The Government proposes to introduce into Parliament a Bill to amend the *Parliamentary Commissioner Act 1971* and the *Working with Children (Criminal Record Checking) Act 2004*.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government’s settled position.

All submissions must be received by 31 January 2021 and should be forwarded to: reportableconduct@ombudsman.wa.gov.au

For further information please see the Ombudsman Western Australia website at http://www.ombudsman.wa.gov.au
DRAFT BILL FOR PUBLIC COMMENT


This draft Bill has been prepared for public comment but it does not necessarily represent the Government’s settled position.

Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2020

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Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2020

A Bill for


The Parliament of Western Australia enacts as follows:
Part 1 — Preliminary

1. Short title

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

2. Commencement

This Act comes into operation as follows —

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

(b) Part 2 Division 3 — on the day after the period of 12 months beginning on the day on which section 7 comes into operation;

(c) the rest of the Act — on a day fixed by proclamation.
Part 2 — Parliamentary Commissioner Act 1971 amended

Division 1 — Preliminary

3. Act amended

This Part amends the Parliamentary Commissioner Act 1971.

Division 2 — General amendments

4. Long title amended

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

authorities, to the deaths of certain children and to the reportable conduct scheme

5. Section 4 amended

In section 4 insert in alphabetical order:

CCS Act means the Children and Community Services Act 2004;
Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the Police Act 1892;
head, of a relevant entity, means —
(a) in relation to a department or an organisation as those terms are defined in the Public Sector Management Act 1994 section 3(1) —
(i) the chief executive officer or chief employee of the department or organisation; or
(ii) the delegate of the chief executive officer or the chief employee of the department or organisation;
or
(b) in relation to any other authority —
(i) the chief executive officer of the authority; or
(ii) if there is no chief executive officer —
the president, chairman or other
principal or presiding member of the
authority, or if the authority is
constituted by a single person, that
person; or

(iii) the delegate of a person referred to in
subparagraph (i) or (ii);

or

(c) a person prescribed, or a person of a class
prescribed, by the regulations to be the head of
an entity or a delegate of that person; or

(d) in any other case —

(i) the chief executive officer of the entity
(whatever described); or

(ii) if there is no chief executive officer —
the principal officer of the entity
(whatever described); or

(iii) if there is no chief executive officer or
principal officer — a person, or the
holder of a position, in the entity
nominated by the entity and approved
by the Commissioner; or

(iv) the delegate of a person referred to in
subparagraph (i), (ii) or (iii);

relevant entity means an entity to which the reportable
conduct scheme applies under section 19H;

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 allegation has the meaning given in
section 19E;

reportable conduct has the meaning given in
section 19F;

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

reportable conviction has the meaning given in
section 19G;
6. **Section 19A amended**

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

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

   After Part III Division 3A insert:

   **Division 3B — Reportable conduct scheme**

   **Subdivision 1 — Preliminary**

   19C. **Terms used**

   In this Division —

   **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;

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

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

   **contractor** includes —

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

   **employee**, of a relevant entity —

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

   (i) 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
(ii) engaged by the entity to provide services to children, including as a volunteer or contractor; or

(iii) a carer as defined in the CCS Act section 3;

and

(b) if the relevant entity is a religious body —

(i) includes a minister of religion and a religious leader of the religious body; but

(ii) does not include a person only because the person participates in worship;

and

(c) if the relevant entity is the Police Force of Western Australia, includes a person appointed under the Police Act 1892 Part I as an officer or constable of the Police Force;

*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; 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 action taken or not taken as a result of the findings of an investigation referred to in paragraph (b);

*investigator* means a person conducting an investigation under this Act on behalf of the head of a relevant entity for the purposes of the reportable conduct scheme;

*relevant commencement day* means the day on which the Parliamentary Commissioner Amendment (Reportable Conduct) Act 2020 section 7 comes into operation;
Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2020
Parliamentary Commissioner Act 1971 amended

Part 2
General amendments

Division 2
s. 7

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

sexual offence —
(a) means an offence of a sexual nature under a law of this State, another State, a Territory or the Commonwealth, committed against, with or in the presence of, a child; and
(b) includes, without limitation —
(i) an offence under The Criminal Code Chapter XXXI committed against, with or in the presence of, a child; and
(ii) an offence of a sexual nature under The Criminal Code Chapter XXV; and
(iii) an offence of a sexual nature under any other provision of The Criminal Code committed against, with or in the presence of, a child; and
(iv) an offence under a law of another State, a Territory or the Commonwealth the elements of which, if they had occurred in this State, would have constituted an offence of a kind referred to in subparagraph (i), (ii) or (iii); and
(v) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind referred to in subparagraphs (i) to (iv) or paragraph (a); and
(vi) an offence that, at the time it was committed —
(I) was an offence of a kind referred to in subparagraphs (i) to (v) or paragraph (a); or
(II) in the case of an offence committed before the relevant commencement day — was an offence of a kind referred to in subparagraphs (i) to (v) or paragraph (a).
19D. **Conviction**

(1) For the purposes of this Division, a reference to a **conviction** in relation to an offence committed by a person is a reference to any of the following —

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

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

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

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

(2) For the purposes of this Division, a reference to a **conviction** includes a reference to a conviction that is a spent conviction.

