B(aa) to (e).

Clause 13 amends section 22B(e)(ii) of the Act by deleting “Commissioner,” and inserting “Commissioner for Children and Young People”. This amendment is intended to ensure there is no ambiguity in reference to the Commissioner and Commissioner for Children and Young People.

Clause 14 Section 22C inserted

Clause 14 inserts a new section 22C of the Act – Disclosure of certain information in relation to reportable conduct scheme.

Section 22C(1) provides that in this section, reportable conduct information means information obtained by the Commissioner, the Deputy Commissioner or a member of the Commissioner’s staff for the purposes of the Scheme.

Section 22C(2) provides that the Commissioner, the Deputy Commissioner or a member of the Commissioner’s staff authorised for the purposes of this section by the Commissioner or the Deputy Commissioner may disclose reportable conduct information if the information:

- is disclosed to a person referred to in section 22B(aa), (b), (c), (d) or (ea) and concerns a matter of a kind for which information can be disclosed to that person under section 22B; or
- is disclosed to the Commissioner of Police and concerns a matter that is relevant to the functions of the Commissioner of Police; or
- is disclosed to the Commissioner for Children and Young People or an authorised member of the staff of the Commissioner for Children and Young People and concerns a matter that is relevant to the functions of the Commissioner for Children and Young People under the *Commissioner for Children and Young People Act 2006*; or
- is disclosed to the CEO as defined in the *Children and Community Services Act 2004* section 3 or a member of the staff of the Department as defined in that section and concerns a matter that is relevant to the functions of the CEO under that Act; or
- is disclosed to the CEO as defined in the *Working with Children (Criminal Record Checking) Act 2004* section 4 or an officer of the Department as defined in that section and concerns a matter that is relevant to the functions of the CEO under that Act.

This section is intended to ensure that the Commissioner can disclose reportable conduct information to relevant officers.

Clause 15 Section 23 amended

Clause 15 amends section 23 of the Act – Secrecy.

Clause 15 amends section 23(1) by inserting “by the Commissioner” after the word “investigation”. This amendment is intended to clarify that a reference to an investigation in section 23(1) is a reference to an investigation by the Commissioner.

Clause 15 further amends section 23(1) by deleting “section 22A or 22B.” and inserting “Division 3B or section 22A, 22AA, 22B or 22C(2).” These amendments are intended to reflect amendments to other parts of the Act as a result of the Scheme.

Clause 15 amends section 23(1a) by deleting “relates, and a person to whom such a direction is given shall” and inserting “relates or any other purpose specified in the direction, and a person to whom such a direction is given must”. This amendment is intended to give a wider capacity for the Commissioner to include in a direction of non-disclosure, that a document could also be disclosed beyond which the investigation relates to any other purpose specified by the Commissioner in the direction.

Clause 15 amends section 23(1b) by deleting “his opinion,” and inserting “the Commissioner’s opinion,”. This amendment is intended to clarify that a reference to “his” is a reference to the Commissioner (and is gender and sex neutral).

Clause 15 further amends section 23(1b) by deleting “applies or of any person,” and inserting “applies, of any person or of the proper operation of the reportable conduct scheme,”. This amendment clarifies that the Commissioner may disclose information for the purpose of section 23(1b) if it is in the interests of the proper operation of the Scheme to do so.

Clause 15 amends section 23(1d)(a) by deleting “department or authority” and inserting “department, authority or relevant entity”. This amendment is intended to establish that the provisions of the Act that apply to a department or authority also apply to a relevant entity for the purposes of an investigation under the Scheme.

Clause 15 amends section 23(1e) by deleting “he shall,” and inserting “the Commissioner must,”. This amendment is intended to use the modern must, rather than shall, and is also made to clarify that a reference to “his” is a reference to the Commissioner (and is gender and sex neutral).

Clause 15 further amends section 23(1e) by inserting “if the opinions relate to a relevant entity, the head of the relevant entity; or” in section 23(1e)(aa). This amendment is intended to establish that the provisions of the Act that apply to a department or authority for the purposes of an investigation under the Act also apply to a relevant entity for the purposes of an investigation under the Scheme.

Clause 15 further amends section 23(1e) by deleting “before him” and inserting “before the Commissioner”. This amendment is intended to clarify that the reference to “him” is a reference to the Commissioner (and is gender and sex neutral).

Clause 16 Section 23A amended

Clause 16 amends section 23A of the Act – Documents sent to or by Commissioner not admissible.

Clause 16 inserts a new section 23A(1) of the Act by deleting “Any” and inserting “(1) Any”.

Clause 16 inserts a new section 23A(2) which provides that the provisions in 23A(1) do not apply to a document sent to the Commissioner for the purposes of an investigation by the head of a relevant entity under section 19W(1) or an investigation by the Commissioner under section 19ZB(1)(a).

