

# Review of Victoria's Reportable Conduct Scheme

Final report – March 2024

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Final report – March 2024

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In this document, 'Aboriginal' refers to both Aboriginal and Torres Strait Islander people.

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# Introduction

Victoria's Reportable Conduct Scheme was introduced in July 2017 in response to the Victorian Parliament's Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations. The primary objective of the scheme is to make organisations safer for children. The scheme aims to improve organisations' responses to allegations of child abuse and misconduct, or 'reportable conduct' by its employees, including volunteers. It requires organisations to respond to allegations of reportable conduct made against their employees and to report those allegations to the Commission for Children and Young People. The Commission is the regulator of the scheme, responsible for administering, monitoring and overseeing the scheme.

This review has examined the operation of the scheme since it came into effect in July 2017 to understand if it is working as intended. In preparing this review, the Department of Families, Fairness and Housing (the department) has considered relevant data sources, invited submissions via the Engage Victoria website and conducted targeted engagement with stakeholders, including with organisations subject to the scheme, regulators, peak bodies and key government agencies.

The review found that the scheme is largely operating as intended. Organisations are notifying the Commission about, and then investigating, many allegations of reportable conduct. The Commission has conducted a substantial amount of work in educating organisations about their obligations and has overseen more than 10,800 individual allegations of reportable conduct.

## Opportunities identified in the review

The review identifies 32 opportunities (refer to tables below) to improve the efficiency, effectiveness and sustainability of the scheme across 3 broad areas including:

- 15 opportunities for legislative amendments to clarify and streamline requirements and create efficiencies in the operation of the scheme (orange highlighted rows)
- 8 opportunities for the Commission to consider focusing its future guidance materials to further support understanding and compliance with the scheme, and for the Commission to strengthen its risk-based regulatory approach (purple highlighted rows)
- 9 opportunities for further work to be undertaken to examine more complex matters identified by the review and assess whether there are further opportunities for changes to create efficiencies and strengthen the scheme (blue highlighted rows).

### Chapter 4: Regulatory overlaps and duplication

No.	Opportunity	How
4.1	<p>The inconsistent definitions and thresholds between the Reportable Conduct Scheme and the department's Client Incident Management System (CIMS) hampers the ability of organisations to conduct joint investigations under these 2 schemes. This increases regulatory burden on in-scope sectors.</p> <p>The department's current review of the CIMS scheme offers an opportunity to review these definitions. This will make it easier for organisations to identify when incidents are in scope of the Reportable Conduct Scheme. The department's review of investigation requirements that overlap the CIMS requirements provides more opportunities to reduce the resourcing burden on service providers.</p>	Further work
4.2	<p>There would be benefit in considering ways to reduce duplication and overlaps between the Reportable Conduct Scheme and other schemes including:</p> <ul style="list-style-type: none"> <li>• opportunities to collaborate between regulators</li> <li>• facilitating joint investigations</li> </ul>	Further work

No.	Opportunity	How
	<ul style="list-style-type: none"> <li>sharing information between regulators.</li> </ul> <p>This could be achieved through tools such as memorandums of understanding between regulators, extra guidance material and the scope for aligning definitions and reporting where appropriate.</p>	
4.3	<p>There is an opportunity to amend the <i>Child Wellbeing and Safety Act 2005</i> to allow the Commission for Children and Young People to:</p> <ul style="list-style-type: none"> <li>exempt an organisation from conducting an investigation for a reportable allegation where an investigation for that allegation is already being undertaken under a reportable conduct scheme in another state or territory</li> <li>recognise a finding made under another state's or territory's reportable conduct scheme for the purposes of the Victorian scheme, where the reportable allegation is also captured under the Victorian scheme.</li> </ul>	Act amendment

## Chapter 5: Scope of the Reportable Conduct Scheme

No.	Opportunity	How
5.1	<p>Section 16C of the Act provides that the scheme does not apply to organisations that do not exercise care, supervision or authority over children. However, as some organisations may move in and out of exercising care, supervision or authority over children at different points in time, it is not clear how the scheme should apply in all situations.</p> <p>When allegations are made about conduct by an employee that happened when an entity was in the scope of the scheme, but that entity has since stopped exercising care, supervision or authority over children, it is not clear whether that allegation should be treated as reportable conduct – or whether that entity is now outside the remit of the scheme.</p> <p>There is an opportunity for further work to be undertaken to clarify how s 16C applies in different situations and to consider whether amendments to the Child Wellbeing and Safety Act are necessary.</p>	Further work
5.2	<p>Subject to resourcing and priorities, there is an opportunity for the Commission to provide guidance that sets out the standards an organisation must meet in undertaking reportable conduct investigations to be granted a class or kind exemption under s 16I of the Child Wellbeing and Safety Act. This would provide an extra incentive for entities to work towards improving their competency in reportable conduct investigations. The granting of class and kind exemptions also has the potential to free up the Commission's resources so they can be directed to higher risk activities and help sustain a growing scheme.</p> <p>There is also an opportunity to consider whether the Child Wellbeing and Safety Act should be amended so if an organisation does receive an exemption under s 16I, it is also exempted from the requirements under 16N(3) to provide the Commission a copy of the investigation report, but only where the allegation is <b>not</b> substantiated.</p>	Commission (guidance)/ Act amendment
5.3	<p>The scheme's scope has grown in the first 5 years of its operation, and recent legislative changes will lead to more growth in the scheme's scope. Maintaining a risk-based approach to protecting children and young people requires ongoing monitoring of risk and of the scheme's efficacy. Further careful assessment should be undertaken in consultation with stakeholders to assess whether the scheme's scope should be changed to reflect current circumstances.</p>	Further work
5.4	<p>There is an opportunity to amend the Child Wellbeing and Safety Act to clarify the application of the scheme to former employees. Any amendment will need to be carefully considered to ensure the scope of the scheme is not unintentionally broadened and does not cast doubt on the interpretation of other requirements under the scheme.</p>	Act amendment

No.	Opportunity	How
5.5	<p>There is an opportunity to amend the Child Wellbeing and Safety Act to:</p> <ul style="list-style-type: none"> <li>clarify the definition of sexual misconduct, particularly for grooming behaviour, or consider whether grooming should become a separately defined category of reportable conduct</li> <li>clarify that less-serious conduct is not covered by physical violence under the scheme. This could include examples of behaviours not intended to be captured, as recommended by the Commonwealth Royal Commission, and similar to the approach taken in the Australian Capital Territory.</li> </ul>	Act amendment
5.6	<p>Including conduct outside the workplace within the scheme can create challenges for organisations that have to investigate allegations. There are also risks to employees if a workplace investigates a reportable allegation related to family violence. There is an opportunity to consider whether there should be limitations on what conduct outside the workplace is within the scheme's scope, including whether family violence matters should fall within the scheme's scope and, if it should, how risks of investigations into family violence can be managed. This could include whether:</p> <ul style="list-style-type: none"> <li>there should be limitations on conduct outside the workplace that is within the scheme's scope, such as the limits in the Australian Capital Territory and New South Wales</li> <li>family violence matters outside the workplace should continue to be in scope of the scheme, considering whether there are cases where reportable conduct allegations relating to family violence matters can be safely and effectively investigated under the scheme</li> <li>guidance and education activities could adequately support organisations to identify and manage risks during an investigation into reportable conduct allegations involving family violence</li> <li>there are opportunities for the scheme to better support organisations to conduct investigations into reportable allegations involving family violence, such as speaking with the Commission before starting an investigation</li> <li>the scheme should have flexibility to enable an organisation to not go ahead with an investigation in certain cases.</li> </ul>	Further work

## Chapter 6: Education and advice

No.	Opportunity	How
6.1	<p>The Commission's education and advice has been effective in raising awareness of the scheme and supporting organisations to investigate allegations of reportable conduct. Subject to resourcing and other priorities, future education activities could focus on supporting organisations to assess whether incidents are reportable conduct and raising awareness of the scheme among young people.</p>	Commission (guidance)

## Chapter 7: Responding to allegations

No.	Opportunity	How
7.1	<p>Although some stakeholders are uncertain about the definition of a 'reasonable belief'. Removing this requirement would lower the reporting threshold and may lead to over-reporting and the possibility of vexatious or frivolous reports.</p> <p>Despite the Commission's ongoing education efforts, some organisations continue to mistakenly believe that the head of an organisation must also form a reasonable belief about the employee's conduct before notifying the Commission.</p>	Commission (guidance)

No.	Opportunity	How
	Subject to resourcing and other priorities, the Commission could offer continued guidance on this point. This could include developing de-identified case studies that may help address this confusion.	
7.2	Children and young people need accessible, supportive and confidential ways to report. Online communication options are central to this. Subject to resourcing and other priorities, there is an opportunity for the Commission to update its online communications in consultation with children and young people.	Commission (guidance)
7.3	Reportable conduct allegations about the head of an organisation are not uncommon, but when the situation arises it can take some time for an alternative contact to be identified, meaning that the Commission may initially have to contact the head of the organisation about an allegation involving them.  There is an opportunity to amend the Child Wellbeing and Safety Act to include, in s 16K(1), a requirement that the head of an entity must ensure the entity has a nominated alternative contact person, in the event that there is a reportable allegation against the head of the entity.	Act amendment
7.4	Where an organisation has adequately concluded its investigation within 30 days, notification of the investigation findings under s 16N can also acquit the requirement for the 30-day update under s 16M. Subject to resourcing and other priorities, there is an opportunity for the Commission to consider making this clear in its guidance materials.	Commission (guidance)
7.5	There is an opportunity to amend the Child Wellbeing and Safety Act to extend existing protections for people who disclose information to the Commission, to people who disclose information when making reports to the head of an organisation.	Act amendment
7.6	There is an opportunity to amend the Child Wellbeing and Safety Act to insert an immunity provision for the Commission so staff are not personally liable for anything done or omitted to be done in good faith while exercising powers or functions under the Reportable Conduct Scheme. Consistent with the Victorian Government's policy, the immunity provision would not extend to monitoring and enforcement powers.	Act amendment

## Chapter 8: Investigations and findings

No.	Opportunity	How
8.1	The Commission undertakes a significant amount of education to support in-scope organisations. While an organisation's size is not the only factor influencing its investigatory capability, and the Commission should prioritise support for those organisations where children are considered to be at greatest risk, there is an opportunity for the Commission, subject to resourcing and other priorities, to consider focusing its support on smaller organisations and sectors. It could focus on those sectors without a regulator, to support them to build their capability to meet their obligations to investigate reportable allegations under the scheme.	Commission (practice)
8.2	Stakeholder concerns about natural justice are generally not due to problems with the wording of the Child Wellbeing and Safety Act and are unlikely to be resolved by prescribing investigation processes in law.  Although the review notes that the Commission's current guidance is clear, subject to resourcing and other priorities, there is an opportunity for the Commission to consider addressing concerns through: <ul style="list-style-type: none"> <li>updates to its resources, training and materials</li> <li>advice to further educate and improve organisational understanding of how to provide natural justice to a person during an investigation.</li> </ul>	Commission (guidance)

No.	Opportunity	How
8.3	<p>The review shares the Commission's concerns about the reported lack of involvement of children (either as alleged victims and/or witnesses) in organisational reportable allegation investigations.</p> <p>In-scope organisations should ensure children and young people understand how the organisation investigates a reportable allegation. In-scope organisations also need to ensure their systems, policies and processes to investigate and respond to a reportable allegation are inclusive and adequately involve and support children and young people to take part in the investigation.</p> <p>To help resolve this issue, subject to resourcing and other priorities, there is an opportunity for the Commission to consider:</p> <ul style="list-style-type: none"> <li>• other opportunities to continue its significant work in promoting its package of resources when liaising with organisations during their response and investigation</li> <li>• enquiring how organisations that are investigating a reportable allegation intend to or have included children and young people in the process.</li> </ul>	<p>Commission (guidance)</p> <p>Organisations (practice)</p>
8.4	<p>There is an opportunity to amend the Child Wellbeing and Safety Act to explicitly require the head of an organisation to complete an investigation into a reportable allegation 'as soon as is practicable' and within a reasonable time.</p>	Act amendment
8.5	<p>While the Commission must also report an allegation that may involve criminal conduct to Victoria Police, the Child Wellbeing and Safety Act does not require it to pass on the police clearance to the organisation. However, in practice, the Commission and Victoria Police have set up a centralised information sharing process that seeks to promote consistency in how reportable conduct allegations are handled and overseen.</p> <p>While the Commission and Victoria Police are satisfied with the current process, feedback suggests that stakeholders feel otherwise. There is an opportunity for the Commission and Victoria Police to consider any residual issues with the clearance process. For example, consider whether and how this process could be streamlined and clarified to improve organisational understanding and make the police notification and clearance process as quick as possible.</p>	Further work
8.6	<p>There is an opportunity for the government to work with relevant regulators to examine whether there are any barriers that may exist to regulators conducting reportable allegation investigations.</p>	Further work
8.7	<p>There is an opportunity to amend the Child Wellbeing and Safety Act to allow the Commission to publish own motion investigation findings, recommendations and relevant information when it is in the public interest to do so. This is provided that this will not:</p> <ul style="list-style-type: none"> <li>• interfere with that investigation or any other investigation under the Act</li> <li>• disclose the name or other identifiable information of a person who reported the allegation or enable a reporter to be identified if they do not want to be identified</li> <li>• disclose the name of a child or young person who is the subject of the reportable allegation or enable them to be identified if they do not want to be identified</li> <li>• include identifying details of third parties including the name of the subject of the allegation.</li> </ul>	Act amendment
8.8	<p>There is an opportunity to amend the Child Wellbeing and Safety Act to extend internal review rights in relation to the Commission's own motion investigations to alleged victims.</p> <p>If internal review rights are extended to victims, government should also consider whether the ability to seek an external review of a decision at the Victorian Civil and Administrative Tribunal should also be extended to alleged victims.</p>	Act amendment

