

**2016**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**REPORTABLE CONDUCT AND INFORMATION SHARING LEGISLATION  
AMENDMENT BILL 2016**

**EXPLANATORY STATEMENT**

**Presented by  
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Chief Minister**

## **Introduction**

This Explanatory Statement relates to the *Reportable Conduct and Information Sharing Legislation Amendment Bill 2016* as presented in the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. The Explanatory Statement does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

## **Overview of reforms**

The *Reportable Conduct and Information Sharing Legislation Amendment Bill 2016* responds to community concerns about institutional responses to child abuse.

The purpose of this Bill is to introduce a Reportable Conduct Scheme (the Scheme) to improve reporting and oversight of allegations of misconduct by an employee or volunteer against children in organisations with a duty of care to children and young people. This Bill does not alter existing reporting requirements.

The Scheme is a new function of the ACT Ombudsman and imposes a general duty on the ombudsman to keep under scrutiny the systems for preventing child abuse by employees of designated entities, and for the handling and responding to reportable allegations and convictions against those employees.

The Scheme will, through the provisions of oversight, build on the capacity of organisations in the ACT to respond appropriately and effectively to allegations of abuse, mistreatment or neglect of children in their care, and will be a key feature of child-safe organisations.

The Scheme's primary purpose is to oversight investigations into employee misconduct when a child's safety or wellbeing is at risk, providing an additional level of monitoring and enhancing public confidence in the outcomes of investigations.

The Bill also promotes improved information sharing with the objective to allow the delivery of services in a way that promotes the safety, welfare and wellbeing of children and young people.

The amendments recognise services and other entities interested in child welfare must have authority to request, provide and cooperatively share relevant information to support them to carry out their functions in a way that supports the safety, welfare and wellbeing of children and young people.

Information sharing amendments enhance information disclosure between the commissioner for fair trading, the ombudsman, human rights commission, relevant directors-general, the chief police officer and the chief executive officer of the ACT Teacher Quality Institute. These amendments seek to ensure all information relevant to these entities' functions is available to inform or assist in preventing risk of harm to children and young people, as intended under relevant Acts.

The Bill also recognises services and other entities have a responsibility to coordinate in the interest of supporting safety, welfare and wellbeing of children and young people. The amendments will support designated entities and their employees to cooperate in good faith, ensuring relevant information can be shared. It also

recognises designated entities have a responsibility to protect the confidentiality of some information, but not to the extent it may limit reasonable steps for the coordination information that may identify risks to safety of children.

### **Overview of human rights considerations**

As the Bill allows for more effective sharing of information between entities working towards the protection of children, there is a necessary and consequential engagement of the individual's right to privacy as codified at section 12 of the *Human Rights Act 2004*. These amendments constitute a reasonable limitation of this right.

As required by section 28 of the Human Rights Act, all relevant factors have been considered.

Under current legislation, protected and sensitive information related to matters of child protection may be shared in limited circumstances. With few exceptions, information may be shared to, and by, the director-general of the Community Services Directorate. This is an approach that is, or was in the past, reflected in other Australian jurisdictions.

This arrangement does not lend itself to the timely, effective, and efficient sharing of information. Evidence before the Royal Commission into Institutional Responses to Child Sexual Abuse, the findings of the NSW Special Commission of Inquiry into Child Protection, and the findings of the Victorian Royal Commission into Family Violence have all demonstrated that this kind of information sharing regime is a barrier to the effective protection of children.

Both the NSW and Victorian Royal Commissions called for changes to information sharing provisions similar to those contained in this Bill.

More recently, the *Review into the system level response to family violence in the ACT* (the Glanfield Review), has specifically recommended that these types of information sharing provision be enacted in the ACT.

These changes will improve protections to the specific rights of children by virtue of being children (section 11(2) of the Human Rights Act), the rights of children to be free from cruel or degrading treatment, (section 10(1)(b)), and most importantly, their right to life (section 9(1)).