(3) For the purposes of subsection (2), 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.

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

19E. **Reportable allegation**

In this Act —

**reportable allegation** —

(a) means any information that leads a person to form a suspicion on reasonable grounds that an employee has committed reportable conduct or conduct that may involve reportable conduct, whether or not the conduct is alleged to have occurred within the course of the employee’s employment; but
Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2020
Parliamentary Commissioner Act 1971 amended
Part 2
General amendments
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s. 7

19F. Reportable conduct

In this Act —

reportable conduct means —

(a) the following conduct, whether or not a
    criminal proceeding in relation to the conduct
    has been commenced or concluded and whether
    the conduct occurred before, on or after the
    relevant commencement day —
    (i) a sexual offence;
    (ii) sexual misconduct;
    (iii) an assault committed against, with or in
         the presence of, a child;
    (iv) an offence prescribed by the regulations
         for the purposes of this definition;

but

(b) does not include conduct that is —

    (i) reasonable for the discipline,
        management or care of a child or of
        another person in the presence of a
        child, having regard to —
        (I) the characteristics of the child,
            including the age, health and
            developmental stage of the
            child; and
        (II) any relevant code of conduct or
             professional standard that at the
             time applied to the discipline,
             management or care of the child
             or the other person;
    or
    (ii) trivial or negligible and that has been or
         will be investigated and recorded as part
         of another workplace procedure; or
    (iii) of a class or kind exempt from being
         reportable conduct under
         section 19L(1).
19G. **Reportable conviction**

In this Act —

*reportable conviction* —

(a) means a conviction for an offence under a law of the State, another State, a Territory or the Commonwealth that is an offence referred to in paragraph (a)(i) or (iv) of the definition of *reportable conduct* in section 19F; and

(b) in relation to a person, includes a conviction entered for the person before, on or after the relevant commencement day.

19H. **Entities to which reportable conduct scheme applies**

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

(a) exercises care, supervision or authority over children as part of its primary functions or otherwise; and

(b) is not exempt under section 19M(1).

19I. **Object and principles**

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

(a) reporting and investigating reportable allegations and reportable convictions; and

(b) taking appropriate action in response to findings of reportable conduct.

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

(a) the protection and best interests of children are paramount considerations; and

(b) 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 —

(i) the child must be given the opportunity to express the views freely; and

(ii) the views are to be given due weight in the investigation in accordance with the
developmental capacity of the child and
the circumstances;

and

(c) criminal conduct or suspected criminal conduct
should be reported to the police; and

(d) the Commissioner and others involved in the
reportable conduct scheme should work in
collaboration to ensure a fair process is used in
the investigation of reportable allegations and
reportable convictions; and

(e) employees who are the subject of reportable
allegations are entitled to be afforded natural
justice in investigations into their conduct.

Subdivision 2 — Role of Commissioner

19J. Administration, oversight and monitoring of
scheme

The Commissioner is responsible for administering,
overseeing and monitoring the reportable conduct
scheme.

19K. Functions of Commissioner

(1) The Commissioner has the following functions in
relation to the reportable conduct scheme —

(a) to educate and provide advice to relevant
entities in order to assist them to identify
reportable conduct and to notify and investigate
reportable allegations and reportable
convictions;

(b) to oversee the investigation of reportable
allegations and reportable convictions by
relevant entities;

(c) if the Commissioner considers it to be in the
public interest to do so — to investigate
reportable allegations and reportable
convictions;

(d) if the Commissioner considers it 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;
(e) to make recommendations to relevant entities in relation to the findings of the investigations referred to in paragraph (c) or (d);

(f) to monitor the compliance of relevant entities with the reportable conduct scheme and whether appropriate action is taken by a relevant entity;

(g) to monitor a relevant entity’s systems for preventing, notifying and dealing with reportable conduct;

(h) to report to Parliament on the reportable conduct scheme;

(i) to perform any other function conferred on the Commissioner under this Division.

(2) Without limiting the Commissioner’s investigation powers under this Act, the Commissioner may exercise any power and perform any function the Commissioner has under Divisions 3 and 4 for the purpose of performing the Commissioner’s functions under this Division.

19L. Commissioner may exempt conduct

(1) The Commissioner may exempt a class or kind of conduct of employees of a relevant entity from being reportable conduct.

(2) The Commissioner must publish the details of an exempt class or kind of conduct on the Commissioner’s website.

19M. Commissioner may exempt entities

(1) The Commissioner may exempt an entity from the reportable conduct scheme.

(2) The Commissioner must give written notice to an entity of an exemption under subsection (1) that relates to the entity.

(3) An exemption under subsection (1) continues until the Commissioner gives the entity written notice that the exemption is revoked.
19N. Commissioner may exempt investigations

(1) The Commissioner may exempt the head of a relevant entity from commencing or continuing an investigation.