## Chapter 9: Oversight of investigations and monitoring compliance with the scheme

No.	Opportunity	How
9.1	<p>There is an opportunity to</p> <ul style="list-style-type: none"> <li>evaluate the use of the new enforcement powers and their impact on the Reportable Conduct Scheme once they are operationalised, and to consider whether these powers should be expanded to support other obligations under the Act</li> <li>consider whether current offences and penalties under the scheme are sufficient and an effective deterrent and whether amendments to the Child Wellbeing and Safety Act are necessary.</li> </ul>	Act amendment

## Chapter 10: Information sharing

No.	Opportunity	How
10.1	<p>There is an opportunity to consider whether the reciprocal information sharing provisions between the Commission and other regulators and oversight bodies should be extended to:</p> <ul style="list-style-type: none"> <li>Victorian integrity and oversight agencies</li> <li>interstate bodies that are setting up new reportable conduct schemes.</li> </ul>	Further work
10.2	<p>The Act does not currently state that confidential information shared by the Commission with organisations outside the Child Information Sharing Scheme must be treated as confidential and not distributed without permission.</p> <p>There is an opportunity to amend Part 5A of the Child Wellbeing and Safety Act to clarify that confidential information the Commission obtains under the Child Information Sharing Scheme and shares with organisations and investigators that are not Information Sharing Entities for the purposes of a reportable conduct investigation must be treated as confidential and not distributed without permission.</p>	Act amendment
10.3	<p>There is an opportunity to amend the Child Wellbeing and Safety Regulations 2017 to prescribe Commonwealth, state and territory law enforcement agencies to allow the Commission to share appropriate information with police from other states and territories and other law enforcement agencies.</p>	Regulation amendment
10.4	<p>There is an opportunity to create a broad information sharing power that allows the Commission to share information with the Working with Children Check Unit when:</p> <ul style="list-style-type: none"> <li>the Working with Children Check Unit requests more information about a substantiated allegation of reportable conduct</li> <li>a substantiated finding of reportable conduct has already been shared with the Working with Children Check Unit and the Commissioner becomes aware of more allegations against the same person</li> <li>the Working with Children Check Unit is reassessing a person's clearance to work with children and asks the Commission if it has other relevant information about the person.</li> </ul>	Act amendment
10.5	<p>There is an opportunity to amend the Child Wellbeing and Safety Act to give the Commission a clear power to share broader information about a substantiated finding than is currently the case, and to communicate more transparently with the Working with Children Check Unit about the progress of cases.</p> <p>Similarly, the <i>Worker Screening Act 2020</i> could be amended to allow greater discretion in the sharing of information between the Working with Children Check Unit and the Commission, to allow the Commission to:</p> <ul style="list-style-type: none"> <li>know when a person's clearance is being reassessed</li> </ul>	Act amendment

No.	Opportunity	How
	<ul style="list-style-type: none"> <li>understand the impact of its referrals.</li> </ul>	
10.6	<p>There is an opportunity to amend the Child Wellbeing and Safety Act to allow the Commission to share limited information with the subject of a reportable allegation. Sharing information with a subject should always be at the Commission's discretion.</p>	Act Amendment
10.7	<p>The need for victim survivors of sexual assault to tell their story has been recognised in the <i>Judicial Proceeding Reports Act 1958</i>. There is an opportunity to consider whether this principle should be extended to the Reportable Conduct Scheme, and whether a process is included in the Child Wellbeing and Safety Act that allows children to consent to being identified as the subject of a reportable conduct allegation. This needs to include consideration of what the impact of such an exemption would be on employees accused of reportable conduct.</p>	Further work

# Chapter 1: Background

Victoria's Reportable Conduct Scheme was introduced in response to recommendations from the 2013 Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations (the Betrayal of Trust Inquiry). The Betrayal of Trust Inquiry found serious incidences of child abuse in some of our most trusted and important institutions and organisations.

The Betrayal of Trust Inquiry found significant variations in systems and processes for responding to suspected child abuse across organisations. It noted that many organisations were looking for guidance about the skills and knowledge necessary to appropriately identify and respond to allegations of child abuse. A key finding of the Inquiry was that there was a need for:

*... independent scrutiny of the systems and processes organisations have in place for preventing and responding to allegations of criminal child abuse and ensuring the safety of children.<sup>1</sup>*

The Betrayal of Trust Inquiry recommended the Victorian Government authorise an independent oversight and monitoring scheme to improve the handling of allegations of child abuse in relevant organisations. These organisations included government departments and religious and non-government organisations.

To acquit this recommendation, changes were made to the *Child Wellbeing and Safety Act 2005* (the Act) in 2017 to introduce a reportable conduct scheme. The scheme covers organisations that exercise supervision, care or authority over children. The scheme now applies to more than 12,000 Victorian organisations.

The scheme began in phases from 1 July 2017 (refer to **Table 1.1**). It was fully operational after 18 months, on 1 January 2019. As noted in the second reading speech, the scheme's introduction was phased in to:

- recognise the wide range of organisations covered by the scheme
- provide some organisations with more time to prepare.<sup>2</sup>

The phased introduction brought organisations with existing systems for reporting and investigations into scope in the first phase. These included schools and child protection services. Government departments came into scope early to model good practices. Organisations with less developed or no systems and processes in place to respond to allegations came into scope later. These included museums and galleries.

**Table 1.1: Phases for the Reportable Conduct Scheme implementation**

Phase 1: 1 July 2017	Phase 2: 1 January 2018	Phase 3: 1 January 2019
Scheme begins – organisations in scope:	Other organisations in scope: <ul style="list-style-type: none"> <li>• religious bodies</li> <li>• hospitals</li> </ul>	Fully operational – other organisations in scope:

<sup>1</sup> Family and Community Development Committee 2012, *Inquiry into the handling of child abuse by religious and other nongovernment organisations: final report* (Executive summary and recommendations), p. iv

<sup>2</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 7 December 2016, Martin Foley, available: [https://hansard.parliament.vic.gov.au/search/?LDMS=Y&IW\\_FIELD\\_ADVANCE\\_PHRASE=be+now+read+a+second+time&IW\\_FIELD\\_IN\\_SPEECHTITLE=Children+Legislation+Amendment+Reportable+Conduct+Bill+2016&IW\\_FIELD\\_IN\\_HOUSENAME=ASSEMBLY&IW\\_FIELD\\_IN\\_ACTIVITYTYPE=Second+Reading&IW\\_FIELD\\_IN\\_SITTINGYEAR=2016&IW\\_DATABASE=\\*](https://hansard.parliament.vic.gov.au/search/?LDMS=Y&IW_FIELD_ADVANCE_PHRASE=be+now+read+a+second+time&IW_FIELD_IN_SPEECHTITLE=Children+Legislation+Amendment+Reportable+Conduct+Bill+2016&IW_FIELD_IN_HOUSENAME=ASSEMBLY&IW_FIELD_IN_ACTIVITYTYPE=Second+Reading&IW_FIELD_IN_SITTINGYEAR=2016&IW_DATABASE=*)

Phase 1: 1 July 2017	Phase 2: 1 January 2018	Phase 3: 1 January 2019
<ul style="list-style-type: none"> <li>• schools and other education providers</li> <li>• child protection services</li> <li>• out-of-home care services</li> <li>• residential disability services for children</li> <li>• in-patient mental health and drug and alcohol services for children</li> <li>• youth housing services</li> <li>• government departments</li> </ul>	<ul style="list-style-type: none"> <li>• other disability services for children</li> <li>• providers of overnight camps for children (excluding youth organisations)</li> <li>• residential facilities of boarding schools</li> </ul>	<ul style="list-style-type: none"> <li>• childcare centres and kindergartens</li> <li>• prescribed statutory bodies with functions of a public nature such as public museums and galleries</li> </ul>

In December 2017, shortly after the scheme began, the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse (Commonwealth Royal Commission) handed down its final report. Like the Betrayal of Trust Inquiry, the Commonwealth Royal Commission heard testimonies from many thousands of people who courageously told their stories. The Commonwealth Royal Commission unearthed that the problems identified in the Victorian Betrayal of Trust Inquiry were reflected across the country.

The Commonwealth Royal Commission reported that 'countless thousands of children have been sexually abused in many institutions in Australia'<sup>3</sup> and that institutional child sexual abuse has occurred over many generations. It reported that 'it is a mistake to assume that sexual abuse in institutions will not continue to occur in the future'.<sup>4</sup> It also noted that there is a need for governments to continue to develop effective regulation to help prevent and address abuse of children in institutions.

The Commonwealth Royal Commission recommended that state and territory governments establish nationally consistent reportable conduct schemes, based on the approach that was in place in New South Wales (recommendation 7.9). The Commonwealth Royal Commission also made recommendations for:

- the key elements that should be included in reportable conduct schemes (recommendation 7.10 – refer to **Box 1.1**)
- the periodic review of reportable conduct schemes (recommendation 7.11)
- the scope of services that should be covered by reportable conduct schemes (recommendation 7.12), including organisations that:
  - exercise a high degree of responsibility for children
  - engage in activities that involve a heightened risk of child sexual abuse due to institutional characteristics, the nature of the activities involving children or the additional vulnerability of the children the institution engages with.

#### **Box 1.1: Recommendation 7.10 from the Commonwealth Royal Commission<sup>5</sup>**

Reportable conduct schemes should provide for:

<sup>3</sup> Final report – [Preface and executive summary](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_preface_and_executive_summary.pdf)

<[https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_preface\\_and\\_executive\\_summary.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_preface_and_executive_summary.pdf)>.

<sup>4</sup> Ibid.

<sup>5</sup> Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final report: Improving institutional responding and reporting*.

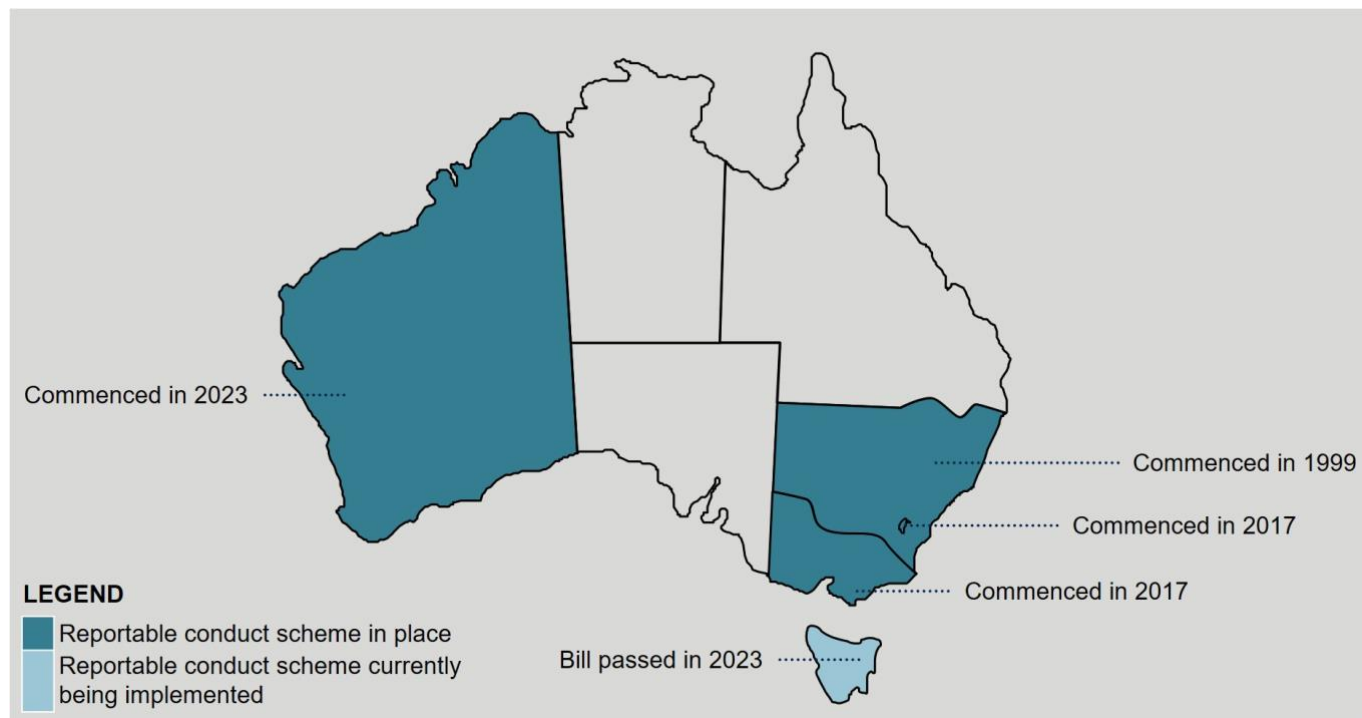
- an independent oversight body
- obligatory reporting by heads of institutions
- a definition of reportable conduct that covers any sexual offence, or sexual misconduct, committed against, with, or in the presence of, a child
- a definition of reportable conduct that includes historical conduct of a current employee
- a definition of employee that covers paid employees, volunteers and contractors
- protection for persons who make reports in good faith
- oversight body powers and functions that include:
  - scrutinising institutional systems for preventing reportable conduct and for handling and responding to reportable allegations, or reportable convictions
  - monitoring the progress of investigations and the handling of complaints by institutions
  - conducting, on its own motion, investigations concerning any reportable conduct of which it has been notified or otherwise becomes aware
  - power to exempt any class or kind of conduct from being reportable conduct
  - capacity building and practice development, through the provision of training, education and guidance to institutions
  - public reporting, including annual reporting on the operation of the scheme and trends in reports and investigations, and the power to make special reports to parliaments.