Information may only be shared between those entities that exercise the closest supervision and care for children and young people. The Bill also places restrictions on both the requesting and providing parties to ensure that the information is being used only for purposes of promoting the safety, welfare or wellbeing of a child, or a class of children.

There is also a restriction that any information sharing under these provisions must not be used or disclosed for a purpose that is not associated with the safety, welfare or wellbeing of a child, or a class of children.

Additional information sharing provisions allow transfer of information from the ombudsman to the commissioner for children and young people, the commissioner of fair trading, relevant directors-general, the human rights commission, the chief executive officer of the ACT Teacher Quality Institute and the police. While this allows for a wider range of information to be transferred, each of these recipients already handle protected information in their duties, and are bound by confidentiality provisions within their own Acts.

These amendments represent a small and reasonable limitation on the right to privacy, which is greatly outweighed by the increased protections available to the rights of children to be protected from abuse and mistreatment.

### **What changes are provided for by the Bill?**

The Bill amends the *Ombudsman Act 1989*, the *Children and Young People Act 2008* and the *Working with Vulnerable People (Background Checking) Act 2011*.

There are four components of the Bill designed to establish a reportable conduct scheme aimed at improving reporting and oversight of allegations of employee misconduct against children in child-safe organisations.

These components establish:

1. a requirement for designated entities to report allegations, abuse and action taken to the ombudsman;
2. a requirement for the ombudsman to keep policies and practices of designated entities under scrutiny;
3. authority for the ombudsman to initiate their own investigation where they are unsatisfied with an organisation's policies and practices;
4. authority for designated entities to share information to allow for the identification of child safety and wellbeing information.

### **Amendments to the Ombudsman Act**

The Bill amends the Ombudsman Act by creating a new division that expands the scope of the ombudsman's authority to monitor the practices and procedures of designated entities for the prevention of reportable conduct and for dealing with reportable allegation or convictions involving an employee.

The Bill requires organisations to report to the ombudsman within a relevant time period, and empowers the disclosure of such information to a law enforcement agency, the human rights commission including the commissioner for children and young people and relevant directors-general.

### **Amendments to the Children and Young People Act**

*Providing information to the commissioner for fair trading (new sections 856A and 856B)*

The Bill promotes improved information sharing to support effective delivery of the working with vulnerable people scheme. The amendments will enable the director-general responsible for the Children and Young People Act and a responsible person for approved care and protection organisations to provide information to the commissioner for fair trading for the purposes of exercising their functions under the Working with Vulnerable People (Background Checking) Act.

The director-general and approved care and protection organisations are in receipt of credible and significant personal information regarding individuals. The sharing and disclosure of certain information to the commissioner for fair trading, such as protected information, is restricted.

Inclusion of these additional provisions means the commissioner for fair trading can access relevant and available protected information to inform an assessment of risk

in relation to a person's working with vulnerable people registration. The Working with Vulnerable People (Background Checking) Act provides certain protections about using personal information regarding individuals, and it is an offence to use or divulge this information for other purposes other than for functions under the Act.

#### Designated entities sharing reportable conduct information

The object of these amendments is to allow designated entities to deliver services in a way that promotes the safety, welfare and wellbeing of children and young people through the sharing of information.

The exercise of information sharing functions is to be informed by principles that encourage and enable designated entities to work collaboratively, respecting each other's functions and expertise, whilst communicating efficiently with each other in order to improve the provision of services. Generally, the safety, welfare and wellbeing of children and young people is treated as more important than protecting confidentiality of information and personal privacy for all designated entities, as reflected in the amendments.

Information may be shared between those entities that exercise supervision and care for children and young people. The Bill places restrictions on both the requesting and providing parties to ensure that the information is being used only for purposes of promoting the safety, welfare or wellbeing of a child, or a class of children.

