

Queensland

A Reportable Conduct Scheme

Issues paper 10 March 2017



What is a Reportable Conduct Scheme?

A Reportable Conduct Scheme involves a central oversight body, which organisations must notify when allegations or convictions relating to actions by an employee or volunteer of the organisation constitute reportable conduct.

The definition of reportable conduct can vary but generally will involve sexual, physical or psychological abuse of a child. Reportable conduct schemes only apply to allegations and convictions relating to employee conduct, and the responses of organisations to those matters.

Once the oversight body receives a notification it may decide to monitor the organisation's investigation of the allegation of reportable conduct, or choose to commence its own investigation. The investigation by the oversight body can be into either the conduct of the employee, or the conduct of the organisation in responding to the allegation against the employee. The results of the investigation by the oversight body can be provided back to an organisation with recommendations to improve child safe practices, or this information can be referred to other public agencies if relevant for the protection of children.

Organisations subject to such a scheme usually have a high degree of responsibility for children or responsibility for children as one of their primary functions.

A Queensland Reportable Conduct Scheme oversight body would work in concert with other entities such as the Crime and Corruption Commission, the Queensland Ombudsman or the Queensland Family and Child Commission which have powers to investigate how government agencies respond to allegations or issues, and make recommendations to improve future responses.

Making a Submission

All comments and submissions to the Department of the Premier and Cabinet (DPC) must be made in writing.

In providing comments or a submission, please identify the question you are responding to and, if practicable, please provide reasons and supporting details for your responses. Please also feel free to comment on any other issues relating to a Reportable Conduct Scheme for Queensland that are of concern to you.

Please provide any comment or submission by **2 May 2017**

By email: reportableconduct@premiers.qld.gov.au

By post: c/o Social Policy
Department of the Premier and Cabinet
PO Box 15185
City East QLD 4002

Privacy Statement

For the purpose of the *Information Privacy Act 2009*, by making a submission you are consenting to the use and disclosure of any personal information you provide, as outlined in this privacy statement.

Any personal information in your comments or submissions will be collected by DPC for the purpose of the consultation. Officers of DPC may contact you for further consultation on the issues you raise. Your submissions may also be released to other Government agencies as part of the consultation process.

Submissions provided to DPC in relation to this issues paper will not be published. Please note however that all submissions, including any personal information contained within submissions, may be subject to disclosure under the *Right to Information Act 2009*, and applications for access to submissions, including those marked confidential, will be determined in accordance with that Act.

Submissions (or information about their content) may also be provided, in due course, to a parliamentary committee that considers matters relating to the issues paper.

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Why does Queensland need a Reportable Conduct Scheme?

The work of the Royal Commission into Institutional Responses to Child Sexual Abuse has highlighted the systemic failures of institutions in both protecting children and responding to allegations of child sexual abuse, and that much can be learnt from existing responses to child abuse to make organisations more child safe.

Queensland has strong existing mechanisms, such as the Blue Card system, which encourage all organisations to be child safe. Queensland also has comprehensive existing reporting arrangements for misconduct regarding organisations and professionals. The Queensland College of Teachers, the Health Ombudsman, the Queensland Ombudsman, and the Crime and Corruption Commission, all form part of a comprehensive framework of reporting to protect children in Queensland.

The Queensland Government is committed to ensuring a consistent and systemic level of oversight regarding employee conduct in organisations providing care and services to children and young people. This can be achieved through establishing a Queensland Reportable Conduct Scheme, in alignment with the Council of Australian Governments'

in-principle agreement on 1 April 2016 to harmonise Reportable Conduct Schemes across jurisdictions, similar to the current model in New South Wales (NSW).

This discussion paper explores the potential implications of introducing a Reportable Conduct Scheme for affected stakeholders in Queensland, including organisations and employees or volunteers. It is proposed that the functions of a Queensland Reportable Conduct Scheme would be the responsibility of an existing reporting body (potentially either the Queensland Ombudsman or the Queensland Family and Child Commission), consistent with the Reportable Conduct Schemes in NSW, the Australian Capital Territory (ACT) and Victoria. This Issues Paper presents the approaches of other jurisdictions to provide context for the issues that may require consideration in Queensland.