The Victorian Government accepted or accepted in principle these recommendations. Victoria's scheme closely aligns with the Reportable Conduct Scheme the Commonwealth Royal Commission recommended in that it:

- includes independent oversight by the Commission for Children and Young People (the Commission)
- requires organisations that exercise care, supervision or authority over children to respond to allegations of child-related misconduct made against their workers or volunteers.

Reportable conduct schemes operate in 3 other Australian states and territories. New South Wales introduced a reportable conduct scheme in 1999. A scheme began in the Australian Capital Territory in 2017. In January 2023 a scheme began in Western Australia. Also, in 2023, the Tasmanian Government passed a Bill to introduce a reportable conduct scheme in that state (refer to **Figure 1.1**).

**Figure 1.1: Introduction of reportable conduct schemes in Australian states and territories**



Each Australian state and territory has taken a slightly different approach to its reportable conduct scheme. However, these schemes each contain many of the key elements recommended by the Commonwealth Royal Commission including:

- independent scheme oversight
- obligatory reporting by heads of organisations
- inclusion of sexual misconduct as reportable conduct
- covering employees and volunteers.

Also, all existing reportable conduct schemes throughout Australia require organisations to have systems to facilitate and support employee’s reporting concerns.

## Intent and requirements of Victoria’s Reportable Conduct Scheme

The overarching intent of Victoria’s Reportable Conduct Scheme is to make organisations safer for children. The principles for the scheme, set out in s 16B of the Act, highlight the scheme’s importance in protecting children.

*Section 16B of the Act:*

*The Reportable Conduct Scheme is based on the fundamental principle that:*

- a) the protection of children is the paramount consideration in the context of child abuse or employee misconduct involving a child.*

The scheme aims to achieve its intent by improving organisations’ responses to allegations of child abuse and misconduct by its employees, including volunteers. This is known as ‘reportable conduct’.

The Commission administers, oversees and monitors the scheme. As noted in the second reading speech for the Bill,<sup>6</sup> a key role of the Commission is to 'build the capacity of organisations to respond appropriately and effectively to reportable allegations, assisting organisations to better prevent and respond to child abuse'. The Act provides the Commission with powers and functions to administer the Reportable Conduct Scheme, enabling it to:

- educate and provide advice to organisations
- oversee investigations into reportable allegations
- conduct its own investigations into reportable allegations
- investigate an organisation's handling of a reportable allegation
- scrutinise the systems in place in organisations that are subject to the scheme to prevent reportable conduct
- monitor compliance with the scheme
- report to ministers and parliament on the scheme.

Organisations subject to the scheme must have systems in place for reporting allegations of reportable conduct made against their employees. These systems ensure:

- the head of the organisation is made aware of the allegation
- there are processes to appropriately investigate and respond to the allegation.

The Act requires organisations to have systems in place to:

- prevent reportable conduct
- notify the head of the entity or the Commission of reportable allegations
- investigate and respond to reportable allegations.

Reportable conduct is defined in the Act to include:

- sexual offences, sexual misconduct and physical violence committed against, with or in the presence of a child
- any behaviour that causes significant emotional or psychological harm to a child
- significant neglect of a child.

The definition captures conduct that falls below a criminal threshold and may therefore not be reported to police. The second reading speech for the Bill noted this 'will ensure that grooming and other inappropriate patterns of behaviour can be identified in the early stages, and the risks to children appropriately responded to'.<sup>7</sup>

The head of an organisation must notify the Commission when it becomes aware of a reportable allegation and at certain stages of responding to an allegation including:

- within 3 business days of becoming aware of an allegation, they must notify preliminary details about the allegation

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<sup>6</sup> [Victoria, \*Parliamentary Debates\*, Legislative Assembly, 7 December 2016, Martin Foley](https://hansard.parliament.vic.gov.au/search/?LDMS=Y&IW_FIELD_ADVANCE_PHRASE=be+now+read+a+second+time&IW_FIELD_IN_SpeechTitle=Children+Legislation+Amendment+Reportable+Conduct+Bill+2016&IW_FIELD_IN_HOUSENAME=ASSEMBLY&IW_FIELD_IN_ACTIVITYTYPE=Second+Reading&IW_FIELD_IN_SittingYear=2016&IW_DATABASE=*)

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<sup>7</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 7 December 2016, Martin Foley, available:

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- as soon as practicable and within 30 days, they must notify more detailed information about the allegation and certain details about the organisation's response to the allegation
- at the conclusion of an investigation, they must submit the findings of the investigation and action taken or proposed to be taken.

The Act requires the head of an organisation to respond to a reportable conduct allegation by running an investigation. They may also ask a regulator or an independent investigator with appropriate qualifications, training or experience to investigate the allegation.

Where an allegation may involve criminal conduct, it must be reported to Victoria Police. These investigations must not start or continue until the Chief Commissioner of Police advises that the police investigation has been completed or agrees that the Reportable Conduct Scheme investigation can go ahead. This is to ensure the priority of any Victoria Police investigation. It also ensures that an investigation under the scheme does not interfere with a police investigation into the same matter.

Finally, the scheme includes powers to share information about reportable allegations with:

- the Department of Justice and Community Safety for the purpose of the Working with Children Check scheme<sup>8</sup>
- regulators, which include departments that fund or regulate an organisation subject to the scheme, the Victorian Registration and Qualifications Authority, the Suitability Panel, the Australian Health Practitioner Regulation Agency and the Victorian Institute of Teaching
- other bodies prescribed in regulations including the Chief Psychiatrist, state and Commonwealth disability commissions and commissioners, the New South Wales Children's Guardian and the Australian Capital Territory Ombudsman.

## Changes to the scheme since its introduction

The scheme has had several changes in the first 5 years of operation. These changes have affected the level of activity for organisations and the Commission. As noted above, organisations subject to the scheme were phased in, with the scheme being fully operational 18 months after starting.

Legislative amendments and regulations have been made to clarify provisions and to ensure the scheme's original intent is maintained. Changes outlined below, while consistent with the original policy intent of the scheme, have expanded the scope of both organisations (and people within organisations) that are covered by the scheme. This has increased the number of reportable allegations that must be reported to the Commission, contributing to the scheme's growth over time. However, some of the legislative changes may help to create regulatory efficiencies.

Legislative amendments came into effect in 2018<sup>9</sup> to clarify the definition of 'employee'. The changed definition ensures formal kinship and foster carer arrangements are included, potentially increasing the scope of employees covered. The amendments also clarified who the 'head' of the organisation is, in circumstances where it is not clear, by enabling an organisation to nominate a 'head' and for the Commission to approve that nomination. This amendment aimed to make it simpler and quicker for the Commission to identify the head of the organisation, creating a regulatory efficiency.

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<sup>8</sup> Following machinery of government changes on 1 January 2023, the Department of Government Services is responsible for the administration of the *Worker Screening Act 2020*. The Commission now discloses information to that department for the purpose of a Working with Children Check.

<sup>9</sup> Amendments were included in the Health and Child Wellbeing Legislation Amendment Bill 2017, which passed in February 2018.

Regulations made in 2019 and 2020 expanded the organisations that the Commission could disclose information about reportable allegations to. The regulations also expanded the organisations in scope of the scheme.<sup>10</sup> From May 2022 the scheme applied to youth organisations that offer overnight camps for children, such as the Girl Guides and Boy Scouts. This expansion in the scheme's scope is consistent with the policy intent that the scheme applies to organisations that exercise care, supervision or authority over children. It also implemented recommendation 7.12 from the Commonwealth Royal Commission, which recommended that reportable conduct schemes should cover providers of overnight camps for children.

In 2023 the Victorian Government passed more amendments to enable the scheme to run as intended and ensure the original policy intent is reflected.<sup>11</sup> The amendments:

- clarify that the scheme applies to labour hire arrangements, secondments and independent contractors – for example, relief teachers, nurses and youth justice workers in custodial settings that are contracted through labour hire or similar arrangements (this amendment is consistent with the scheme's policy intent and was required to ensure all workers of an in-scope organisation are within the scheme's scope, regardless of how they are employed)
- provide the Commission with a set of contemporary regulatory powers so the Commission can track and enforce organisations' compliance with the requirement to notify the Commission about a reportable allegation, in a proportionate and timely manner.

The most recent amendments are set to begin on or before 1 July 2024. The amendments clarifying that the scheme applies to labour hire workers, secondees and independent contractors will contribute to the scheme's growth. Providing the Commission with a set of regulatory powers and tools may create regulatory efficiencies by clarifying the Commission's powers. However, some of the extra powers, such as entry and inspection powers and powers to seize items, were previously not available to the Commission and may need specialist investigative expertise.

Some of the amendments to the scheme have led or will lead to an increase in notifications that organisations must make. This will mean increases in the efforts of various organisations and regulators, and in the workload of the Commission. The overall scope of the scheme and any suggested expansion needs to be considered in the context of the scheme's sustainability.

The Commission is funded by the government. There has been some increase to the Commission's overall funding since the scheme began. For example, the Victorian Government invested an extra \$1.5 million in 2021–22 and \$0.5 million in 2022–23 to help the Commission implement the amended Child Safe Standards. Like all regulators working within a finite budget, the Commission must continue to take a risk-based approach, subject to mandatory obligations under the Act, to its monitoring and oversight of the scheme. The Commission's risk-based approach will become an increasingly critical part of its regulatory approach in the context of the scheme's growth.

The review considered the scheme's operation within the current budget, accounting for:

- the need for proportionality
- mandatory obligations for the Commission and organisations
- the Commission's regulatory practice approach
- the scheme's sustainability.

Where stakeholders propose changes to the scheme to improve its effectiveness or reach, the review considered any proposals with a view to balancing:

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<sup>10</sup> Amendments included in the Child Wellbeing and Safety Amendment Regulations 2019 and Child Wellbeing and Safety Amendment Regulations 2020.

<sup>11</sup> Amendments were included in the Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Bill 2023, which passed on 20 June 2023.

- the risks those measures are aimed at addressing
- any extra or new obligations that are imposed that may create an unjustified burden on regulated organisations
- the capacity of the Commission to implement changes within current resourcing while managing the scheme's growth.

Chapter 2 details the scheme's growth in numbers of allegations of reportable conduct made to the Commission and investigated by organisations.

## Child safeguarding framework

The Reportable Conduct Scheme sits within a broad and multilayered child safeguarding framework in Victoria that includes:

- the child protection system
- the Working with Children Check scheme
- Child Safe Standards
- sector-specific regulators administering other regulatory schemes such as the Victorian Institute of Teaching
- the criminal justice system
- the Sex Offender Register and the post sentence scheme
- mandatory reporting to Child Protection for certain professions such as early childhood workers, people in religious ministries, psychologists and out-of-home care workers.

Chapter 3 of the report details how the Reportable Conduct Scheme fits within the broader child safeguarding framework in Victoria.