The amendments will support designated entities and their employees to cooperate in good faith and without legislated or perceived obstacles for acting in the interest of the safety, welfare and wellbeing of a child or class of children. Someone who honestly and without recklessness provides information under provisions in this division will not commit a breach of confidence, profession etiquette or ethics, or a rule of professional conduct. They are also not liable for any civil, criminal or other disciplinary action.

### **Amendments to the Working with Vulnerable People (Background Checking) Act**

#### Commissioner for fair trading requesting information from entities to conduct a new or ongoing risk assessment for a person (sections 33 and 53)

The amendments will require designated entities to comply with requests from the commissioner for fair trading for information or advice that will assist in conducting a new or ongoing risk assessment for a person.

The amendments recognise that designated entities hold relevant information about individuals, and the provision of that information is critical for decision-making about protecting children and vulnerable people. Implementation will include all relevant information, except certain identifying information about persons making a report under the Children and Young People Act, section 857.

The amendments also provide necessary protections for the entity giving relevant information or advice in response to a request made to support a risk assessment under the Working with Vulnerable People (Background Checking) Act. The Bill builds in necessary protections for people disclosing information to ensure the provision of relevant information occurs.

Under the Working with Vulnerable People (Background Checking) Act the commissioner for fair trading has restricted use of personal information about individuals specific to functions under the Act.

*Information sharing between the commissioner for fair trading, the ombudsman, human rights commission, relevant directors-general, the chief police officer and the chief executive officer of the ACT Teacher Quality Institute(new sections 63A, 63B)*

The amendments allow for the disclosure of protected or relevant information between the commissioner for fair trading, the ombudsman, human rights commission, relevant directors-general, the chief police officer and the chief executive officer of the ACT Teacher Quality Institute.

The aim of these amendments is to ensure that all information relevant to their functions is available to inform or assist in preventing risk of harm to a child or vulnerable person, as intended under the relevant Acts (e.g. Working with Vulnerable People (Background Checking) Act).

The amendments allow designated information sharing entities to request information, including protected information and safety and wellbeing information, from one another for the purpose of making a decision, assessment, or conducting or planning an investigation, or providing a service relating to the safety, welfare or wellbeing of a child or vulnerable person.

As is the case with a number of the Bill's provisions, the amendments strengthen the primacy of the best interests of a child or vulnerable person. This is because it provides relevant decision-makers access to information that aims to safeguard or protect the welfare and wellbeing of a child or vulnerable person.

The amendments will also strengthen the partnership between the commissioner for fair trading, the ombudsman, human rights commission, relevant directors-general, the chief police officer and the chief executive officer of the ACT Teacher Quality Institute, to work collaboratively to further protect children and vulnerable people.

### **Who will these changes affect?**

The reportable conduct and information sharing provisions will affect a wide range of people working in organisations that provide services to children and young people and have responsibility for reporting allegations of misconduct against children and young people.

The organisations that exercise the closest supervision and authority over children will be 'designated entities' under the scheme, including government directorates, government and non-government schools, child care services, out of home care organisations, and other agencies whose employees work directly with children.

### **Who and what informed these changes?**

Across Australia there have been a number of inquiries into how organisations respond to allegations of abuse or neglect against children in their care. This Bill looks to establish another measure consistent with the ACT's commitment to create child-safe organisations.

The Glanfield Review specifically recommended that these types of information sharing provision be enacted in the ACT to clearly authorise information sharing and to foster a culture of appropriate information sharing and collaboration.

Restrictions are placed on both the requesting and providing parties to ensure information is used only for purposes of promoting the safety, welfare or wellbeing of a child, or a class of children.

The Bill as a whole received input from stakeholders and from people who work in organisations that provide services to children and young people, through a discussion paper and a series of public consultations. The ACT Ombudsman has been consulted, in addition to the NSW Ombudsman and interjurisdictional bodies. A nationally consistent Reportable Conduct Scheme has been given in-principle support by the Council of Australian Governments (COAG).