This amendment is intended to ensure that documents sent to or by the Commissioner in operating the Scheme can be admitted into a court or tribunal or other relevant proceedings.

Clause 17 Section 25 amended

Clause 17 amends section 25 of the Act – Procedure on completion of investigation.

Clause 17 inserts a new section 25(8) which applies in relation to an investigation by the Commissioner for the purposes of the Scheme.

Section 25(8)(a) and (b) provide that for the purposes of section 25 of the Act, any reference to an appropriate authority is taken to be a reference to the relevant entity and any reference to the principal officer of the appropriate authority is taken to be a reference to the head of the relevant entity. This amendment is intended to establish that the procedure set out in section 25 of the Act also applies to investigations for the purposes of the Scheme.

Section 25(8)(c) provides that section 25(3) applies only if the relevant entity is a department or authority. This amendment is intended to clarify that, where the Commissioner makes a report or

recommendations to the head of a relevant entity under sections 25(2) and (3), the Commissioner must send a copy to the responsible Minister only where the relevant entity is a department or authority.

Section 25(8)(d)(i) provides that for the purposes of an investigation referred to in section 19ZB(1)(a), that is, an investigation by the Commissioner into any reportable allegation or reportable conviction involving an employee of a relevant entity, sections 25(1) and (2) do not apply. The effect of this amendment is to exclude the Commissioner from forming opinions and making recommendations under sections 25(1) and (2) of the Act because the Commissioner's powers to make findings and recommendations for the purposes of the Scheme are set out in Division 3B.

Section 25(8)(d)(ii) provides that a reference in sections 25(3) to (5), to a recommendation made by the Commissioner, is taken to be a reference to a recommendation made under section 19ZD(3)(b) (Provisions relating to an investigation under section 19ZB(1)(a)). This amendment is intended to clarify that sections 25(3) to (5), which apply when the Commissioner makes recommendations under the Act, also apply when the Commissioner makes recommendations following the Commissioner's investigation into a reportable allegation or reportable conviction involving an employee of a relevant entity.

This section is intended to provide that the existing provisions of the Act regarding proceedings upon the completion of an investigation, unless otherwise provided, apply to the Scheme.

Clause 18 Section 28 inserted

Clause 18 inserts a new section 28 of the Act – Annual report to include report on reportable conduct scheme.

Section 28(1) provides that the annual report of the Commissioner under the *Financial Management Act 2006* Part 5 must include a report about the operation of the Scheme in the financial year to which the report relates, including the following:

- a description of the activities of the Commissioner in relation to the Scheme;
- an evaluation of the response of relevant entities to the recommendations of the Commissioner under the Scheme;
- a description of matters relating to the Scheme, including trends, notifications and investigations.

Section 28(2) provides that a report under section 28(1) must not include information that could lead to the identification of a child or a person investigated under the Scheme.

Section 28(3) provides that this section does not limit the power of the Commissioner to also, at any time, lay before each House of Parliament a report in relation to the Scheme.

This section is intended to preserve the capacity for the Commissioner, at any time, to provide the Parliament a report in relation to the Scheme.

Clause 19 Section 29 amended

Clause 19 amends section 29 of the Act – Supreme Court may determine jurisdictional questions.

Clause 19 inserts a new section 29(3) of the Act which provides that references in section 29 to the party subject to investigation include references to the relevant entity or head of the relevant entity. This amendment is intended to clarify that the relevant entity or the head of a relevant entity may make an application to the Supreme Court for a determination of the Commissioner's jurisdiction in respect of an investigation conducted under the Scheme.

This section is intended to provide that the existing provision in the Act is available to a relevant entity or the head of a relevant entity.

Clause 20 Section 29A inserted

Clause 20 inserts a new section 29A of the Act – Delegation by Commissioner of Police.

Section 29A(1) provides that the Commissioner of Police may delegate any power or duty of the Commissioner of Police under section 19ZG (Concurrent investigations or proceedings), section 22AA (Consultation in relation to reportable conduct scheme) or section 22C(2)(b) (Disclosure of certain information in relation to reportable conduct scheme) to a specified police officer; police officers of a specified rank or class; or another person appointed or employed under the *Police Act 1892*.

Section 29A(2) provides that the delegation must be in writing signed by the Commissioner of Police.

Section 29A(3) provides that a person to whom a power or duty is delegated under this section cannot delegate that power or duty.

Section 29A(4) provides that a person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

Section 29A(5) provides that nothing in this section limits the ability of the Commissioner of Police to perform a function through an officer or agent.

This power to delegate has been included as it would not be reasonably expected, or efficient, for the Commissioner of Police to exercise these powers personally.

Clause 21 Section 30AA inserted

Clause 21 creates a new section 30AA of the Act – Protection from liability for giving information: reportable conduct scheme.