This issues paper focuses on several key areas, including:

- What types of organisations would be subject to a Queensland Reportable Conduct Scheme?
- What is considered 'reportable conduct'?
- Whose conduct should be reportable?
- What will be the responsibilities of organisations under a Queensland Reportable Conduct Scheme?
- Who should lead a Reportable Conduct Scheme in Queensland?
- What roles and powers will the oversight body have?

What types of organisations would be subject to a Queensland Reportable Conduct Scheme?

A Queensland Reportable Conduct Scheme would allow for either the Queensland Ombudsman or the Queensland Family and Child Commission (QFCC) to provide a central oversight function for reportable conduct. Key features would include monitoring and reviewing allegations and convictions of employees and volunteers of organisations with a degree of responsibility for children, and the actions taken by organisations in responding to those allegations or convictions. These functions would seek to work with, and not duplicate, current professional and service reporting or oversight arrangements.

Queensland is proposing to draw upon the experiences of other jurisdictions in effecting a best practice Reportable Conduct Scheme, and implementing an approach that is suitable for Queensland.

New South Wales

New South Wales established its Reportable Conduct Scheme within the NSW Ombudsman in 1999. In NSW, designated agencies must report reportable allegations and convictions that arise inside and outside of an employee's work. 'Employee' is defined as a person employed by the agency, whether or not they are employed in connection to any work or activities that relate to children, and any individual engaged by the agency to provide services to children, including as a volunteer. This extends the scheme to foster carers.

For the purposes of the NSW scheme, 'designated agencies' are relevant government departments that deal with children, and non-government organisations within the categories of: non-government schools, child care centres, agencies providing substitute residential care to children, and, out of school hours care. 'Other public authorities', such as government departments that are not specifically named within the list of 'designated agencies', are only required to notify allegations that arise from an employee's work. For example, the Department of the Premier and Cabinet would be considered a public authority rather than a designated agency, and would only be required to report to the scheme about allegations that arise during the course of employment.

Australian Capital Territory

The Australian Capital Territory passed legislation to establish a Reportable Conduct Scheme last year, which is due to commence in full on 1 July 2017. In the ACT, entities that will be required to notify the oversight body of allegations of reportable conduct include an administrative unit that deals with the safety, welfare or wellbeing of a particular child or class of children, and non-government organisations similar to those in NSW. However additional services will also be included such as health service providers, education and care services, approved kinship and foster care organisations, and any other entity prescribed by regulation.

Victoria

From 1 July 2017, the Commission for Children and Young People (CCYP) will administer a reportable conduct scheme in Victoria. Under that scheme, the entities which must notify the oversight body are the same as both NSW and the ACT but also include: residential services for children with a disability, certain education providers, hospitals, providers of overnight camps, religious bodies, the residential facilities of boarding schools, early childhood services, and statutory bodies that have responsibility for children, such as public museums and galleries.

The differences across jurisdictions are largely dependent upon the level of specificity provided in legislation and information materials, for example a class of organisation that is named in Victoria may also fall under the ACT Reportable Conduct Scheme through a regulation.

Queensland

Organisations that may be required to notify under a Queensland Reportable Conduct Scheme could include, but are not limited to:

- Government agencies
- State and non-state schools
- Out-of-home care services
- Child care centres
- Organisations with a high degree of responsibility for children

When considering which organisations should be under a Queensland Reportable Conduct Scheme, consideration should be given to the organisation's level of involvement with, and responsibility for, children. There will also likely be increases in reporting obligations for such organisations.

Q1. What types of organisations should be subject to a Queensland Reportable Conduct Scheme?

Q2. Are there any types of organisations that should be excluded from a Reportable Conduct Scheme?

Q3. What potential impact could the increased burden of reporting have on your organisation if included under a Reportable Conduct Scheme?

What should be considered reportable conduct?

Central to an efficient Reportable Conduct Scheme is a robust and clear definition of what conduct should be reported by organisations. The definition of reportable conduct in Queensland is proposed to include conduct that may not amount to a criminal offence, but may require further investigation. It is important this broader category of behaviour is captured to help prevent persons who engage in this type of behaviour from moving across sectors and causing further harm to children.

New South Wales

Under the NSW Reportable Conduct Scheme notifications are required to be made to the NSW Ombudsman by organisations when an allegation of child abuse is made against an employee or volunteer, including:

- any sexual offence, or sexual misconduct committed against, with, or in the presence of a child;
- any assault, ill-treatment or neglect of a child; and,
- any behaviour that causes psychological harm to a child.