## Notes on Clauses

### Part 1 Preliminary

#### Clause 1 Name of Act

This is a technical clause and sets out the name of the Act as the *Reportable Conduct and Information Sharing Legislation Amendment Act 2016*.

#### Clause 2 Commencement

This clause enables certain provisions of the Act to commence on the day after this Act's notification day and the remainder to commence on a day fixed by the Minister on written notice.

#### Clause 3 Legislation Amended

This clause provides that the Act amends the following legislation:

- *Children and Young People Act 2008*
- *Ombudsman Act 1989*
- *Working with Vulnerable People (Background Checking) Act 2011*.

### Part 2 Children and Young People Act 2008

#### Clause 4 New sections 856A and 856B

##### **Section 856A, director-general giving information to the commissioner for fair trading**

A new section 856A enables the director-general responsible for the Children and Young People Act to give protected information to the commissioner for fair trading if satisfied on reasonable grounds that the information is relevant to the commissioner's functions under the Working with Vulnerable People (Background Checking) Act.

##### **Section 856B, responsible person giving information to the commissioner for fair trading**

A new section 856B enables a responsible person for approved care and protection organisations to give protected information to the commissioner for fair trading if satisfied on reasonable grounds that the information is relevant to the commissioner's functions under the Working with Vulnerable People (Background Checking) Act.



## **Clause 5      New division 25.3.3**

Clause 5 creates a new division for *Part 25.3 – Sharing protected information*, including a new heading *Designated entities sharing reportable conduct information* for sections 863A – 863G.

Section 863A defines designated entities and reportable conduct in accordance with their meaning under the Ombudsman Act.

Section 863B enables a designated entity to request reportable conduct information from another designated entity.

Section 863C requires a designated entity to provide reportable conduct information if requested under section 863B and the conditions contained within that section are satisfied. This section also provides the grounds for a designated entity to refuse to provide reportable conduct information.

Section 863D provides a restriction on the use of information given under this division if it is not used or given for a purpose associated with safety, welfare or wellbeing.

Section 863E ensures that the disclosure of information under this division is not disclosed in breach of confidence or professional conduct rules or ethics and that the persons making the disclosure are protected from liability.

Section 863F ensures that the disclosure of information under this division is not prevented or restricted by any other Act or law.

Section 863G imposes a general duty on designated entities to take reasonable steps to ensure cooperative, coordinated and efficient provision of reportable conduct information.

## **Clause 6      Dictionary, new definitions**

Clause 6 creates new definitions for the purposes of the Act and the relevant new sections.

## **Part 3            Ombudsman Act 1989**

## **Clause 7      New section 2B**

Clause 7 provides that the Criminal Code applies in relation to an offence against the Act.

**Clause 8     New section 5(5A)**

Clause 8 authorises the ombudsman to investigate action taken by an agency for the purpose or in the course of providing a service for children and young people.

**Clause 9     New division 2.2A**

Clause 9 creates a new division for *Part 2 – Establishment, functions, powers and duties of ombudsman*, including a new heading *Reportable conduct* for sections 17D – 17P, expanding the scope of the ombudsman’s authority to investigate.

Section 17D defines terms used in the new division. The meaning of each of the terms clearly conveys the scope of the ombudsman’s authority.

Section 17E defines the meaning of reportable conduct to include conduct that constitutes ill-treatment or neglect, behaviour that causes psychological harm or misconduct of a sexual nature. Reportable conduct also includes offences against particular provisions of the *Crimes Act 1900* or the *Education and Care Services National Law (ACT) 2011*.

Section 17F imposes a general duty on the ombudsman to keep under scrutiny the systems for preventing child abuse by employees of designated entities, and for handling and responding to reportable allegations and convictions against those employees.

Section 17G imposes an obligation on the heads of designated entities to notify the ombudsman of any reportable allegations or convictions against employees and of details of disciplinary action taken or proposed to be taken.