Section 30AA(1) provides that this section applies if a person acting in good faith:

- gives a report, notification or information to the Commissioner under the Scheme or in the course of, or for the purposes of, an investigation into a reportable allegation or reportable conviction under the Act; or
- gives a report, notification or information to the head of a relevant entity under the Scheme; or
- gives information to an investigator conducting an investigation under the Scheme.

Section 30AA(2) provides that the report, notification or information may be given despite any other enactment, law or agreement that prohibits or restricts its disclosure.

Section 30AA(3) provides that in giving the information or making the report or notification the person:

- (a) does not incur any civil or criminal liability or liability to be punished for a contempt of court; and
- (b) is not to be taken to have breached any duty of confidentiality or secrecy imposed by law; and

- (c) is not to be taken to have breached any professional ethics or standards or any principles of conduct applicable to the person's employment or to have engaged in unprofessional conduct.

Section 30AA(4) provides that civil proceedings cannot be brought against a person in respect of an act referred to in section 30AA(1)(a), (b) or (c) without the leave of the Supreme Court, and the Supreme Court must not give leave unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith.

The Royal Commission recommended that reportable conduct schemes include protections for persons who make reports in good faith.

Clause 22 Section 30B amended

Clause 22 amends section 30B of the Act – Victimisation.

Clause 22 inserts, after section 30B(1)(e), new subsections (1)(ea) and (1)(eb) as follows:

- (ea) has made or will or may in the future make a report to the head of a relevant entity or the Commissioner under section 19T or give a notification to the Commissioner under the Scheme (Part III Division 3B); or
- (eb) has provided, is providing or will or may in the future provide information in the course of, or for the purpose of, an investigation of a reportable allegation or reportable conviction to the Commissioner or the head of a relevant entity under this Act; or

This amendment provides protections from victimisation under the Act and is intended to protect persons making a report.

Clause 23 Section 33 replaced

Clause 23 replaces section 33 of the Act – Regulations.

Section 33 provides that the Governor may make regulations for amending Schedule 1 or 2, or prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the Scheme.

This clause is intended to enable institutions to be added to the reportable conduct scheme via regulation (for example, following a review by the Minister under section 19ZK or a gap in coverage identified at any other time) and to prescribe other matters as required (for example, where a head of a relevant entity is required to be prescribed by regulation).

Clause 24 Schedule 1 amended

This clause deletes the item relating to the State Administrative Tribunal from Schedule 1.

Clause 25 Schedule 2 inserted

Clause 25 inserts Schedule 2 of the Act, which sets out the relevant entities to which the Scheme applies. Entities to which the Scheme applies is further defined in section 19I (the Scheme applies to an entity set out in column 2 of Schedule 2 that exercises care, supervision or authority over children as part of its primary functions or otherwise and, is not exempt from the Scheme by the Commissioner under section 19O(1) (Commissioner may exempt entities)).

The categories of entities are set out in column 1 of Schedule 2 and include:

- Public bodies

- Providers of education services
- Providers of health services
- Providers of out-of-home care services
- Providers of child care services
- Providers of youth justice services

After 12 months of operation of the Scheme (pursuant to clause 2 and clause 27), column 1 of Schedule 2 will also include:

- Religious bodies
- Providers of disability services
- Providers of accommodation and respite services for children

The entities set out in column 2 of Schedule 2 include:

- A department.
- An authority.
- 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.
- 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).
- A provider of a mental health service as defined in the *Mental Health Act 2014* 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.
- A person who has entered into an agreement under the *Children and Community Services Act 2004* section 15(1) for the provision of placement services.
- An education and care service as defined in the *Education and Care Services National Law (Western Australia)* section 5(1).
- A child care service as defined in the *Child Care Services Act 2007* section 4.
- A provider of a detention centre as defined in the *Young Offenders Act 1994* section 3.
- A provider of community justice services funded by the department principally assisting in the administration of the *Young Offenders Act 1994*.

After 12 months of operation of the Scheme (pursuant to clause 2 and clause 27), column 2 of Schedule 2 will also include:

- 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 —

- altar serving;
 - art groups;
 - bible study groups;
 - choirs and music groups;
 - creches and other child minding services;
 - dance groups;
 - faith-based children's and youth groups;
 - multi-faith networks;
 - open days;
 - prayer groups;
 - religious community engagement and outreach;
 - religious festivals and celebrations;
 - religious services;
 - sports teams;
 - Saturday schools, Sunday schools and after school religious education;
 - tutoring services;
 - youth camps.
- 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).
 - 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 *Children and Community Services Act 2004*.
 - 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.

Division 2 — Additional amendments

Clause 26 Section 19G amended

Clause 26 amends section 19G (Reportable conduct), by inserting, after section 19G(1)(c):

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

The intent of, and reason for, the phased implementation is set out in the explanation under new section 19G.

Clause 27 Schedule 2 amended

Clause 27 amends Schedule 2 (Relevant entities to which the Scheme applies) to include additional entities.