Australian Capital Territory

In the ACT, the proposed Reportable Conduct Scheme will provide that reportable conduct is:

- engaged in by an employee of a designated entity, whether or not in the course of employment with the entity;
- that results in any of the following, regardless of a child's consent:
 - ill treatment or neglect of a child;
 - exposing or subjecting the child to— behaviour, or a circumstance, that psychologically harms the child, or misconduct of a sexual nature.
- a number of specified criminal offences.

In the ACT, conduct which is not included within the definition of reportable conduct includes:

- conduct that is reasonable discipline, management or care of a child taking into account the characteristics 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
- if the conduct is investigated and recorded as part of workplace procedure, that is trivial or negligible or prescribed by regulation.

Victoria

In Victoria, reportable conduct is considered to be allegations against workers or volunteers of child abuse or misconduct involving children, which includes:

- sexual misconduct or offences;
- grooming;
- 'sexting';
- inappropriate physical contact with a child; or
- other conduct that crosses professional boundaries concerning children.

Queensland

In Queensland, child abuse is defined by s 9 of the *Child Protection Act 1999* (Qld) in reference to harm, where harm is defined as any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing. Harm can be caused by physical, psychological or emotional abuse or neglect, or sexual abuse or exploitation. This definition could provide the basis for the definition of reportable conduct in Queensland.

Q4. What conduct should be considered reportable in a Queensland Reportable Conduct Scheme?

Whose conduct should be reportable?

Across all Reportable Conduct Schemes proposed and in force in Australia, the conduct of employees and volunteers of specified organisations is considered reportable. This does not affect any existing obligations upon organisations' or individuals' to report matters to police or other relevant existing oversight bodies.

The definition of employee for the purposes of the reportable conduct scheme in NSW is a person employed by the agency, whether or not they are employed in connection with any work or activities of the agency that relates to children, and any individual engaged by the agency to provide services to children (including in the capacity of a volunteer). This definition extends the definition of those who are subject to a Reportable Conduct Scheme to foster or out of home carers. Similarly, in Victoria, those covered are considered to be workers and volunteers.

In the ACT, however, certain persons are excluded from being subject to the Reportable Conduct Scheme including adults that are clients of, or adults not associated with, the organisation including strangers or visitors, and other children.

Organisations in Queensland likewise engage employees and volunteers who work in varying capacities.

In considering whose conduct should be reportable, factors such as the person's connection with the organisation including the person's degree of responsibility in relation to the child should be taken into consideration.

Q5. Whose conduct should be reportable under a Queensland Reportable Conduct Scheme?

Q6. Whose conduct should be excluded from reporting under a Queensland Reportable Conduct Scheme?

What would be the reporting responsibilities of organisations under a Queensland Reportable Conduct Scheme?

Within a Reportable Conduct Scheme, organisations are responsible for notifying the oversight body of any allegations or convictions involving their employees or volunteers within a set timeframe. This responsibility ultimately rests with the head of the organisation, and as such systems or mechanisms to facilitate reporting should be implemented.

An essential component of a reportable conduct scheme is a clear timeframe for reporting or demonstrating responses to reportable conduct. This ensures timely responses and effective intervention by the oversight body if needed. Reportable conduct schemes in other jurisdictions have strict timeframes to guide organisations in their reporting obligations.

In NSW, designated agencies are required to notify the central oversight body within 30 days from when allegations or convictions of reportable conduct occur either in the course of, or outside of the employment of, that person. Other public authorities must notify only of reportable conduct that occurs during employment. This does not affect the existing reporting requirements to the NSW Police and the Department of Family and Community Services. The notification to the NSW Ombudsman must include: details of the allegation or conviction, advice as to the action going to be taken in response or reasoning for why action is or is not going to be taken, and a written submission made by the employee about what action should be taken against the employee.

In the ACT, similar to the approach taken in NSW, designated entities must report: any reportable allegation or conviction involving an employee, whether action is to be taken and justifications why or why not, and any submissions by the employee. The initial report of the allegation or conviction must occur within 30 days from when the entity becomes aware of the reportable conduct.

In Queensland other comparable oversight schemes incorporate criteria and timeframes for reporting to appropriate bodies. It is preferable that a Queensland Reportable Conduct Scheme include timeframes and clear understanding of relationships with other reporting requirements. For example, a Reportable Conduct Scheme will not interfere with reporting obligations to the Queensland Police Service, and the Queensland Police Service's role in investigating and prosecuting child abuse will not be affected.