(2) An exemption under subsection (1) may be for a specified period.

(3) Without limiting subsection (1), the Commissioner may exempt the head of the relevant entity if —
   (a) the matter is already being dealt with or investigated by another appropriate person or body; or
   (b) the head of the relevant entity has made a request for the exemption in a notice under section 19U.

(4) The Commissioner must give written notice to the head of the relevant entity of an exemption under subsection (1) that relates to the entity.

(5) An exemption under subsection (1) continues until —
   (a) the Commissioner gives the head of the relevant entity written notice that the exemption is revoked; or
   (b) if the exemption is for a specified period — the end of the specified period.

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

Subdivision 3 — Systems to deal with reportable conduct

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

The head of a relevant entity must ensure that the relevant entity has in place —
   (a) a system for preventing reportable conduct by an employee of the relevant entity in the course of the person’s employment; and
   (b) a system for enabling any person, including an employee of the relevant entity, to notify the head of the relevant entity of a reportable
allegation or reportable conviction involving an employee of the relevant entity of which the person becomes aware; and

(c) a system for enabling any person, including an employee of the relevant entity, to notify the Commissioner of a reportable allegation or reportable conviction involving the head of the relevant entity of which the person becomes aware; and

(d) 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

(e) a system for the receipt, handling and disclosure of information relating to investigation information, reportable allegations and reportable convictions.

19P. Commissioner must monitor relevant entity

(1) The Commissioner must monitor the compliance by a relevant entity with the requirements of section 19O.

(2) If requested by the Commissioner, the head of a relevant entity must provide to the Commissioner any information about a system referred to in section 19O.

(3) The Commissioner may make recommendations for action to be taken by the head of a relevant entity and may provide the head of the relevant entity with any necessary information relating to the recommendations if a reasonable concern with a system referred to in section 19O is identified.

Subdivision 4 — Notice, investigation and reporting

19Q. Report of reportable allegation or reportable conviction

(1) This section applies if a person becomes aware of a reportable allegation or reportable conviction involving an employee of a relevant entity.

(2) If the person is an employee of the relevant entity, the employee must as soon as practicable after becoming
 aware of the reportable allegation or reportable conviction —

(a) report the matter to the head of the relevant entity; or

(b) if the matter relates to the head of the relevant entity — report the matter to the Commissioner.

If the person is not an employee of the relevant entity, the person may —

(a) report the matter to the head of the relevant entity; or

(b) if the matter relates to the head of the relevant entity — report the matter to the Commissioner.

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.

19R. Head of relevant entity must notify Commissioner

(1) 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.

(2) 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 —

(a) details of the reportable allegation or reportable conviction;

(b) the name (including any former name and alias) and date of birth of the employee;

(c) whether the police have been contacted about the reportable allegation or reportable conviction;

(d) the risk assessment made and the risk management action taken or proposed to be taken by the relevant entity;
(e) the name, address and telephone number of the relevant entity;

(f) the name of the head of the relevant entity;

(g) how the head of the relevant entity intends to proceed with the matter;

(h) any information prescribed by the regulations.

(3) The head of the relevant entity is only required to provide information under subsection (2)(a), (b), (c) and (h) of which the head of the relevant entity is aware.

(4) 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.

(5) This section does not apply in relation to conduct of employees of a relevant entity that is of a class or kind of conduct that is exempt under section 19L(1).

(6) It is an offence for the head of a relevant entity to fail, without reasonable excuse, to comply with subsection (2).

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

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

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

(1) 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.

(2) An employee of a relevant entity may disclose any information to the Commissioner that the employee believes on reasonable grounds reveals reportable conduct involving the head of the relevant entity.

(3) A person who makes a report to the head of a relevant entity under section 19Q 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.

(4) A person who has made a report to the head of the relevant entity under section 19Q 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.

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

(1) 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 —

(a) must —

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

(ii) 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

(iii) engage a person as an independent investigator to investigate the reportable allegation or reportable conviction on behalf of the head of the relevant entity; and

(b) must inform the Commissioner of the identity of the person who will conduct the investigation.

(2) The head of a relevant entity must give an employee who is the subject of an investigation under this section an opportunity to make submissions to the head of the relevant entity setting out the employee’s responses in relation to —

(a) the reportable allegation or reportable conviction; and
(b) any proposed adverse findings of the investigation; and

(c) any actions affecting the employee that are proposed to be taken as a result of the findings of the investigation.

(3) The head of a relevant entity must take all reasonable steps to ensure that an investigation under this section is carried out in a timely way.

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

(5) The head of a relevant entity must comply with a request under subsection (4).

(6) It is an offence for the head of a relevant entity to fail, without reasonable excuse, to comply with subsection (1) or (5).