## Scope and methodology for the review

Section 16ZN of the Act requires the Minister for Children to:

- review the scheme's first 5 years of operation
- consider whether the scheme should be expanded to apply to any other entities.<sup>12</sup>

As outlined in the terms of reference for the review (**Appendix 1**), the review has examined the scheme's operation since it started in July 2017 with a view to understanding if it is working as intended. The review considered whether the scheme is achieving its overarching goal of making organisations safer for children by examining the operation of elements of the scheme aimed at achieving the objectives including:

- ensuring allegations of reportable conduct by employees are appropriately reported and responded to
- oversight of responses to allegations of reportable conduct in organisations that exercise care, supervision and authority over children
- maintaining the priority of a Victoria Police investigation into any allegations of criminal misconduct and ensuring suspected criminal conduct is being reported to police
- enabling information sharing with the Working with Children Check, relevant professional registration bodies and regulators for substantiated allegations of reportable conduct so a person's suitability to continue working or volunteering with children can be reassessed.

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<sup>12</sup> Note: The Act refers to organisations that are subject to the scheme as 'entities'.

## Review methodology

The review consulted with stakeholders including (refer also to **Appendix 2**):

- the Commission for Children and Young People
- government departments
- other regulators
- organisations required to comply with the scheme
- unions
- children and young people
- representatives from various professional associations for organisations required to comply with the scheme.

Between September and October 2022, a public consultation process took place through the Engage Victoria website. The public could complete a survey and make a submission to the review. Individuals and organisations subject to the scheme were asked about their:

- experiences with the scheme
- involvement with organisations that engage with children and young people.

There were 184 survey responses completed and 35 submissions received. The outcomes of the survey are at **Appendix 3**.

The review consulted with the Commission, including with the Commissioner and the Commissioner for Aboriginal Children and Young People, throughout the review. This included meeting to discuss progress and making data and information requests on various aspects of the scheme's operation.

The review looked to understand whether the Act enables the Commission to fulfil its role in overseeing and monitoring the scheme, as well as the Commission's views on, and experiences with, administering the scheme.

Also, the review ran consultation forums with stakeholder groups and virtual meetings including with:

- peak bodies representing organisations that have to comply with the scheme and children and young people
- victim advocacy groups
- unions
- regulators under the scheme including the Victorian Institute of Teaching and the Australian Health Practitioner Regulation Agency
- representatives from the Office of the Children's Guardian, responsible for administering New South Wales' reportable conduct scheme
- departments with a key role as both an organisation having to comply with the scheme and a regulator of organisations having to comply with the scheme including the Department of Education and the Department of Health
- Victoria Police
- the Working with Children Check unit in the Department of Justice and Community Safety.

## Chapter 2: Broad overview of the first 5 years

The first 5 years of the scheme's operation have seen significant levels of activity and achievements. Organisations have identified, reported and investigated many reportable allegations. The Commission has overseen many organisations' responses to allegations of reportable conduct. Also, the Commission has developed a range of resources to help organisations understand their obligations under the scheme and to improve their responses to allegations.

Since the scheme began until 30 June 2022,<sup>13</sup> organisations have made more than 4,700 mandatory notifications of alleged reportable conduct to the Commission.<sup>14</sup> These have involved more than 10,800 individual allegations of reportable conduct.<sup>15</sup>

Awareness and identification of reportable allegations by organisations appears to have grown as the scheme has matured. The number of mandatory notifications has increased each year since the scheme was fully implemented (refer to **Figure 2.1**). This increase continued throughout the COVID-19 pandemic, despite children's contact with organisations reducing through 'stay at home' orders during the pandemic. Seventy-seven per cent of these notifications were finalised by 30 June 2022, involving investigating 8,161 reportable allegations.<sup>16</sup> The Commission has reported that it expects notifications to continue to increase 'in future years as awareness of the scheme's requirements grows and organisations strengthen their reporting processes'.<sup>17</sup>

In its submission to the review, the Commission has reported improved standards of investigations across many organisations, particularly in organisations with high volumes of allegations.<sup>18</sup>

Aboriginal children and young people continue to be over-represented as alleged victims of abuse. In 2021–22, 12% of unique alleged victims were recorded as being an Aboriginal child or young person, although they only make up 2% of the Victorian population under 18 years of age. Most of these allegations arose from notifications from the out-of-home care sector.

Across Australia, Aboriginal children are significantly over-represented in out-of-home care, and unfortunately Victoria has the highest over-representation of children in care. The over-representation of Aboriginal children in child protection is a symptom of the gap between outcomes for Aboriginal and non-Aboriginal people across all socioeconomic indicators.

Victoria is committed to Closing the Gap for Aboriginal people across all indicators, including over-representation of Aboriginal children in care. The Government has committed through the *Roadmap to Reform* and *Wungurilwil Gapgapduir: Aboriginal Children and Families Agreement* to prioritise efforts to reduce the over-representation of Aboriginal children involved in child protection and out-of-home care.

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<sup>13</sup> The report is using data as at 30 June 2022.

<sup>14</sup> A mandatory notification under the scheme are the notifications made by the head of an organisation to the Commission about reportable conduct allegations against an employee. Any other person can also notify the Commission about a reportable conduct allegation – for example, an employee of an organisation or the parent of a child. These notifications are not mandatory. Mandatory notifications under the scheme differ from mandatory reporting to child protection authorities – refer to Chapter 3 for more information.

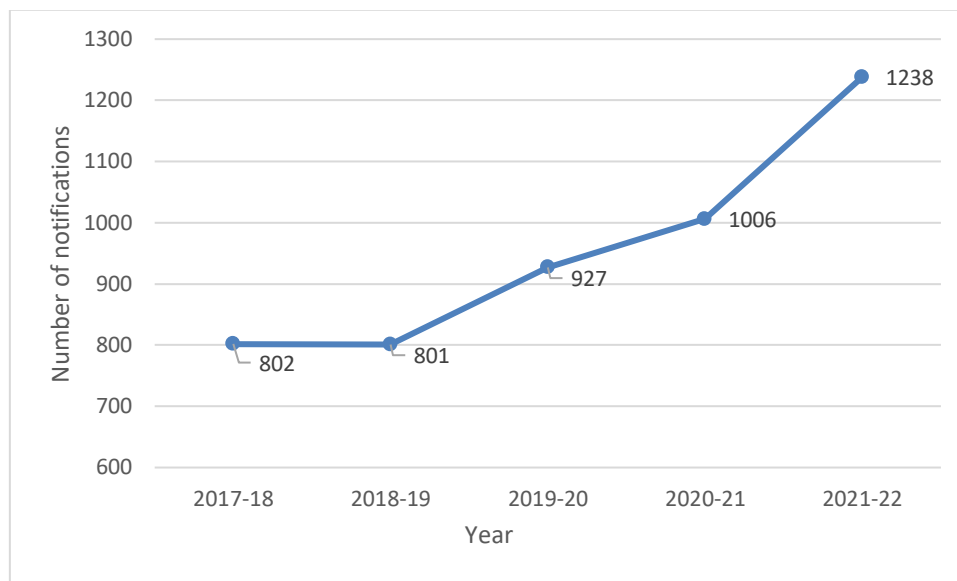
<sup>15</sup> A single mandatory notification to the Commission may relate to multiple allegations of reportable conduct and multiple alleged victims – refer to Commission for Children and Young People 2022, *Annual report 2021–22*, p. 80.

<sup>16</sup> Commission for Children and Young People 2022, *Annual report 2021–22*, p. 101.

<sup>17</sup> *Ibid.*, p. 81.

<sup>18</sup> Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's Reportable Conduct Scheme*, p. 14.

**Figure 2.1: Number of mandatory notifications of reportable conduct to the Commission, 2017–18 to 2021–22<sup>19</sup>**



**There have been high levels of activity over the first 5 years of the scheme's operation up to 30 June 2022:**

- 4,700 mandatory notifications were made to the Commission, involving more than 10,800 allegations of reportable conduct
- 77% of mandatory notifications have been finalised
- 8,161 reportable allegations have been investigated.

*Awareness and identification of reportable conduct appears to have grown as the scheme has matured.*

## Allegations by sector and type

From the scheme commencement until 30 June 2022, most mandatory reportable conduct notifications came from 4 broad sectors:

- out-of-home care providers (1,735 notifications – 36% of all notifications)
- education providers including schools (1,218 notifications – 26% of all notifications)
- early childhood education providers such as childcare centres and kindergartens (992 notifications – 21% of all notifications)
- religious bodies (297 notifications – 6% of all notifications).

In each of the first 5 years of the scheme's operation, most allegations related to physical violence. These accounted for 41% of all allegations between 2017 and 2022.<sup>20</sup> There are variations in the types of reportable conduct allegations across sectors (refer to **Tables 2.1–2.4**).

In the out-of-home care sector, reportable conduct allegations have mainly related to physical violence and significant neglect of a child. In the education sector, the most frequent allegations were about sexual misconduct and physical violence. In the early childhood education and care

<sup>19</sup> Commission for Children and Young People 2022, *Annual report 2021–22*.

<sup>20</sup> Data from 2017 to 2022. Source: Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's Reportable Conduct Scheme*.

sector, most allegations were about physical violence. In religious bodies, most allegations have related to sexual offences and sexual misconduct. This data offers valuable information that helps the Commission to target its information and guidance activities, as well as its compliance and enforcement activities.

**Table 2.1: Top 2 types of reportable allegations by the type of conduct – out-of-home care sector**

Type of reportable conduct	2017–18 (%)	2018–19 (%)	2019–20 (%)	2020–21 (%)	2021–22 (%)
1. Physical violence	345 (51)	332 (54)	319 (49)	319 (43)	580 (45)
2. Significant neglect	136 (20)	98 (16)	134 (21)	179 (24)	391 (30)

**Table 2.2: Top 2 types of reportable allegations by the type of conduct – education sector**

Type of reportable conduct	2017–18 (%)	2018–19 (%)	2019–20 (%)	2020–21 (%)	2021–22 (%)
1. Sexual misconduct	219 (34)	161 (31)	336 (41)	433 (43)	306 (38)
2. Physical violence	237 (36)	193 (37)	228 (28)	187 (18)	227 (28)

**Table 2.3: Top 2 types of reportable allegations by the type of conduct – early childhood education sector**

Type of reportable conduct	2017–18 (%)	2018–19 (%)	2019–20 (%)	2020–21 (%)	2021–22 (%)
1. Physical violence	18 (75)	164 (75)	275 (65)	272 (62)	269 (61)
2. Significant emotional or psychological harm	5 (21)	30 (14)	65 (15)	79 (18)	69 (16)

**Table 2.4: Top 2 types of reportable allegations by the type of conduct – religious bodies**

Type of reportable conduct	2017–18 (%)	2018–19 (%)	2019–20 (%)	2020–21 (%)	2021–22 (%)
1. Sexual offences	8 (16)	66 (48)	61 (40)	45 (43)	66 (35)
2. Sexual misconduct	26 (52)	29 (21)	42 (28)	29 (28)	33 (17)

## Resources to help organisations comply with the scheme

Under the Act, the Commission's functions include educating and providing advice to organisations to help them identify reportable conduct, and to report and investigate reportable allegations.

Since the scheme began, the Commission has invested time and resources to develop a range of resources to help organisations understand and comply with the scheme including:

- campaigns to support sectors' transition into the scheme
- information sessions and training, including webinars and online videos
- various published resources and guidance material.

The Commission's resources have a broad reach and are widely accessed. As of June 2022, more than 10,000 copies of the Commission's key guidance document for organisations subject to the scheme, *Guidance for organisations investigating a reportable conduct allegation*, had been downloaded or provided in hard copy. Also, the Commission had delivered, on average, 15 information sessions per year on the scheme, as well as some targeted information sessions and initiatives for particular sectors.

The Commission has developed targeted resources to support the scheme's operation.<sup>21</sup> These resources have also had broad reach, with a video of a mock interview with a child being watched more than 9,000 times. An animated introductory video for interviewing children and young people have been viewed more than 18,000 times.<sup>22</sup>

Chapter 6 of the report details the Commission's activities relating to its functions to educate and provide advice to organisations.

## Disclosure of information under the scheme

As outlined in Chapter 1, the scheme requires organisations and the Commission to notify Victoria Police of any allegations that could involve criminal conduct. This requirement aims to act as a safety net, providing another way for police to learn of potential criminal conduct. The Commission has informed Victoria Police of many matters involving possible criminal conduct each year of the scheme's operation. From the scheme commencement until 30 June 2022, between 55 and 60% of all reportable conduct notifications were reported to Victoria Police.