Q7. What timeframes should be in place for the reporting of conduct to the oversight body?

Q8. Who should be responsible for providing reports to the oversight body?

Q9. Would there be any measures that government could implement to assist organisations with compliance under a Queensland Reportable Conduct Scheme?

Who could lead a Reportable Conduct Scheme in Queensland?

The NSW Reportable Conduct Scheme has been in place since 1999, and similar Reportable Conduct Schemes are soon to be implemented in the ACT and Victoria.

In NSW, the NSW Ombudsman is the central oversight body with responsibility for receiving notifications of reportable conduct. Under section 25A of the *Ombudsman Act 1974* (NSW) notifications are required to be made to the Ombudsman by organisations when an allegation of child abuse is made against an employee or volunteer. The NSW scheme allows for the Ombudsman to monitor the progress of an investigation or to conduct its own investigation into either the allegation, conviction or the handling or response to an allegation or conviction.

In the ACT, under the proposed Reportable Conduct Scheme, the ACT Ombudsman will have the power to oversee, examine and report on an allegation of abuse committed in a school, day care centre or any other organisation that has a primary responsibility for the care of children. The *Reportable Conduct and Information Sharing Legislation Amendment Act 2016* which implements the ACT Reportable Conduct Scheme has been passed by the ACT Parliament, and the scheme is due to be implemented from 1 July 2017.

In Victoria, the proposed Reportable Conduct Scheme will utilise the CCYP as the central oversight body to which organisations with a very high degree of responsibility for children will report allegations of abuse by employees and volunteers. The Victorian scheme is also due to be implemented in a staggered approach from 1 July 2017.

In Queensland, there are two existing entities that could be best suited to lead a Reportable Conduct Scheme in Queensland as the central oversight body, the Queensland Ombudsman and the Queensland Family and Child Commission.

What are the current roles and powers of the Queensland Ombudsman and the Queensland Family and Child Commission?

The Queensland Ombudsman is established under the *Ombudsman Act 2001* (Qld). The Ombudsman currently investigates complaints about the actions and decisions of Queensland public agencies and their staff that may be unlawful, unreasonable, unfair, improperly discriminatory or otherwise wrong. The Queensland Ombudsman also assists state agencies and local councils to improve their administrative practice through making recommendations based upon investigations, conducting training on good decision-making and complaints management, and providing advice and other assistance.

The Queensland Ombudsman has the power to facilitate investigation and resolution of complaints made to it, and to use its investigative powers where necessary. These powers are limited to investigating the actions of Queensland Government agencies, local councils and public universities. The Queensland Ombudsman has the power to begin an investigation from its own initiative, as well as in response to complaints and

references from the Queensland Parliament or Parliamentary Committees. The Queensland Ombudsman can also make recommendations to improve agencies' practices and procedures, both generally and in relation to a specific complaint.

Should the Queensland Ombudsman perform the role of the central oversight body under the Reportable Conduct Scheme, these existing investigative powers could be broadened to include those organisations outside of government which may fall under the definition of reporting agencies.

The QFCC is established under the *Family and Child Commission Act 2014* (Qld) The QFCC was created as a result of the Queensland Government's response to the Queensland Child Protection Commission of Inquiry. The QFCC's purpose is to: promote the safety, wellbeing and best interests of children and young people; promote and advocate the responsibility of families and communities to protect and care for children and young people; and, improve the child protection system. One of the key current roles of the QFCC is to provide oversight by monitoring, reviewing, evaluating and reporting on the performance of the child protection system and associated reform initiatives.

The QFCC does not currently have the same level of investigative powers for individual circumstances as the Queensland Ombudsman, as it is not a function of the QFCC to investigate the circumstances of a particular child, young person or family or to advocate on their behalf. The QFCC may undertake research and evaluation of systems, policies and practices relevant to the child protection system. Should the QFCC perform the role of the central oversight body, additional investigative powers may need to be provided to the QFCC to fulfil the obligations under a Queensland Reportable Conduct Scheme.

Q10. Who should lead a Reportable Conduct Scheme in Queensland?

What roles and powers should the central oversight body have?

Under a Queensland Reportable Conduct Scheme the oversight body will monitor, investigate and report on reportable conduct matters, to ensure organisations with children have adequate protections in place to keep children safe.