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

19U. Commissioner must be notified of matters affecting investigation

(1) The head of a relevant entity must give the Commissioner written notice, as soon as practicable, if, in relation to a matter being investigated under section 19T(1), the head of the relevant entity —

(a) forms the view that the matter does not constitute reportable conduct; or

(b) becomes aware that another appropriate person or body is dealing with or investigating the matter; or

(c) is required by law to comply with the directions of another person or body in relation to the investigation of the matter; or

(d) is requested by another appropriate person or body to cease, or discontinue for a period, the investigation of the matter.

(2) The notice must be in a form and contain the information required by the Commissioner.
(3) The head of the relevant entity may, in the notice, request the Commissioner to exempt the head of the relevant entity under section 19N(1) from the requirement to continue the investigation.

19V. Head of relevant entity must report outcome of investigation

(1) The head of a relevant entity must, as soon as practicable after the end of an investigation under section 19T(1) of a reportable allegation or reportable conviction, give the Commissioner —

(a) a written report setting out —

(i) the findings of the investigation and the reasons for those findings; and

(ii) any disciplinary or other action taken, or proposed to be taken, in relation to the reportable conduct; and

(iii) any submissions made by the employee under section 19T(2); and

(iv) if the entity does not propose to take any disciplinary or other action in relation to the employee — the reasons why no action is to be taken;

and

(b) any other information that the head of the relevant entity considers relevant to the report.

(2) After receiving the report and other information, the Commissioner may, by written notice given to the head of the relevant entity, request any additional information specified in the notice that the Commissioner considers relevant to determine whether —

(a) the reportable allegation or reportable conviction was properly investigated; and

(b) appropriate action was taken as a result of the investigation.

(3) The head of a relevant entity must comply with a request of the Commissioner under subsection (2).
(4) It is an offence for the head of a relevant entity to fail, without reasonable excuse, to comply with subsection (1) or (3).

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

19W. Commissioner may conduct own investigation

(1) The Commissioner may conduct an investigation under this section if the Commissioner considers it is in the public interest to do so.

(2) The Commissioner may make a decision to conduct an investigation under this section —

(a) on the Commissioner’s own initiative; or

(b) in response to a report or disclosure under this Division; or

(c) in response to a complaint made to the Commissioner in relation to —

(i) the handling or investigation by the head of a relevant entity under this Division of a reportable allegation or reportable conviction involving an employee of the relevant entity; or

(ii) a finding of, or action taken or not taken by, the head of a relevant entity under this Division in relation to a reportable allegation or reportable conviction involving an employee of the relevant entity.

(3) An investigation may be conducted into any of the following —

(a) any reportable allegation or reportable conviction involving an employee of a relevant entity;

(b) any handling or investigation by the head of a relevant entity of a reportable allegation or reportable conviction involving an employee of the relevant entity;

(c) any action taken or not taken by the head of a relevant entity in response to a finding of reportable conduct by an employee of the relevant entity.
(4) The Commissioner may make the following findings following an investigation under subsection (3)(a) —

(a) that there are reasonable grounds to suspect that the employee has engaged in reportable conduct;
(b) that the employee has a reportable conviction;
(c) that there are no, or no reasonable, grounds to suspect that the employee has engaged in reportable conduct;
(d) that the employee does not have a reportable conviction.

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

(1) If the Commissioner decides to conduct an investigation under section 19W, the Commissioner must give the head of the relevant entity written notice stating —

(a) that the Commissioner intends to carry out an investigation under section 19W; and
(b) particulars of the investigation; and
(c) whether the Commissioner requires the head of the relevant entity not to commence, or to suspend, an investigation by the head of the relevant entity into a matter the Commissioner has decided to investigate.

(2) The Commissioner, on completing an investigation under section 19W, may require the head of the relevant entity to continue an investigation that is suspended under subsection (1)(c).

(3) The head of a relevant entity must, as far as practicable, comply with a requirement of the Commissioner under subsection (1)(c) or (2).

(4) It is an offence for the head of a relevant entity to fail, without reasonable excuse, to comply with subsection (3).

Penalty for this subsection: a fine of $5 000.
19Y. Provisions relating to investigation under section 19W(3)(a)

(1) This section applies if the Commissioner decides to conduct an investigation referred to in section 19W(3)(a).

(2) The Commissioner must give the employee who is the subject of the investigation written notice stating —
   (a) that the Commissioner intends to carry out an investigation under this section; and
   (b) particulars of the investigation.

(3) As soon as practicable after the investigation ends, the Commissioner —
   (a) must give the head of the relevant entity written notice stating that the investigation has ended; and
   (b) must report to the head of the relevant entity —
      (i) the findings of the investigation; and
      (ii) the reasons for the findings;
   and
   (c) may make any recommendations that the Commissioner thinks fit.

(4) The head of a relevant entity must not take any action to implement a recommendation of the Commissioner under subsection (3)(c) involving an employee of the relevant entity until the later of the following —
   (a) the end of the period under section 19Z(2) for the employee to apply for a review of the finding;
   (b) if the employee makes an application under section 19Z(1) for a review of the finding — the final determination of the review.