Section 17H authorises the disclosure by the heads or other employees of designated entities of information about child abuse allegations or convictions against employees to the ombudsman. This section also enables the ombudsman to pass on any such information to the police or other investigative agencies, the human rights commission, and the directors-general responsible for the Children and Young People Act, chief executive officer of the ACT Teacher Quality Institute and the Education and Care Services National Law (ACT), despite the confidentiality provisions of those Acts.

Section 17I enables the ombudsman to monitor the progress of any investigation by a designated entity into reportable allegations or convictions against employees of the agency.

Section 17J requires the head of a designated entity to report to the ombudsman on the results of an investigation monitored by the ombudsman and on the action taken as a result of the investigation.

Section 17K enables the ombudsman to conduct an independent investigation into a reportable allegation or conviction against an employee of a designated entity (or into any inappropriate handling of or response to any such allegation or conviction). The ombudsman may require the entity to defer its investigation and may provide recommendations to the entity on the action that should be taken.

Section 17L empowers the ombudsman to disclose investigation information to an appropriate person as defined in the section.

Section 17M enables the ombudsman to disclose information to the commissioner for fair trading for the purpose of the exercise of functions under the Working with Vulnerable People (Background Checking) Act.

Section 17N authorises a member of the human rights commission to disclose information to the ombudsman if the member is satisfied that the information is relevant to the exercise of the ombudsman's functions.

Section 17O ensures that the disclosure of information under this division is not prevented or restricted by any other Act or law and that the persons making the disclosure are protected from liability.

Section 17P provides that a person commits an offence where they make a false or misleading allegation with the intention of causing another person to be investigated under the Act.

#### **Clause 10 Dictionary, note 2**

Clause 10 adds terms into a list in Note 2 that provides relevant definitions that are contained in the *Legislation Act 2001*, dict, pt1.

#### **Clause 11 Dictionary, new definitions**

Clause 11 creates new definitions for the purposes of the Act and the relevant new sections.

## **Part 4 Working with Vulnerable People (Background Checking) Act 2011**

### **Clause 12 Section 33, commissioner for fair trading requesting information to conduct a risk assessment**

Clause 12 enables the commissioner to seek information or advice from any entity the commissioner considers may be able to give information or advice that will assist in conducting a risk assessment of a person. The amendment directs entities, who have received such a request from the commissioner, to as far as is practicable comply with the request. Implementation will include all relevant information, except certain identifying information about persons making a report under the Act.

### **Clause 13 Section 53, commissioner for fair trading requesting information about registered people**

Clause 13 enables the commissioner to seek information or advice from any entity the commissioner considers may be able to give information or advice that is relevant to whether a registered person continues to pose no risk or an acceptable risk of harm to a vulnerable person. The amendment directs entities who have received such a request from the commissioner to comply with the request, as far as is practicable.

### **Clause 14 New part 7A**

Clause 14 creates a new part 7A including a new heading – *Information Sharing*, for sections 63A and 63B.

Section 63A enables the commissioner for fair trading to give protected information to particular entities if satisfied on reasonable grounds that the information is relevant to preventing harm or risk of harm to a child or class of child.

Section 63B enables an entity to give information to the commissioner for fair trading if satisfied on reasonable grounds that the information is relevant to preventing harm or risk of harm to a child or class of child.

### **Clause 15 New section 63A(1)(a)(iva)**

Clause 15 enables the commissioner for fair trading to give protected information to the ombudsman if satisfied on reasonable grounds that the information is relevant to the exercise of the ombudsman's functions under the Ombudsman Act.

### **Clause 16 Dictionary, new definition of *ACT Teacher Quality Institute***

Clause 16 inserts a new definition for the term ACT Teacher Quality Institute that will permit the exchange of information between the commissioner for fair trading and the chief executive officer of the ACT Teacher Quality Institute.