One key issue for Queensland to consider is what information sharing capabilities the oversight body will have, both between the oversight body and government agencies, and between the oversight body and other reportable conduct scheme oversight bodies in other jurisdictions.

In NSW, the NSW Ombudsman is the central oversight body who keeps under scrutiny, the systems that government and certain non-government agencies have for preventing reportable conduct and handling reportable allegations and convictions involving their employees or volunteers. The Ombudsman decides whether an

investigation that has been notified has been properly conducted and whether appropriate action was taken as a result. The NSW Ombudsman may conduct a direct investigation into an allegation or conviction, or may investigate the handling of or response to an allegation or conviction.

In the ACT, the Ombudsman will monitor the practices and procedures of an organisation for the prevention of reportable conduct involving an employee of the entity, and dealing with reportable allegations or reportable convictions involving an employee of the entity. The ACT Ombudsman may conduct its own investigation into either the reportable allegation or conduct of an employee within an organisation, or the organisation's response to the allegation or conviction.

In Victoria, the CCYP will receive reports from investigations, conduct investigations, make recommendations to organisations to enable more child safe practices and share relevant information to better protect children. Sharing information will include referring findings of reportable conduct to the Victorian Working With Children Check Unit and relevant professional registration bodies.

Q11. What roles and powers should the oversight body have?

Q12. Should the oversight body have roles and powers to monitor, investigate and report on allegations that do not meet the definition of reportable conduct?

What information sharing or disclosure capabilities could the oversight body have, both within Queensland and with other jurisdictions?

Currently, no states or territories in Australia have specific legislative provisions which enable information sharing for reportable conduct schemes between jurisdictions. However, there are provisions in NSW, the ACT and Victoria which allow for the oversight body to disclose information to other bodies within their jurisdiction in certain circumstances.

In NSW, the NSW Ombudsman can disclose information to the Children's Guardian (who administers the Working With Children Check in NSW). This information can be about an employee the Ombudsman believes may cause that employee to be a disqualified person for the purposes of the Working With Children Check or to be subject to an assessment requirement under that system. The Ombudsman can also share information about reports of its investigations into reportable conduct or the investigation by the agency involved.

The ACT has implemented specific legislative provisions to enable information to be disclosed to the ACT Ombudsman by the head of a designated entity or an employee that, on reasonable grounds, reveals: reportable conduct involving an employee of the entity; or a reportable conviction against an employee of the entity. The Ombudsman

may then disclose this information if it is relevant to the safety, health or wellbeing of a child or class of child to: the chief police officer; law enforcement agency; human rights commission; the director-general responsible for child safety or education; or the chief executive officer of the ACT Teacher Quality Institute.

In the ACT, the Ombudsman also has the ability to give information to the Commissioner for Fair Trading in relation to Working With Vulnerable People checks, and the Human Rights Commission may provide information to the Ombudsman.

In Victoria, the CCYP may disclose information to address child safety concerns to a relevant authority, the Minister or Secretary of the Department of Health and Human Services, or another relevant Minister or Secretary. Information may be disclosed to these entities about the failure of an entity to provide for the safety of children and to prevent child abuse, to enable an adequate response to allegations, or where the disclosure may prevent the serious or imminent threat of harm to the health, safety or wellbeing of a child.

Queensland could utilise similar discretionary powers for disclosure of information for the oversight body to other designated entities. Appropriate information sharing with other regulatory and investigative bodies will be an essential component of a Queensland Reportable Conduct Scheme, and is necessary to properly protect children in the State. However issues such as ensuring the privacy of children and according natural justice to accused persons will need to be balanced with effective sharing of information. Safeguards and best practice mechanisms will be explored further in the development of the Queensland model. Additionally, the physical security of information and ensuring secure lines of communication will be key elements of any Reportable Conduct Scheme.

Q13. Should the oversight body have the power to disclose certain information for the protection of children to certain agencies or persons, and what agencies or persons should be included?

Q14. Should the oversight body have the ability to share information with other agencies, and other jurisdictions?

Q15. What safeguards should be considered?

Next Steps – Submissions

The Queensland Government welcomes submissions from all interested parties to the Queensland Reportable Conduct Scheme discussion paper. Details on making a submission can be found on the Get Involved website at www.getinvolved.qld.gov.au, and can be made to reportableconduct@premiers.qld.gov.au. Submissions will close on 2 May 2017.

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