(5) As soon as practicable after the investigation ends, the Commissioner must —
   (a) give the employee who is the subject of the investigation written notice stating that the investigation has ended; and
(b) report to the employee —
   (i) the findings of the investigation; and
   (ii) the reasons for the findings.

19Z. Application to State Administrative Tribunal for review

(1) A person aggrieved by a finding of the Commissioner on an investigation conducted under section 19W(3)(a) may apply to the State Administrative Tribunal for a review of the finding.

(2) An application under subsection (1) must be made within 28 days after the person is notified of the finding for which the review is sought.

(3) For a review under this section, the State Administrative Tribunal is to be constituted by a judicial member as defined in the State Administrative Tribunal Act 2004 section 3(1).

(4) A finding of the Commissioner on an investigation conducted under section 19W(3)(a) is taken to be a decision for the purposes of the State Administrative Tribunal Act 2004 Part 3 Division 3.

19ZA. Relevant entities that are agents of Crown

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

19ZB. Concurrent investigations or proceedings

(1) This section applies if —
   (a) the Commissioner of Police advises the Commissioner or the head of a relevant entity that an investigation or finding under this Division is likely to compromise a police investigation; or
   (b) 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 this Division is likely to compromise an investigation by that person or body (a relevant investigation).
(2) The Commissioner or the head of the relevant entity may —
   (a) suspend the investigation or finding until otherwise advised; and
   (b) take steps to manage any risks while the investigation or finding is suspended; and
   (c) if the investigation or finding was being conducted by the head of the relevant entity —
      (i) advise the Commissioner about the suspension under this section; and
      (ii) advise the Commissioner of the steps being taken to manage the risks.

(3) Before making a decision about whether to suspend or continue an investigation, the Commissioner or the head of the relevant entity must consult with the Commissioner of Police or the person conducting the relevant investigation.

(4) Before making a decision under subsection (2)(b) 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 —
   (a) the Commissioner of Police or the officer in charge of the police investigation; or
   (b) the person or body conducting the relevant investigation.

(5) 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.

(6) This section does not affect the operation of any other Act.

(7) In this section, a police investigation or relevant investigation includes any court proceeding (including an appeal) arising out of the investigation.
Subdivision 5 — Disclosure of information

19ZC. Investigation information may be disclosed to child or parent

(1) The Commissioner or the head of a relevant entity may disclose investigation information to any of the following —
   (a) a child who is the subject of conduct that forms the basis of a reportable allegation or a reportable conviction that has been investigated by the Commissioner or the head of the relevant entity;
   (b) a parent or guardian of a child referred to in paragraph (a), or a person who has parental responsibility for the child.

(2) The Commissioner or the head of a relevant entity must not disclose information under subsection (1) —
   (a) if the disclosure would —
      (i) put the wellbeing of the child at risk; or
      (ii) contravene the CCS Act section 124F or 240; or
      (iii) compromise an investigation under this Act, a police investigation, a relevant investigation referred to in section 19ZB or an investigation under another Act;
   or
   (b) in any circumstances prescribed by the regulations.

19ZD. Commissioner may request information about reportable convictions

(1) In this section —
   court means the Supreme Court, the District Court, the Magistrates Court or the Children’s Court;
   Registrar in relation to —
   (a) the Supreme Court, means the Principal Registrar of the Supreme Court; or
   (b) the District Court, means the Principal Registrar of the District Court; or
(c) the Magistrates Court, means the Principal Registrar of the Magistrates Court; or

(d) the Children’s Court, means a registrar of the Children’s Court.

(2) The Commissioner may make a request to the Registrar of a 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 reportable conduct scheme.

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

(4) The Registrar of the court to whom a request may be made under subsection (2) is authorised to disclose information to the Commissioner for the purposes of an investigation under the reportable conduct scheme.

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

Subdivision 6 — Review of amendments made by Parliamentary Commissioner Amendment (Reportable Conduct) Act 2020

19ZE. Review of amendments made by Parliamentary Commissioner Amendment (Reportable Conduct) Act 2020

(1) The Minister must review the operation and effectiveness of the amendments made to this Act by the Parliamentary Commissioner Amendment (Reportable Conduct) Act 2020, 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.

(2) The review must include consideration as to whether the reportable conduct scheme should be expanded to apply to any other entities.

(3) 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.
(4) If, in the Minister’s opinion, a House of Parliament will not sit during the period of 21 days after finalisation of the report, the Minister must send the report to the Clerk of the House.

(5) When the report is sent to the Clerk of a House it is taken to have been laid before the House.

(6) The laying of the report that is taken to have occurred under subsection (5) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the report.

8. Section 19 amended

After section 19(8) insert:

(9) This section applies to an investigation by the Commissioner for the purposes of the reportable conduct scheme as follows —

(a) subsections (1) and (1a) do not apply;

(b) a reference to a department or authority is taken to be a reference to a relevant entity;

(c) a reference to the principal officer of a department or authority is taken to be a reference to the head of a relevant entity;

(d) subsection (7)(b) applies only if the investigation relates to a relevant entity that is a department or authority.

