

Submission by the Children in Care Collective

Proposed Reportable Conduct Scheme for Western Australia

The Children in Care Collective was formed in 2016 by a number of out-of-home care service providers, senior practitioners and academics in order to share information and work collaboratively and proactively on a range of issues for children and young people with complex needs living in out-of-home care. More information about the Collective can be found on its website at <http://childrenincarecollective.com.au/>

The Children in Care Collective (CCC) is fully supportive of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and welcomes the opportunity to provide some comments on the proposed Reportable Conduct Scheme ('the Scheme') for Western Australia and the *Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2020* ('the Bill').

Comments on the Bill

Section 19C – definition of 'employee'

Employee is defined in the Bill to mean an individual who has reached 18 years of age. CCC submits that there should be no minimum age limit imposed, and that any person employed by a relevant entity who provides services to children should be held accountable to the relevant standards of conduct and not engage in reportable conduct.

Section 19F – Reportable conduct

The definition of reportable conduct does not include:

- Ill-treatment of a child
- Neglect of a child
- Behaviour that causes significant emotional or psychological harm to a child.

The Information Sheet about the scheme does however indicate that reportable conduct that includes significant neglect of a child, and any behaviour that causes significant emotional or psychological harm to a child must be notified to the Ombudsman.

The CCC suggests that these three additional types of conduct should be included in the definition of reportable conduct as it assists agencies when these terms are well-defined in the Act. For example, in Part 4, *Children's Guardian Act 2019* (NSW), 'key concepts' have been defined and there are practical examples given about what constitutes different forms of reportable conduct.

The NSW Ombudsman, who was formerly responsible for overseeing the NSW reportable conduct scheme, published a fact sheet about notifying and identifying reportable conduct, which was widely used by agencies to guide decision making about whether conduct would meet the threshold for reportable conduct. Such guidance, which ideally is also codified in the legislation, makes it clear to employees, employers, and investigators what constitutes reportable conduct.

Section 19G – Reportable conviction

The definition of reportable conduct is quite narrow and only includes a conviction for a sexual offence or an offence prescribed by the regulations. The CCC submits that the definition of reportable conviction should extend to an offence involving reportable conduct (i.e. all types of reportable conduct) and should also include a finding of guilt without the court proceeding to a conviction.

Section 19I – Objects and principles

The CCC submits that it should be an objective of the Scheme to assist entities to prevent reportable conduct from arising in the workplace, and to ensure that entities take appropriate action in response to allegations of reportable conduct and reportable convictions.

Section 19L – Commissioner may exempt conduct

There is no detail included in this section for how the Commissioner decides to make a class or kind of conduct of employees exempt from being reportable conduct. This is unlike section 19N, which details about how the Commissioner may exempt the head of a relevant entity from commencing or continuing an investigation. Neither is there any detail about the basis for the Commissioner's decision to exempt a class or kind of conduct from being reportable conduct.

The CCC submits that it would assist if there was reference to how the Commissioner will decide to exempt a class or kind of conduct exempt from being reportable conduct, even if the Act defers this detail to a regulation – and on what basis. There should also be a requirement in this section for the Commissioner to notify the particular entity of the class or kind of conduct of employees that are deemed to be exempt from reportable conduct.

Section 19R – Head of relevant entity must notify Commissioner

In addition to the information listed in section 19R(2), that the head of the relevant entity must notify to the Commissioner, the CCC submits that the head of the relevant entity should also give written notice of whether a report about a child's wellbeing has been made to the Department of Communities, Child Protection and Family Support.

Section 19V – Head of relevant entity must report outcome of investigation

The CCC submits that the written report that is to be provided to the Commission after the end of an investigation should also include:

- for a reportable allegation - information about the facts and circumstances of the reportable allegation
- for a reportable conviction – information about the conviction
- an analysis of the evidence and rationale for the findings.

The CCC submits that it will be difficult for the Commissioner to determine whether the reportable allegation or reportable conviction has been properly investigated (under section 19V(2)), if these matters are not included in the report.

The CCC suggests that a reasonable timeframe within which the written report is to be provided should be added to this section, with the ability of the Commissioner to grant an extension (at the request of the relevant entity) for the submission of the report. This would ensure that investigation are conducted and completed in a timely manner, which is in the best interests of children.

Section 19W(4) – Commissioner may conduct own investigation

The CCC submits that the rather than have a finding of ‘reasonable grounds to suspect that an employee has engaged in reportable conduct’, that it is open to the Commissioner to simply make a finding of whether reportable conduct has occurred.

Section 19Z – Application to the State Administrative Tribunal for review

It may be appropriate for decisions made by the Commissioner following a finding of an investigation to be subject of administrative review, but the CCC questions whether the actual finding of an investigation should be reviewed by the State Administrative Tribunal.

Other comments

Intersection between the reportable conduct scheme and the National Disability Insurance Scheme (NDIS) reportable incidents

If a child in out-of-home care who is also a NDIS client is the victim of a reportable allegation, there can be reporting and investigation obligations in relation to reportable conduct as well as reportable incidents under the *NDIS (Incident Management and Reportable Incidents) Rules 2018*.

LWB submits that in such circumstances, it may be appropriate for the Commissioner, under section 19N(3)(a) to exempt a reportable conduct investigation if a reportable incident investigation is taking place in relation to the same factual circumstances.



Roderick Best
Chair
Children in Care Collective
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On behalf of the Children in Care Collective:

Allambi Care, Anglicare NSW South, NSW West and ACT, Anglicare Sydney, CareSouth, Key Assets, Life Without Barriers, Mackillop Family Services, Marist180, Settlement Services International, Stretch-a-Family and Australian Catholic University - Institute of Child Protection Studies