Where a reportable conduct allegation is substantiated,<sup>23</sup> the Commission must, except in limited circumstances, notify the Secretary of the Department of Justice and Community Safety.<sup>24</sup> The notification triggers a review of a person's Working with Children Check. As of June 2022, about 29% of all finalised allegations have been upheld. This has resulted in the Commission referring matters about 986 individuals and 2,312 substantiated allegations to the Department of Justice and Community Safety.<sup>25</sup>

Also, the Commission can disclose information about reportable allegations to other bodies and regulators that oversee workers in different sectors. Since the scheme began, the Commission has shared details of reportable allegations and findings with the:

- Victorian Institute of Teaching
- Victorian Registration and Qualifications Authority
- Quality Assessment and Regulation Division, the early childhood services regulator in the Department of Education

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<sup>21</sup> Commission for Children and Young People 2021, *Annual report 2019–20*.

<sup>22</sup> Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's Reportable Conduct Scheme*.

<sup>23</sup> An allegation is substantiated where it has been determined, on the balance of probabilities, that the alleged conduct occurred. Referenced in the Commission's *Guidance for organisations investigating a reportable conduct allegation*.

<sup>24</sup> Following machinery-of-government changes on 1 January 2023, the Department of Government Services administers the *Worker Screening Act 2020*. The Commission now discloses information to that department for Working with Children Checks.

<sup>25</sup> Commission for Children and Young People 2022, *Annual report 2021–22*.

- Australian Health Practitioner Regulation Agency
- Human Services Regulator.

Like referrals to the Department of Justice and Community Safety, these powers to share information with other bodies and regulators aim to give those bodies information about workers that may be relevant to their suitability to continue working in that sector. This allows those bodies and regulators to take action including reassessing a person's suitability to continue working or volunteering with children in a specific sector. Also, the Commission has advised it shares information with other bodies and regulators where that information is relevant to their responsibilities to oversee organisations and their child safe systems.

When the scheme began 5 years ago, it created a new system of mandatory notifications that applied to activities and bodies that had not necessarily been regulated in this way before. Since 2017 the Commission has built recognition and understanding of the scheme to a point where there were more than 1,200 notifications in 2021–22. About 75% of the 182<sup>26</sup> respondents to the public survey for the review said they understood the scheme and its requirements well or very well.

Much of this growth is due to the Commission's focus on outreach and education. The scheme does face challenges, including how to continue to be sustainable considering its strong growth. After 5 years, it is worth considering whether the scheme is still appropriately focused on the areas of greatest risk, and whether the scheme's settings need to change. These challenges are discussed in the following chapters. But these challenges should not overshadow the success of the scheme's implementation and operation, and the established role the scheme now plays in the network of efforts to improve child safety.

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<sup>26</sup> Note that not all survey respondents answered all survey questions. This represents the number of survey respondents who answered the question: *'How well do you understand the Reportable Conduct Scheme and its requirements?'*

## Chapter 3: The regulatory landscape

As noted in Chapter 1, the Reportable Conduct Scheme sits within a broad and multilayered child safeguarding framework in Victoria that includes:

- the child protection system
- the Working with Children Check scheme
- the Child Safe Standards
- several other regulatory schemes.

Also, since 2018, the Victorian Government has progressively introduced information sharing schemes such as:

- the child information sharing scheme
- the family violence information sharing scheme
- the Multi-Agency Risk Assessment and Management framework.

These schemes and framework lead to better information sharing between agencies to promote the wellbeing and safety of children.

The various child safeguarding schemes work together to address risks to children in different settings and across different thresholds.

As noted in Chapter 1, any opportunities for change noted in this review consider the scheme's size and sustainability. Any changes to the scheme must be thought of in terms of whether:

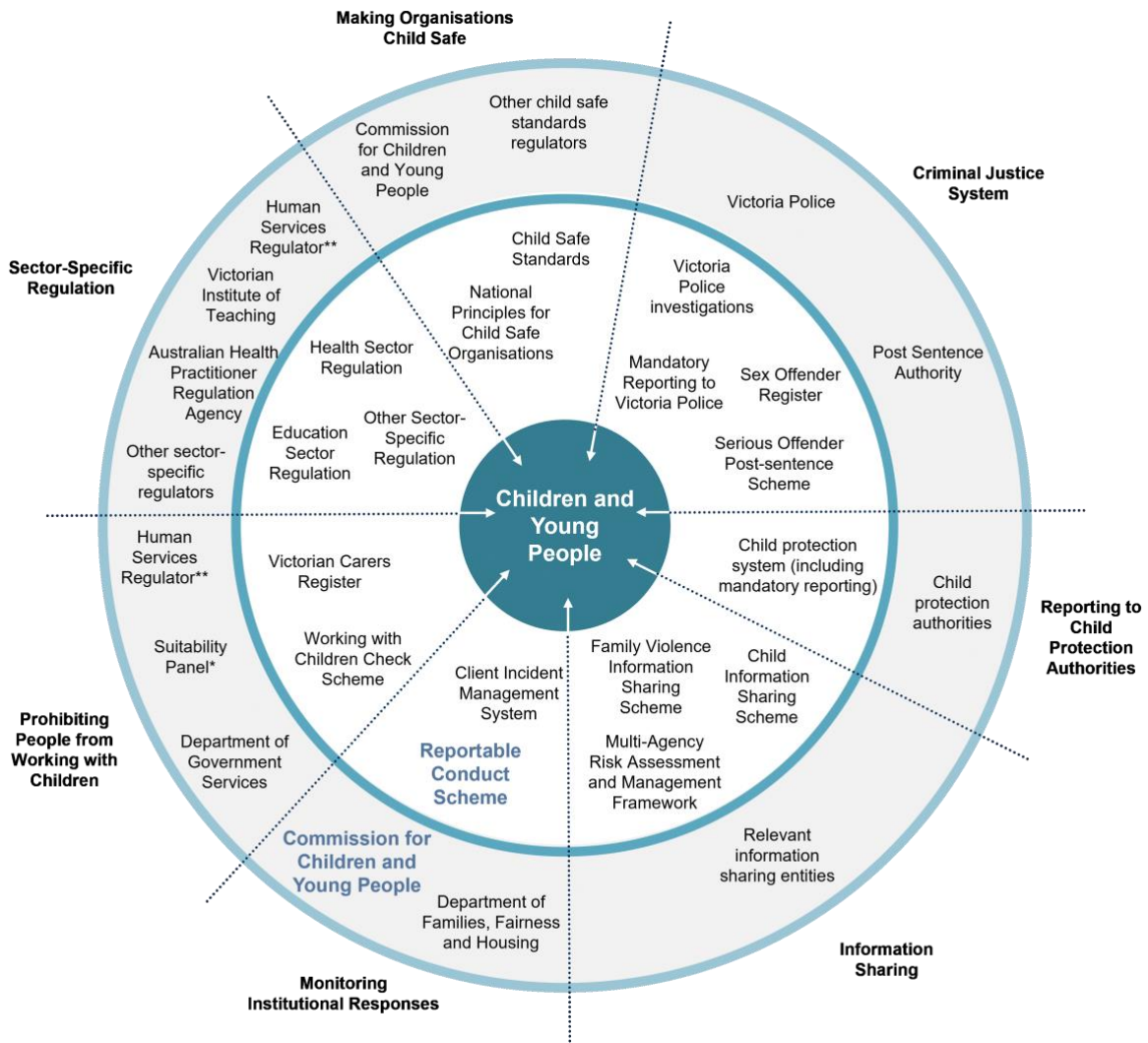
- there is a clearly identified risk to children and young people
- there is a regulatory gap
- other parts of the child safeguarding system can play a role in addressing any risks and gaps.

### The framework for child safeguarding

The scheme's overarching aim is to make organisations safer for children (refer to Chapter 1). But the Reportable Conduct Scheme is not the only regulatory scheme in Victoria with this goal. The child safeguarding framework is multilayered, with several schemes working together to safeguard children (**Figure 3.1**). In recent years, the Victorian Government has:

- introduced more child safeguarding schemes such as the Child Safe Standards
- strengthened requirements such as the Working with Children Check scheme
- expanded the reach of existing schemes such as applying mandatory reporting to child protection authorities.

**Figure 3.1: The regulatory framework for child safeguarding**



\* The Victorian Carer’s Register / Suitability Panel will be replaced by the Worker and Carer Exclusion Scheme from 1 July 2024  
 \*\*The Human Services Regulator will be replaced by the Social Services Regulator from 1 July 2024

These schemes each have a role to play in the child safeguarding framework, and no one scheme can address every risk of harm to children. It is important that the role of the Reportable Conduct Scheme, relative to the other schemes, is understood when proposing changes to improve the framework.

### The criminal justice system

The criminal justice system looks to address conduct against children and young people of a criminal nature. Police will investigate alleged incidents, and perpetrators can face prosecution.

Certain acts must be reported to Victoria Police if people believe they have occurred:

- Adults who have information that leads them to form a reasonable belief that a sexual offence has been committed against a child must report this information to police.<sup>27</sup>

<sup>27</sup> Crimes Act 1958 (Vic), s 327.

- Under the scheme, heads of organisations must report allegations to Victoria Police if they become aware that an allegation may involve criminal conduct.<sup>28</sup>

If an offender is found guilty of certain sexual offences against children, they may also have a Sex Offender Register order made against them. Perpetrators must report their contact details to police (and report any changes to their details within 7 days). Adult offenders can be placed on the register for 8 years, 15 years or life for severe and repeat offenders.

If a court considers a sex offender to be an unacceptable risk to the community after they have completed their sentence, it can make a detention or supervision order to reduce the risk of reoffending.<sup>29</sup> Where the court decides that a supervision order is necessary, the court can set conditions that an offender must follow. These conditions can include restrictions on where an offender may live, who they may contact and where they can go.

It is a key principle of the Reportable Conduct Scheme that police investigations have primacy. An organisation's investigation may need to be put on hold while a police investigation is underway. This helps ensure the investigation does not interfere with the police investigation (Chapter 1).

The Reportable Conduct Scheme also captures conduct that falls below a criminal threshold. The burden of proof in the criminal justice system is high, and there can often be difficulties in pursuing complaints through the courts.<sup>30</sup> The Reportable Conduct Scheme enables risks to children that may not be prosecuted through the criminal justice system to be responded to.

## Child Protection and mandatory reporting to child protection authorities

Statutory child protection services support children and young people at risk of harm or where families are cannot protect them.

The main functions of Child Protection are to:

- investigate matters where it is alleged that a child is at risk of significant harm
- refer children and families to services that monitor the ongoing safety and wellbeing of children
- make applications to the Children's Court if the child's safety cannot be ensured within the family
- oversee protection orders granted by the Children's Court.

Under the *Children, Youth and Families Act 2005*, people in certain job roles (such as teachers, nurses and police officers) must tell child protection authorities if they have a reasonable belief that a child needs protection. This is called 'mandatory reporting'. The scope of mandatory reporting has expanded in recent years. In March 2019 it extended to out-of-home care workers, youth justice workers, early childhood workers and registered psychologists. In 2020, school counsellors and people in religious ministry were added.<sup>31</sup>

Mandatory reporting enables child protection authorities to:

- investigate
- assess the level of risk to the child involved
- take steps to address this risk if necessary.

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<sup>28</sup> *Children, Youth and Families Act 2005* (Vic), s 16U.

<sup>29</sup> *Serious Offenders Act 2018* (Vic).

<sup>30</sup> Family and Community Development Committee 2012, *Inquiry into the handling of child abuse by religious and other nongovernment organisations: final report*, p. 479.

<sup>31</sup> *Children Legislation Amendment Act 2019* (Vic), s 1(a)(1).

Mandatory reporting can address immediate risks of harm to children and may trigger a police investigation if criminal conduct is involved. But mandatory reporting does not involve any oversight of the way in which the organisation has handled or responded to an allegation of child abuse.<sup>32</sup>

## Stopping people from working with children

In 2006 Victoria introduced a system for screening people who want to work with children – the Working with Children Check. The check applies to adults who are in child-related work in any of the occupational fields referred to in the *Worker Screening Act 2020*.<sup>33</sup> Working with Children Checks involve a detailed examination of the criminal history and relevant professional conduct findings of applicants to help protect children from sexual or physical harm by workers or volunteers.<sup>34</sup>

The scope of the check has expanded over time. For example, in 2017 the scheme was amended to include kinship carers and expanded the definition of 'direct contact with children'.<sup>35</sup>

The scope of the scheme and the Working with Children Check differ. For example, the Working with Children Check is broader and covers work in some organisations that are not covered by the scheme. But the scheme covers all employees within an organisation, regardless of whether their role involves any engagement with children.

Other regulatory regimes may also stop workers from offering certain services. In particular, under the Children, Youth and Families Act, people who want to work in the out-of-home-care sector must be registered on the Victorian Carer Register within 14 days of their appointment. Any person may make a notification to the Secretary of the Department of Families, Fairness and Housing alleging physical or sexual abuse towards a child or young person by an out-of-home care worker.