9. Section 20 amended

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

(2AA) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the head of a relevant entity or an investigator conducting an investigation under Division 3B, whether imposed by any enactment or by any rule of law, applies to the disclosure of information for the purposes of that investigation.
(2) In section 20(2B) delete “Crown or any authority to which this Act applies” and insert:

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

(3) In section 20(3):

(a) delete “(2A)” and insert:

(2A), (2AA)

(b) delete “he” and insert:

the person

10. Section 21 amended

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

(1) For

(2) At the end of section 21 insert:

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

11. Section 22A amended

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

concerning —

(a) any complaint under this Act; or

(b) any investigation under this Act, other than an investigation carried out for the purposes of the reportable conduct scheme.
Note: The heading to amended section 22A is to read:

Consultation other than in relation to reportable conduct scheme

12. Section 22AA inserted

After section 22A insert:

22AA. Consultation in relation to reportable conduct scheme

(1) The Commissioner may consult the Corruption and Crime Commission, the Public Sector Commissioner, the Inspector of Custodial Services or the Director of Public Prosecutions concerning —

(a) a reportable allegation or reportable conviction; or

(b) any investigation under this Act carried out for the purposes of the reportable conduct scheme; or

(c) any other matter that is relevant to the functions of the Commissioner under the reportable conduct scheme.

(2) The Commissioner or the head of a relevant entity may consult with a specified person concerning —

(a) a reportable allegation or reportable conviction; or

(b) any investigation under this Act carried out for the purposes of the reportable conduct scheme; or

(c) any other matter that is relevant to the functions of the Commissioner or the head of the relevant entity under the reportable conduct scheme.

(3) In subsection (2) —

**specified person** means —

(a) the Commissioner of Police; or

(b) the Commissioner for Children and Young People; or

(c) the CEO as defined in the CCS Act section 3; or
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(d) the CEO as defined in the Working with Children (Criminal Record Checking) Act 2004 section 4.

(4) Information obtained by the Commissioner, the Deputy Commissioner or a member of the Commissioner’s staff under this Act for the purposes of the reportable conduct scheme may be disclosed for the purposes of any consultation by the Commissioner under subsection (1) or (2).

(5) Information obtained by the head of a relevant entity or an investigator conducting an investigation under this Act for the purposes of the reportable conduct scheme may be disclosed for the purposes of any consultation by the head of the relevant entity under subsection (2).

13. Section 22B amended

In section 22B:

(a) after “this Act” insert:

(other than an investigation carried out for the purposes of the reportable conduct scheme)

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

Commissioner for Children and Young People,

14. Section 22C inserted

After section 22B insert:

22C. Disclosure of certain information relating to reportable conduct scheme

(1) 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 reportable conduct scheme.
(2) 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 —

(a) the information —

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

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

or

(b) the information —

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

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

or

(c) the information —

(i) is disclosed to the Commissioner for Children and Young People or a member of the staff of the Commissioner for Children and Young People authorised for the purposes of this subparagraph by the Commissioner for Children and Young People; and

(ii) 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

(d) the information —

(i) is disclosed to the CEO as defined in the CCS Act section 3 or a member of the staff of the Department as defined in that section; and
(ii) concerns a matter that is relevant to the functions of the CEO under that Act;

or

(e) the information —

(i) is disclosed to the CEO as defined in the Working with Children (Criminal Record Checking) Act 2004 section 4 or a member of the staff of the Department as defined in that section; and

(ii) concerns a matter that is relevant to the functions of the CEO under that Act.

15. Section 23 amended

(1) In section 23(1):

(a) after “investigation” (first occurrence) insert:

by the Commissioner

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

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

(2) In section 23(1b):

(a) delete “his opinion,” and insert:

the Commissioner’s opinion,

(b) delete “person,” and insert:

person or of the proper operation of the reportable conduct scheme,

(3) In section 23(1d)(a) after “authority” insert:

or relevant entity
(4) After section 23(1e)(a) insert:

(aa) if the opinions relate to a relevant entity, the head of the relevant entity; or

16. Section 23A amended

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

(1) Any

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

(2) Subsection (1) does not apply to a document sent to the Commissioner, the Deputy Commissioner or a member of the Commissioner’s staff for the purposes of the reportable conduct scheme.

17. Section 25 amended

After section 25(7) insert:

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

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

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

(c) subsection (3) applies only if the investigation relates to a relevant entity that is a department or authority;

(d) for the purposes of an investigation referred to in section 19W(3)(a) —

(i) subsections (1) and (2) do not apply; and
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(ii) a reference in subsections (3) to (5) to a recommendation under subsection (2) is taken to be a reference to a recommendation under section 19Y(3)(c).

18. Section 28 inserted

At the end of Part III Division 5 insert:

28. Annual report to include report on reportable conduct scheme

(1) The annual report of the accountable authority of the Parliamentary Commissioner for Administrative Investigations under the Financial Management Act 2006 Part 5 must include a report about the operation of the reportable conduct scheme in the financial year to which the report relates, including the following —

(a) a description of the activities of the Commissioner in relation to the reportable conduct scheme;

(b) an evaluation of the response of relevant entities to the recommendations of the Commissioner under the reportable conduct scheme;

(c) a description of matters relating to the reportable conduct scheme, including trends, notifications and investigations.

(2) A report under subsection (1) must not include information that could lead to the identification of a child or a person investigated under the reportable conduct scheme.

(3) This section does not limit the power of the Commissioner under section 27(1) to also, at any time, lay before each House of Parliament a report in relation to the reportable conduct scheme.
19. **Section 29 amended**

After section 29(2) insert:

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

20. **Section 29A inserted**

After section 29 insert:

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

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

   (a) a specified police officer;

   (b) police officers of a specified rank or class;

   (c) another person appointed or employed under the Police Act 1892.

(2) The delegation must be in writing signed by the Commissioner of Police.

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

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

(5) Nothing in this section limits the ability of the Commissioner of Police to perform a function through an officer or agent.
21. Section 30AA inserted

After section 30A insert:

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

(1) This section applies if a person acting in good faith —

(a) gives a report, notification or information to the Commissioner under Part III Division 3B or in the course of, or for the purposes of, an investigation into a reportable allegation or reportable conviction under this Act; or

(b) gives a report, notification or information to the head of a relevant entity under Part III Division 3B; or

(c) gives information to an investigator carrying out an investigation under Part III Division 3B.

(2) The report, notification or information may be given despite any other enactment, law or agreement that prohibits or restricts its disclosure.

(3) 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.

(4) Civil proceedings cannot be brought against a person in respect of an act referred to in subsection (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.
22. **Section 30B amended**

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

(ea) has provided, is providing 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

23. **Section 33 replaced**

Delete section 33 and insert:

33. **Regulations**

The Governor may make regulations —

(a) amending Schedule 1 or 2; or

(b) 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 reportable conduct scheme.

24. **Schedule 1 amended**

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

25. **Schedule 2 inserted**

After Schedule 1 insert:

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

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public bodies</td>
<td>A department.</td>
</tr>
<tr>
<td></td>
<td>An authority.</td>
</tr>
</tbody>
</table>

[Draft Bill for public comment]
<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Providers of education services</td>
<td>A school as defined in the <em>School Education Act 1999</em> section 4.</td>
</tr>
<tr>
<td></td>
<td>A college or other vocational education and training institution as those terms are defined in the <em>Vocational Education and Training Act 1996</em> section 5(1).</td>
</tr>
<tr>
<td></td>
<td>A registered training provider as defined in the <em>Vocational Education and Training Act 1996</em> section 5(1).</td>
</tr>
<tr>
<td></td>
<td>A university established under a written law.</td>
</tr>
<tr>
<td></td>
<td>An Australian university college, an authorised non-university institution or a recognised overseas university as those terms are defined in the <em>Higher Education Act 2004</em> section 3.</td>
</tr>
<tr>
<td>Providers of health services</td>
<td>A health service provider as defined in the <em>Health Services Act 2016</em> section 6.</td>
</tr>
<tr>
<td></td>
<td>A private hospital service provider as defined in the <em>Private Hospitals and Health Services Act 1927</em> section 2(1).</td>
</tr>
<tr>
<td></td>
<td>A provider of a mental health service as defined in the <em>Mental Health Act 2014</em> section 4 that has inpatient beds for children and young people.</td>
</tr>
<tr>
<td></td>
<td>A provider of a drug and alcohol treatment service that has inpatient beds for children and young people.</td>
</tr>
<tr>
<td></td>
<td>An ambulance service.</td>
</tr>
<tr>
<td>Providers of out-of-home care</td>
<td>A person who has entered into an agreement under the CCS Act section 15(1) for the provision of placement services.</td>
</tr>
<tr>
<td>services</td>
<td></td>
</tr>
<tr>
<td>Providers of child care services</td>
<td>An education and care service as defined in the <em>Education and Care Services National Law (Western Australia)</em> section 5(1).</td>
</tr>
<tr>
<td></td>
<td>A child care service as defined in the <em>Child Care Services Act 2007</em> section 4.</td>
</tr>
<tr>
<td>Column 1</td>
<td>Column 2</td>
</tr>
<tr>
<td>----------</td>
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</tr>
<tr>
<td>Providers of youth justice services</td>
<td>A provider of a detention centre as defined in the <em>Young Offenders Act 1994</em> section 3. A provider of community justice services funded by the department principally assisting in the administration of the <em>Young Offenders Act 1994</em>.</td>
</tr>
</tbody>
</table>

### Division 3 — Additional amendments

#### 26. Section 19F amended

In section 19F in the definition of *reportable conduct* after paragraph (a)(iii) insert:

1. (iiiia) significant neglect of a child;
2. (iiiib) any behaviour that causes significant emotional or psychological harm to a child;