The Secretary can investigate allegations and decide to refer the matter to the Suitability Panel. The Governor in Council appoints the members of the Suitability Panel. The membership must include a legal practitioner chairperson and several other members with relevant tertiary qualifications. The Suitability Panel can decide to disqualify a person from being on the Carer Register if they have engaged in the alleged conduct and pose an unacceptable risk to children.

From 1 July 2024 the Worker and Carer Exclusion Scheme is set to replace the Carer Register and Suitability Panel.<sup>36</sup> It will similarly be able to exclude a carer from working in the out-of-home care sector where they have engaged in certain conduct and pose an unjustifiable risk to children.

Registration schemes also apply to roles such as teachers and medical professionals, discussed below.

The Reportable Conduct Scheme does not include a way to prohibit workers. But the scheme's intent is that the Commission can share information with other regulators that may lead to a person being excluded from working with children (Chapter 1). Where an allegation is substantiated, the Commission notifies the Department of Justice and Community Safety. This may trigger a reassessment of the person's Working with Children Check. The Commission can also share

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<sup>32</sup> Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final report: Improving institutional responding and reporting, Volume 7*, p. 46.

<sup>33</sup> *Worker Screening Act 2020* (Vic), s 7.

<sup>34</sup> Department of Justice and Community Safety 2020, *Regulatory Impact Statement: Worker Screening Regulations 2020*, p. 22.

<sup>35</sup> Premier of Victoria, 1 May 2017, '[New working with children checks for kinship carers](https://www.premier.vic.gov.au/site-4/new-working-children-checks-kinship-carers)' <<https://www.premier.vic.gov.au/site-4/new-working-children-checks-kinship-carers>>.

<sup>36</sup> At time of writing the Disability and Social Services Regulation Amendment Bill 2024 currently in Parliament proposes to delay the commencement of the Worker and Carer Exclusion Scheme for up to two years. Existing protections for children and young people will continue if the Bill passes and the Worker and Carer Exclusion Scheme is delayed.

information with regulators responsible for other regulatory schemes such as the Victorian Institute of Teaching.

## Making organisations child safe

All organisations that must comply with the scheme also have to comply with the Child Safe Standards (the Standards). The Standards support child safety by embedding child safety into everyday thinking and practice.

Following a review in 2019, new Standards came into effect on 1 July 2022 and a strengthened regulatory framework for the Standards came into effect on 1 January 2023. The new Standards closely align with the National Principles for Child Safe Organisations while keeping their focus on Aboriginal cultural safety and child empowerment. Organisations covered by the scheme implemented the new Standards on 1 July 2022.

The Child Safe Standards scheme has far greater reach than the Reportable Conduct Scheme. The Standards cover more than 50,000 organisations, while the Reportable Conduct Scheme covers around 12,000 organisations. Although the schemes are complementary, the Child Safe Standards aim to prevent abuse and harm to children and young people by embedding child safe practices, processes and systems in organisations and through organisational leadership and culture. By contrast the Reportable Conduct Scheme requires organisations to report and then investigate allegations of conduct against a child or young people, by a worker or volunteer.

There are some similarities between the 2 schemes. For example, under the Reportable Conduct Scheme, the head of an organisation subject to the scheme must ensure they have a system in place for preventing the commission of reportable conduct by employees within the course of their work. The Standards also require organisations to have policies, procedures and processes in place to keep children safe, which contributes to organisational systems that protect children and prevent abuse. The guidance provided by the Commission suggests that organisations that meet the Standards are likely to have the systems in place to meet the requirements of the Reportable Conduct Scheme.<sup>37</sup>

The Child Safe Standards are enforced by a number of co-regulators. Different existing regulators have responsibility for enforcing the Standards in the areas that they already regulate. These regulators include:

- the Victorian Registration and Qualifications Authority – which regulates registered schools, school boarding premises and registered training organisations.
- The Victorian Wage Inspectorate – which regulates organisations that employ children under the *Child Employment Act 2003*.

Currently, the Human Services Regulator fulfils the Department of Families, Fairness and Housing's responsibility to regulate the Child Safe Standards in relation to state-funded social services. The Human Services Regulator also enforces compliance with the Human Services Standards.

In July 2024 the independent Social Services Regulator will replace the Human Services Regulator and will enforce the Child Safe Standards and new Social Service Standards for social services.

The Commission is the regulator for Child Safe Standards for all organisations where there is no specified co-regulator, and holds a responsibility, shared with the other co-regulators, to provide education, information and advice on the Standards.

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<sup>37</sup> Commission for Children and Young People 2018, [Reportable Conduct Scheme: Information Sheet – Frequently Asked Questions](https://ccyp.vic.gov.au/assets/resources/RCSInfoSheetUpdates/RCS-FAQs-110718.pdf) <<https://ccyp.vic.gov.au/assets/resources/RCSInfoSheetUpdates/RCS-FAQs-110718.pdf>>.

## Overseeing institutional responses

A key aim of the Reportable Conduct Scheme is to oversee and improve institutional responses to child abuse. It does this through requiring incidents to be reported to the Commission for Children and Young People. Chapter 1 overviews the scheme, and the remaining chapters of this review discuss aspects of the scheme in more detail.

Beyond this scheme, the Department of Families, Fairness and Housing oversees incidents in services it funds through the Client Incident Management System (CIMS). The department's CIMS policy requires that incidents are reported to a departmental divisional office within 3 business days of occurring. The policy sets minimum standards for service providers to carry out investigations. CIMS aims to ensure timely and effective responses to client incidents and ensure effective and appropriate investigations and review of incidents. The department is currently reviewing the CIMS.

## Sector-specific regulation

On top of the Child Safe Standards and the Reportable Conduct Scheme, organisations may be subject to other schemes that regulate and undertake investigations into the conduct of individuals. For example:

- The Victorian Institute of Teaching regulates school teachers and early childhood educators. The institute regulates and investigates teachers' compliance with codes of conduct and ethics.
- The Victorian Registration and Qualifications Authority regulates schools, which includes monitoring and enforcing compliance with registration requirements, including the Child Safe Standards.
- The Quality Assessment and Regulation Division in the Department of Education regulates Child Safe Standards compliance for the early education sector.
- Australian Health Practitioner Regulation Agency and associated National Boards regulate health professionals' conduct.
- The Private Hospitals Unit in the Department of Health regulates private hospitals.
- The Human Services Regulator currently regulates social services, including a range of community-based child and family services. From 1 July 2024 the Social Services Regulator will take on this responsibility.

## Information sharing

The Victorian Government has introduced several information sharing and risk assessment schemes that relate to the child safeguarding framework. Together, these schemes mean better information sharing between agencies to promote the wellbeing and safety of children. These schemes include:

- the Child Information Sharing Scheme, which allows authorised organisations and professions to share and request information to support child wellbeing and safety (authorised organisations include schools, kindergartens, day care, child protection, youth justice, maternal and child health, public hospitals and Victoria Police)
- the Family Violence Information Sharing Scheme, which allows information sharing between authorised organisations to manage family violence risk
- the Multi-agency Risk Assessment and Management Framework, which helps workers across the service system to understand their responsibilities to undertake risk assessments and to manage and share information.

## The role of the scheme in the regulatory landscape

As the discussion above highlights, the regulatory landscape for safeguarding children involves several regulators and regulatory schemes. This creates the potential for regulatory overlap, which is discussed in Chapter 4.

The Reportable Conduct Scheme has a specific place in the framework. Where gaps in the safeguarding framework are identified, it is not necessarily the case that expanding or amending the scheme will be the best solution. Rather, it may be that a different scheme in the regulatory landscape is best placed to address the issue.

## Chapter 4: Regulatory overlaps and duplication

A key concern participants raised – notably participants representing social services providers – was the degree of regulatory overlap resulting from the multiple schemes that aim to protect children. Participants highlighted that one incident can often be subject to multiple investigations over time. For example, one participant said that:

*The most common scenario for our members is to be subject to at least two or three investigations – a local level investigation, a Division 10 investigation and an inquiry by the Victorian Institute of Teaching.*

Another organisation noted that:

*The regulatory landscape in which the [Reportable Conduct Scheme] operates is highly complex, with entities subject to numerous concurrent and overlapping obligations and processes for response to allegations, incidents and risk of harm to children.*

Overlapping or duplicative regulation can lead to numerous costs. Most obviously, it can increase administrative costs for the government and compliance costs for service providers. Beyond this, there can also be human costs. Workers face uncertainty when multiple investigations span an extended period. Also, victims might have to relive trauma multiple times when having to do multiple interviews. These costs should be minimised.

However, not all perceived overlap is unnecessary. The Reportable Conduct Scheme has a specific place in the framework. It monitors institutional responses, with a focus on the person's role in an organisation. More severe conduct is to be referred to other regulatory authorities.

Investigations and decisions made by regulators and other authorities can often have more serious impacts for the employee. For example, bodies such as the Suitability Panel can decide whether a person can work in certain roles in Victoria. These investigations often draw on a broader evidence base. It is not fitting that the institutions themselves conduct these investigations.

The Commonwealth Royal Commission's findings on duplication in New South Wales support this view. It noted that:

*In our view, these reporting obligations fulfil different purposes specific to the roles and functions of the Ombudsman and the Children's Guardian in their administration of each scheme and are not a duplication as such.*

However, the Commonwealth Royal Commission did note that fulfilling multiple obligations could be made simpler, including through using technology. It recommended that reportable conduct schemes be compatible with legislation regulating other schemes to ensure reporting duplication is minimised.<sup>38</sup>

Regulatory overlaps and multiple reporting obligations should be streamlined through:

- information sharing
- collaboration among co-regulators
- efficient regulatory practice.

For example, the need to reduce regulatory burden where possible is a guiding principle of the Social Services Regulation Act. This Act enables the Social Services Regulator, when investigating

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<sup>38</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, *Final report: Improving institutional responding and reporting*, Volume 7, p. 298.

worker or carer conduct under the Worker and Carer Exclusion Scheme, to learn of other reportable conduct investigations. This will reduce the likelihood of multiple investigations into the same matter.

Regulatory overlap and duplication matters are complex. They generally relate to multiple schemes and regulators and are therefore largely beyond the scope of this review. Nonetheless, this chapter considers the broad overlapping areas with the Reportable Conduct Scheme. We also highlight where improvements could be made.

## The Reportable Conduct Scheme and the Client Incident Management System

One of the key overlaps that participants reported was between the Reportable Conduct Scheme and CIMS (Chapter 3). CIMS empowers service provider organisations to:

- investigate and respond to events that result in harm to clients
- manage service quality
- make the best use of departmental support and resources, particularly for the most serious incidents.

This helps to improve client safety and wellbeing. Under CIMS, all 'major-impact' incidents must be subject to either an investigation or review (case review or root cause analysis review).

The overlap with CIMS is not relevant for all services covered by the Reportable Conduct Scheme. Instead, it relates to services regulated by the scheme that the Department of Families, Fairness and Housing funds.

Although the scope of the 2 schemes is different, both CIMS and the Reportable Conduct Scheme have improving organisational responses to client incidents at their core. So it makes sense to minimise overlaps and duplication between these schemes as much as possible.

Recognising this, in 2018–19 the then Department of Health and Human Services and the Commission published guidelines for organisations doing joint CIMS / Reportable Conduct Scheme investigations.<sup>39</sup> The guidance notes that a single investigation:

- reduces the risk of traumatising the child more
- enables fewer witness interviews
- supports procedural fairness
- decreases the emotional toll on workers
- reduces administrative burden.

The Reportable Conduct Scheme itself is not specific about how an organisation investigates. It gives organisations flexibility to conduct joint CIMS and Reportable Conduct Scheme investigations.

Despite this, stakeholders highlighted that conducting joint CIMS / Reportable Conduct Scheme investigations is challenging.

*... organisations may be required to make reports of incidents to the Department of Families, Fairness and Housing (DFFH) through the Client Incident Management System (CIMS) and allegations of reportable conduct to the Commission. Both these lines of reporting require separate reports, and in some cases different evidence. This includes the way a report is laid out and the processes going forward after the report. The intersection of the two systems can*

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<sup>39</sup> Commission for Children and Young People and Department of Health and Human Services 2020, *Conducting joint Client Incident Management System and Reportable Conduct Scheme investigations: Guidance for service providers*.

*be difficult to manage and support staff in terms of training and understanding the requirements of each.*

Similarly, another service provider stakeholder noted that:

*The interaction and crossover with the DFFH Client Incident Management System (CIMS) and the variation in definitions and thresholds has been a significant challenge.*

Service provider organisations may have to report incidents or allegations of abuse and misconduct against staff members, carers or volunteers under both schemes, if they meet the relevant thresholds. But not all incidents that require a CIMS investigation will be reportable allegations under the Reportable Conduct Scheme and vice versa. There may also be other investigation types that an organisation needs to undertake at the same time, such as misconduct or other workplace investigations. Therefore, the review understands from stakeholder feedback that joint investigations generally don't occur.