#### 27. Schedule 2 amended

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

<table>
<thead>
<tr>
<th>Religious bodies</th>
<th>A religious body that provides, or has provided, activities, facilities, programs or services that provide a means for adults to have contact with children.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Examples of activities, facilities, programs or services</strong> —</td>
<td></td>
</tr>
<tr>
<td>(a) alter serving;</td>
<td></td>
</tr>
<tr>
<td>(b) art groups;</td>
<td></td>
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<tr>
<td>(c) bible study groups;</td>
<td></td>
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<tr>
<td>(d) choirs and music groups;</td>
<td></td>
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<tr>
<td>(e) church-run creches;</td>
<td></td>
</tr>
<tr>
<td>(f) dance groups;</td>
<td></td>
</tr>
<tr>
<td>(g) faith-based children’s and youth groups;</td>
<td></td>
</tr>
<tr>
<td>(h) multi-faith networks;</td>
<td></td>
</tr>
</tbody>
</table>
(i) open days;
(j) prayer groups;
(k) religious community engagement and outreach;
(l) religious festivals and celebrations;
(m) religious services;
(n) sports teams;
(o) Sunday schools;
(p) tutoring services;
(q) youth camps.

**Providers of disability services**

A service provider as defined in the *Disability Services Act 1993* section 3.

A registered provider of supports and services under the National Disability Insurance Scheme established under the *National Disability Insurance Scheme Act 2013* (Commonwealth).

**Providers of accommodation and respite services for children**

A provider of a homelessness service that provides overnight beds only for children and young people and is funded by the department principally assisting in the administration of the CCS Act.

A provider of boarding facilities for students who are children.

An entity that provides overnight camps for children and young people as part of its primary activity.

A provider of any other accommodation or respite services for children.
Part 3 — Working with Children (Criminal Record Checking) Act 2004 amended

28. Act amended
This Part amends the Working with Children (Criminal Record Checking) Act 2004.

29. Section 4 amended
In section 4 insert in alphabetical order:

head, of a relevant entity, has the meaning given in the Parliamentary Commissioner Act 1971 section 4;

Parliamentary Commissioner means the Commissioner as defined in the Parliamentary Commissioner Act 1971 section 4;

relevant entity has the meaning given in the Parliamentary Commissioner Act 1971 section 4;

relevant reportable conduct means reportable conduct that is prescribed by the regulations for the purposes of this definition;

reportable conduct has the meaning given in the Parliamentary Commissioner Act 1971 section 19F;

30. Section 12 amended
(1) In section 12(3) in the Table after item 6 insert:

| 6A | The CEO is aware that a finding of relevant reportable conduct has been made in relation to the applicant under the Parliamentary Commissioner Act 1971 Part III Division 3B. | s. 12(5) |

(2) In section 12(8):
(a) delete “offence,” and insert:

offence or finding of relevant reportable conduct,
(b) in paragraphs (b) and (c) delete “committed;” and insert:
committed or the relevant reportable conduct occurred
or is alleged to have occurred;

(c) in paragraph (d) after “offence” insert:

or relevant reportable conduct

(d) in paragraph (e)(ii) delete “applicant;” and insert:

applicant; or

(e) after paragraph (e)(ii) insert:

(iii) any finding of relevant reportable
conduct made in relation to the
applicant;

Section 13 amended
In section 13(1)(a)(ii) after “criminal record” insert:
or the findings of the applicant’s relevant reportable conduct

Part 2 Division 3A inserted
After Part 2 Division 3 insert:

Division 3A — Findings of relevant reportable conduct

Findings of relevant reportable conduct

(1) In this section —

employee, of a relevant entity, has the meaning given
in the Parliamentary Commissioner Act 1971
section 19C;

identifying information, in relation to a person,
includes the person’s —

(a) name and any former name and alias; and
(2) The Parliamentary Commissioner may give written notice to the CEO of a finding of relevant reportable conduct under the Parliamentary Commissioner Act 1971 if —

(a) the Parliamentary Commissioner reasonably believes that the finding is in respect of a person who —

(i) has applied for an assessment notice under section 9 or 10; or

(ii) has a current assessment notice;

and

(b) the finding relates to a person who is or was an employee of a relevant entity that is prescribed, or is of a class of relevant entity prescribed, by the regulations.

(3) A notice under subsection (2) must include the following information in relation to the person to whom the finding relates —

(a) any identifying information the Parliamentary Commissioner holds in relation to the person;

(b) a brief summary of the relevant reportable conduct and the finding.

(4) The CEO must treat a notice of a finding given to the CEO under subsection (2) as an application for an assessment notice by the person to whom the finding relates.

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

(6) If the person to whom the finding relates has a current assessment notice, section 12 applies to the application as if a reference in that section to issuing an assessment notice were a reference to issuing an assessment notice or a further assessment notice.
s. 33

33. Part 3A inserted

After section 34 insert:

Part 3A — Information gathering and sharing

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

(1) In this section —

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

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

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

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

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

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

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

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