Both Reportable Conduct Scheme and CIMS investigations aim to achieve the same purpose. This is to determine, based on the balance of probabilities, whether the conduct occurred. However, in part, the issues stakeholders raised relate to the varying definitions and requirements included in CIMS policy relative to the Reportable Conduct Scheme requirements (**Table 4.1**). The policy guidance on joint CIMS / Reportable Conduct Scheme reviews notes that these different thresholds and findings categories may mean different findings will need to be made under each scheme.<sup>40</sup>

The Act does not specify any findings categories or thresholds. The requirements under the Act are only that the head of an organisation must give the Commission a copy of the investigation's findings and the reasons for those findings.<sup>41</sup> Under CIMS, conduct findings are either substantiated or unsubstantiated. This means that, on the face of it, the schemes align regarding investigation findings.

However, the Commission has established its own types of investigation findings under the scheme:<sup>42</sup>

- substantiated
- unsubstantiated – insufficient evidence
- unsubstantiated – lack of evidence of weight
- unfounded
- conduct outside the scheme.

The Commission's findings categories and findings under the scheme are discussed in Chapter 8.

The differing definitions and findings do not mean organisations cannot have joint investigations. But the different definitions do mean that organisations may need to gather different types of evidence to substantiate conduct. This includes potentially asking different questions of:

- witnesses
- the subject of the allegation
- the alleged victim.

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<sup>40</sup> Commission for Children and Young People and Department of Health and Human Services 2020, *Conducting joint Client Incident Management System and Reportable Conduct Scheme investigations: Guidance for service providers*, p. 15.

<sup>41</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16N(3)(a).

<sup>42</sup> Commission for Children and Young People and Department of Health and Human Services 2020, *Conducting joint Client Incident Management System and Reportable Conduct Scheme investigations: Guidance for service providers*, pp. 21–22.

Ultimately, it makes investigations more complex and means that organisations that do not (or cannot) account for this up front may need to reinterview those involved, adding to the trauma and costs.

There are likely to be benefits from more closely aligning the Reportable Conduct Scheme and the CIMS policy to reduce the complexity of these joint investigations. Benefits include reducing the regulatory burden on organisations and potentially improving the rates of notifications to the Commission and the department. Given that the Reportable Conduct Scheme is a statutory scheme, the greatest benefits are likely to be achieved from greater alignment of the CIMS scheme definitions with the Reportable Conduct Scheme definitions of conduct. Also, the Victorian scheme definitions largely align with those in other states and territories (Chapter 5), and there would be costs in deviating from these definitions.

Aligning the 2 schemes may yield benefits for organisations responding to the Reportable Conduct Scheme. But amending the CIMS scheme needs to consider the broader safeguarding landscape, including the incident notification requirements for the incoming Social Services Regulator. The department is currently reviewing the CIMS scheme. The CIMS review will consider these issues more, including whether there is scope for greater alignment of the schemes to reduce regulatory burden.

#### Opportunity 4.1

*The inconsistent definitions and thresholds between the Reportable Conduct Scheme and the Department of Families, Fairness and Housing's Client Incident Management System (CIMS) hampers the ability of organisations to conduct joint investigations under these 2 schemes. This increases regulatory burden on in-scope sectors.*

*The department's current review of the CIMS scheme offers an opportunity to review these definitions. This will make it easier for organisations to identify when incidents are in scope of the Reportable Conduct Scheme. The department's review of investigation requirements that overlap the CIMS requirements provides more opportunities to reduce the resourcing burden on service providers.*

**Table 4.1: CIMS definitions and Reportable Conduct Scheme thresholds**

<b>CIMS major impact incident types and definitions</b>	<b>Reportable conduct types and thresholds</b>
<p><b>Emotional or psychological abuse</b> Actions or behaviours that reject, isolate, intimidate or frighten by threats of, or the witnessing of, family violence, to the extent that the client's behaviour is disturbed or their emotional/psychological wellbeing has been, or is at risk of being, seriously impaired.</p>	<p><b>Behaviour that causes significant emotional or psychological harm to a child</b> There must be a clear link between the staff member, carer or volunteer's behaviour and the harm to the child. The harm to the child must be significant.</p>
<p><b>Poor quality of care</b> Inappropriate or inadequate care by staff members or carers in the context of service delivery. Injury Actions or behaviours that unintentionally cause harm that requires first aid or medical attention. Includes both explained and unexplained injuries.</p>	<p><b>Significant neglect of a child</b> There needs to be a failure to meet the basic needs of a child (such as their wellbeing or safety) and that failure needs to be intentional or reckless. The neglect of the child must be significant. And it needs to be shown that the worker or volunteer <i>could</i> have met the child's needs but failed to do so.</p>

CIMS major impact incident types and definitions	Reportable conduct types and thresholds
<p><b>Physical abuse</b></p> <p>Actions that involve the inappropriate use of physical contact or force against a person that result in major harm to the client.</p>	<p><b>Physical violence (against, with or in the presence of a child)</b></p> <p>The conduct must be intentional or reckless, without lawful reason, and must be capable of causing injury or harm. To be lawful, force must be reasonable, and no more force should be used than is necessary.</p>
<p><b>Sexual abuse</b></p> <p>Actual or attempted unwanted sexual actions (or allegations of such actions) that result in major harm to the client or that are otherwise forced upon a client against their will or without their consent, through the use of physical force, intimidation and/or coercion.</p>	<p><b>Sexual offences (against, with or in the presence of a child)</b></p> <p>Where potential sexual offences are not prosecuted or do not result in a finding of guilt, they must still be investigated as potential reportable conduct and determined on the balance of probabilities.</p>
<p><b>Sexual exploitation</b></p> <p>Abuse of a person under 18 or a person with a cognitive disability, which may include:</p> <ul style="list-style-type: none"> <li>• the exchange of sex or sexual acts for money, goods, substance or favours</li> <li>• involving a child in creating pornography</li> <li>• contact with a known sex offender.</li> </ul>	<p><b>Sexual misconduct (against, with or in the presence of a child)</b></p> <p>Sexual misconduct involves a departure from the accepted standards of the staff member, carer or volunteer's role that is of a sexual nature.</p>

Source: Summarised from joint CIMS / Reportable Conduct Scheme guidance.

## Reportable Conduct Scheme and social services regulation

A potential source of regulatory overlap noted by participants was between the Reportable Conduct Scheme and notifications under the Human Services Regulator and Suitability Panel processes. Under the current Carer Register / Suitability Panel arrangements, an organisation must notify the departmental Secretary of alleged sexual or physical abuse of a child by an out-of-home carer. This matter can be investigated by an authorised investigator and reported to the Suitability Panel to consider whether the worker should be disqualified from the Carer Register.

The move to the Social Services Regulator in July 2024 will transfer this responsibility to the new regulator under the Worker and Carer Exclusion Scheme.<sup>43</sup> Providers will have to notify the regulator as soon as practicable of serious incidents that have occurred or may pose a serious risk to service users, during social service delivery. Serious incidents include incidents that result in or are reasonably likely to cause serious harm to a service user.

Establishing the Social Services Regulator offers an opportunity to streamline reporting requirements. The Social Services Regulation Act includes provisions designed to reduce regulatory burden. Section 48 of that Act allows the regulator to exempt a registered social service provider (or class of registered social service providers) from notification requirements where they have to give notifications to another regulator or public entity. This could help minimise duplicating notification

<sup>43</sup> At time of writing the Disability and Social Services Regulation Amendment Bill 2024 currently in Parliament proposes to delay the commencement of the Worker and Carer Exclusion Scheme for up to two years. Existing protections for children and young people will continue if the Bill passes and the Worker and Carer Exclusion Scheme is delayed.

obligations where, for example, the regulator and another regulatory entity have appropriate referral and information sharing processes in place to coordinate regulatory activity.

Section 66 of the Social Services Regulation Act allows the regulator to use a reportable conduct investigation report in place of conducting its own investigation into workers or carers in out-of-home care, under the Worker and Carer Exclusion Scheme.

Beyond this, the department is looking to align definitions and reduce overlap when designing the scheme. The preferred option for the Social Services Regulations set out in the department's regulatory impact statement would prescribe the various types of conduct under the Reportable Conduct Scheme as conduct that could lead to exclusion under the Worker and Carer Exclusion Scheme. (The Worker and Carer Exclusion Scheme replaces the Carer Register.) This means that conduct that could exclude people from working with children will align with conduct considered under the Reportable Conduct Scheme.

There is also an opportunity to align reporting in CIMS with the reporting requirements of the Social Services Regulator to minimise duplication. This will be considered in the CIMS policy review and when implementing the regulator.

## Overlaps with other regulators

Several stakeholders also highlighted duplication and overlap with other regulators. One clear example was the Victorian Institute of Teaching, which registers teachers and can investigate allegations against teachers.

For reasons highlighted earlier – the different intent and focus of the Reportable Conduct Scheme compared with these other schemes – there is likely to always be some degree of overlap. This is necessary to ensure effective protections for children and young people are in place.

Even so, the Act includes provisions to avoid unnecessary duplication in investigations and to allow for other regulators to play a role in some reportable allegations. Section 16V(1) states that the Commission may request a regulator of an employee of an organisation to investigate a reportable allegation to do with the employee. Under the scheme, the head of an organisation can also allow a regulator to investigate a reportable allegation that the organisation itself would otherwise need to conduct (s 16N(1)(a)).

Although the Act allows regulators to play a role in scheme investigations, this rarely occurs in practice. The Commission is aware of a small number of instances where a regulator has agreed to investigate on behalf of the head of the organisation.<sup>44</sup> The Commission is yet to make a formal request to a regulator of an employee to investigate under the scheme. This is because of concerns raised to the Commission by regulators of employees, including the following:

- Regulators have their own priorities in line with their respective regulatory missions.
- Regulators are not funded to perform investigations under the scheme.
- Regulators do not have the necessary investigative powers.
- The question of whether evidence gathered by the regulator using its own powers could also be used for the purpose of their investigation under the scheme.

**Chapter 8 – Investigations and findings** considers the barriers to regulators undertaking investigations under the Reportable Conduct Scheme.

Beyond this, under s 16E of the Act, the Commission must liaise with regulators to avoid unnecessary duplication in overseeing the investigation of reportable allegations. The Commission

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<sup>44</sup> Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's Reportable Conduct Scheme*, p. 33.

highlighted some examples where this had occurred in its submission. These included the guidance note on joint investigations under the CIMS and Reportable Conduct Scheme, as well as its contribution to a project undertaken by the Victorian Institute of Teaching to assist teachers, schools and early childhood reporters to understand what conduct must be reported and to whom. Also, the Victorian Institute of Teaching and the Commission have developed a memorandum of understanding and regularly share information to reduce potential inefficiencies and overlaps.

## The need for ongoing improvement

Reducing duplication and overlap between the various schemes in the child protection sector is complex given:

- the number of regulators and agencies working in a crowded regulatory landscape for child safeguarding
- the number of schemes and policies that work together to protect children and young people from harm and abuse.

However, there is a wide agreement among organisations and regulators that aligning definitions under various schemes would streamline the process. In cases where multiple investigations are still needed, efficient information-sharing between regulators and organisations could streamline the process of overlapping functions. In particular, it could enable regulators and entities to share witness statements to minimise the risk of retraumatising children and young people involved in investigations.

There is likely to be scope for the Commission to continue to work with other regulators to:

- share information
- run joint investigations where appropriate
- collaborate
- streamline processes
- reduce duplication of effort.

Not only would this reduce burden on regulated entities, but it would help with the scheme's sustainability.

Work to reduce regulatory duplication would involve multiple regulatory schemes. While this review can consider changes to the reportable conduct schemes, amendments to other schemes is out of its scope. Nonetheless, it would be beneficial to consider other ways to streamline duplicative regulatory requirements. This would include removing unnecessary duplication and making it easier for organisations to respond to multiple reporting requirements where they are needed.

### Opportunity 4.2

*There would be benefit in considering ways to reduce duplication and overlaps between the Reportable Conduct Scheme and other schemes including:*

- *opportunities to collaborate between regulators*
- *facilitating joint investigations*
- *sharing information between regulators.*

*This could be achieved through tools such as memorandums of understanding between regulators, extra guidance material and the scope for aligning definitions and reporting where appropriate.*

## The national reportable conduct regulatory landscape

Victoria is not the only state or territory in Australia to have a reportable conduct scheme in place. New South Wales, the Australian Capital Territory, Tasmania and Western Australia have all implemented schemes. The Queensland Government has expressed in-principle support for a recommendation to introduce nationally consistent Child Safe Standards and a reportable conduct scheme. As of 2022 the Northern Territory and South Australia were yet to agree to recommendations for introducing a reportable conduct scheme.<sup>45</sup>

The principles of these schemes are similar, although they have some differences in design that are discussed in the relevant chapters of this review.

It is vital for regulators in different states and territories to work together to ensure each scheme's success and to achieve their mutual overarching objective to protect children from abuse. The legal intent in Victoria reflects this view, as the Victorian scheme captures certain categories of conduct, even if that conduct occurred in other states or territories. For example, if a reportable allegation is made against a Victorian employee working for a national organisation and the conduct occurred interstate, the head of an organisation must notify the Commission and investigate the reportable allegation. This is the case even if the allegation relates to conduct that occurred in another state or territory.<sup>46</sup>

However, this provision does create the risk that a reportable allegation could lead to notifications under reportable conduct schemes in more than one state or territory. In its submission, the Commission noted that:

*The Act currently does not fully accommodate the existence of reportable conduct schemes across multiple jurisdictions. The Commission has encountered circumstances where an organisation operates across multiple jurisdictions and a reportable allegation that arises is notifiable to more than one jurisdiction, with the obligation to investigate triggered in each.*<sup>47</sup>

In Victoria, the Commission's powers under the Act to exempt the head of an organisation from notifying the Commission of a reportable allegation do not extend to exempting the head of an organisation from responding to or investigating a reportable allegation.<sup>48</sup> The Commission does not have the power to exempt an entity from conducting a single investigation.

On the other hand, in the New South Wales scheme, the regulator can exempt the head of an organisation from conducting or continuing an investigation, including where the matter is already being investigated in Victoria.<sup>49</sup> Also, the Western Australian framework also allows the Parliamentary Commissioner to exempt an organisation from starting or continuing an investigation 'if the matter is already being dealt with or investigated by another appropriate person or body'.<sup>50</sup>

The Commission must liaise with regulators to avoid unnecessary duplication of investigation oversight under the Act.<sup>51</sup> But this requirement only refers to Victorian-based or national regulators of organisations and sectors within scope of the Victorian scheme and not state or territory

<sup>45</sup> South Australian Government 2022, [Royal Commission into Institutional Responses to Child Sexual Abuse: Recommendation Status Update](https://www.childprotection.sa.gov.au/documents/report/rcirca-2022-recommendations-status.pdf) <https://www.childprotection.sa.gov.au/documents/report/rcirca-2022-recommendations-status.pdf>.

<sup>46</sup> Commission for Children and Young People 2017, [Information sheet – Frequently asked questions](https://ccyp.vic.gov.au/assets/resources/RCSInfoSheetUpdates/RCS-FAQs-110718.pdf), <https://ccyp.vic.gov.au/assets/resources/RCSInfoSheetUpdates/RCS-FAQs-110718.pdf>, p. 4.

<sup>47</sup> Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's Reportable Conduct Scheme*, p. 39.

<sup>48</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16N.

<sup>49</sup> *Children's Guardian Act 2019* (NSW), s31

<sup>50</sup> *Parliamentary Commissioner Amendment (Reportable Conduct) Act 2022* (WA), s 19P.

<sup>51</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16E.

regulators of other reportable conduct schemes. The Commission lacks the power to reduce this duplication in matters that cross state and territory borders.

Some entities have noted that this can be challenging for entities that work nationally and is particularly challenging for those in towns on the New South Wales/Victorian border. The Commission and entities have expressed support for substantiated allegations being recognised across state borders, and for investigations taking place in one state satisfying the requirement for an investigation in another state.

Although it is unclear how often this duplication occurs, multiple reportable conduct scheme regulators across states and territories overseeing an investigation is an unnecessary duplication. It increases regulatory burden on organisations for no clear benefit or improvement in safeguards. There is a case to amend the Act to allow the Commission to exempt organisations from investigations where this investigation is being conducted under another reportable conduct scheme, and to accept that investigation's findings for the purposes of the Victorian scheme.

#### **Opportunity 4.3**

*There is an opportunity to amend the Child Wellbeing and Safety Act to allow the Commission for Children and Young People to:*

- *exempt an organisation from conducting an investigation for a reportable allegation where an investigation for that allegation is already being undertaken under a reportable conduct scheme in another state or territory*
- *recognise a finding made under another state's or territory's reportable conduct scheme for the purposes of the Victorian scheme, where the reportable allegation is also captured under the Victorian scheme.*

# Chapter 5: Scope of the Reportable Conduct Scheme

The scheme's scope is determined by 3 key elements:

- the organisations<sup>52</sup> that must comply with the scheme
- employees within an organisation, against whom a reportable allegation can be made
- the conduct that must be reported.

Together these elements determine the scheme's size and scale. They affect the number of reportable conduct allegations that must be notified to the Commission, investigated by organisations and overseen by the Commission.

As outlined in earlier chapters, legislative changes and regulations have expanded the scope of organisations and people within organisations that the scheme covers. These changes have led to increased allegations being reported to the Commission. Pending changes will also contribute to the scheme's growth over time. The 3 elements contributing to the scheme's scope are discussed below.

## Organisations that must comply with the scheme

Organisations that must comply with the scheme include those that provide care, supervision or authority over children. The scheme applied to more than 12,000 organisations in Victoria by June 2022.

The organisations that must comply with the scheme are set out in Schedules 3, 4 and 5 of the Act, as well as Schedule 2 of the Child Wellbeing and Safety Regulations 2017. They include:

- schools, including boarding schools and other education services
- certain state-funded residential services including mental health services, drug and alcohol treatment services and housing services for children
- child protection and out-of-home care services
- Victorian government departments
- religious bodies
- overnight camps for children
- hospitals and public health services
- disability services
- early childhood education and care services (childcare and kindergarten)
- certain prescribed public bodies including art centres, libraries, museums, zoos, parks and gardens.

## Applying the scheme and exemptions under the scheme

Given the scheme is a child safeguarding scheme, the Act provides that the scheme does not apply to organisations that do not exercise care, supervision or authority over children (s 16C). For example, if a disability service does not provide services to children, employ or engage children or young people, or otherwise exercise care, supervision or authority over children, then it would not be subject to the scheme. In its submission to the review, the Commission noted that s 16C can mean an organisation can 'cycle' in and out of the scheme - for example, where an organisation

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<sup>52</sup> The Act refers to organisations that must comply with the scheme as 'entities'.

stops providing services to children for a period and then re-starts those services. The Commission notes this could lead to a lack of clarity about an organisation's obligations under the scheme, particularly in relation to historical allegations about an employee that are made at a time when an organisation is not within scope of the scheme. The Commission recommended that the Act be amended to provide greater clarity as to the length of time an organisation must have stopped exercising care, supervision or authority over children before s 16C applies.

The review agrees that there may be challenges in working out an organisation's responsibility if it cycles in and out of the scheme because of s 16C. For example, it may be difficult for an organisation to know whether it must investigate an allegation about an employee that is made when the organisation is not in scope of the scheme due to s 16C, but the allegation is about conduct by an employee that happened when the organisation was in scope of the scheme. Similarly, it may not be clear how the scheme applies to an allegation about an employee made when an organisation is in scope of the scheme, in relation to conduct of an employee at the time when the organisation was not subject to the scheme.

These are complex matters that need to be carefully considered. There is an opportunity for further work to be undertaken to understand how s 16C applies in different situations and to consider whether amendments to the Act could help clarify how s 16C applies.

### Opportunity 5.1

*Section 16C of the Act provides that the scheme does not apply to organisations that do **not** exercise care, supervision or authority over children. However, as some organisations may move in and out of exercising care, supervision or authority over children at different points in time, it is not clear how the scheme should apply in all situations.*

*When allegations are made about conduct by an employee that happened when an entity was in the scope of the scheme, but that entity has since stopped exercising care, supervision or authority over children, it is not clear whether that allegation should be treated as reportable conduct – or whether that entity is now outside the remit of the scheme.*

*There is an opportunity for further work to be undertaken to clarify how s 16C applies in different situations and to consider whether amendments to the Child Wellbeing and Safety Act are necessary.*

The Act includes 2 categories of exemption from the scheme (although no exemptions have been granted under these provisions):

- The Minister can make regulations to exempt an organisation or a class of organisations from the scheme.
- The Commission can exempt the head of an entity or a class of entities from notifying the Commission of a reportable allegation if it decides that the entity is competent to investigate a reportable allegation without the Commission's oversight. The entity must also prove its competence in responding to reportable allegations in respect of that class or kind of conduct (known as a 'class or kind exemption').<sup>53</sup>

Where a class or kind exemption is granted, the entity must continue to inform the Commission of the findings of an allegation. This is important because it allows the Commission to forward substantiated allegations to the Working with Children Check Unit. It also ensures the Commission has information about all investigations and the outcomes of investigations under the scheme. Although this exemption does not exempt an organisation from the scheme, it can affect the scheme's overall scope by reducing reporting and oversight requirements for organisations and the

<sup>53</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 161(1) and (2).

Commission. For example, where a class or kind exemption is provided, an organisation does not need to notify the Commission of the allegation within 3 days, or provide the Commission with follow up information, required as soon as practicable and within 30 days.

In submissions to the review, some stakeholders advocated for the Commission to consider granting class and kind exemptions where appropriate. During consultations, the Commission noted that it has not granted any exemptions because it is not aware of any entities that meet the standard.

The Commission also noted that a benefit of the scheme has been 'improved responses to allegations of abuse with a lift in the standard of investigations in many organisations'. The Commission has also said it may consider granting exemptions in the future – for example, for entities that are highly competent in running particular types of investigations.

It is entirely the Commission's choice to grant a class or kind exemption. Although the Commission has not yet found any organisations that meet the threshold for an exemption, it may help organisations to meet this threshold if the Commission could spell out what an organisation would need to do to be granted an exemption.

In addition, while an organisation may be exempted from requirements to notify the Commission of reportable allegation, it must still provide the Commission with a copy of the investigation report at the end of the investigation. There may be greater benefits in issuing class and kind exemptions if organisations were only required to provide the investigation report if the allegation was substantiated. This would reduce the burden on organisations where allegations are unsubstantiated or unfounded, but still enable the Commission to share information on substantiated allegations with the Working with Children Check Unit.

### Opportunity 5.2

*Subject to resourcing and priorities, there is an opportunity for the Commission to provide guidance that sets out the standards an organisation must meet in undertaking reportable conduct investigations to be granted a class or kind exemption under s 16I of the Child Wellbeing and Safety Act. This would provide an extra incentive for entities to work towards improving their competency in reportable conduct investigations. The granting of class and kind exemptions also has the potential to free up the Commission's resources so they can be directed to higher risk activities and help sustain a growing scheme.*

*There is also an opportunity to consider whether the Child Wellbeing and Safety Act should be amended so if an organisation does receive an exemption under s 16I, it is also exempted from the requirements under 16N(3) to provide the Commission a copy of the investigation report, but only where the allegation is **not** substantiated.*

## Should the scheme be expanded to cover other organisations?

Section 16ZN of the Act requires the review to consider whether the scheme should expand to apply to any other organisations. The Commonwealth Royal Commission recommended that reportable conduct schemes cover organisations that have a high degree of responsibility for children.<sup>54</sup> The organisations that must comply with Victoria's scheme closely align to the organisations the Commonwealth Royal Commission recommended. Likewise, the scope of organisations that must comply with Victoria's scheme closely aligns with the scope of reportable

<sup>54</sup> Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final report: Improving institutional responding and reporting – recommendations*, recommendation 7.12, p. 20.

conduct schemes elsewhere in Australia, including New South Wales, the Australian Capital Territory and Western Australia.

The Commonwealth Royal Commission recognised that reportable conduct schemes impose a significant regulatory and cost burden. It noted that if the scope of a scheme is overly broad, it might impose a disproportionate burden and cost, making the scheme ineffective and unsustainable. So, the Royal Commission recommended that reportable conduct schemes adopt a narrower scope than that covered by the Child Safe Standards and Working with Children Checks.<sup>55</sup> The Commonwealth Royal Commission recommended *against* some organisations being in scope of reportable conduct schemes, including:

- activities and services provided by clubs and associations with a significant membership of, or involvement by, children
- coaching or tuition services for children
- commercial services for children
- transport services for children.<sup>56</sup>

Recommendations to not cover the above organisations were based on:

- limited evidence before the Commonwealth Royal Commission for risks in those settings
- the potential for disproportionate regulatory burden on organisations – for example, those with a high membership base and low resources, or that operate as sole traders or small businesses
- the lower responsibility that those organisations have for the care, protection and supervision of children
- the likely limited capacity of an oversight body to engage with and support those organisations as well as the organisations the Commonwealth Royal Commission recommended to be covered.

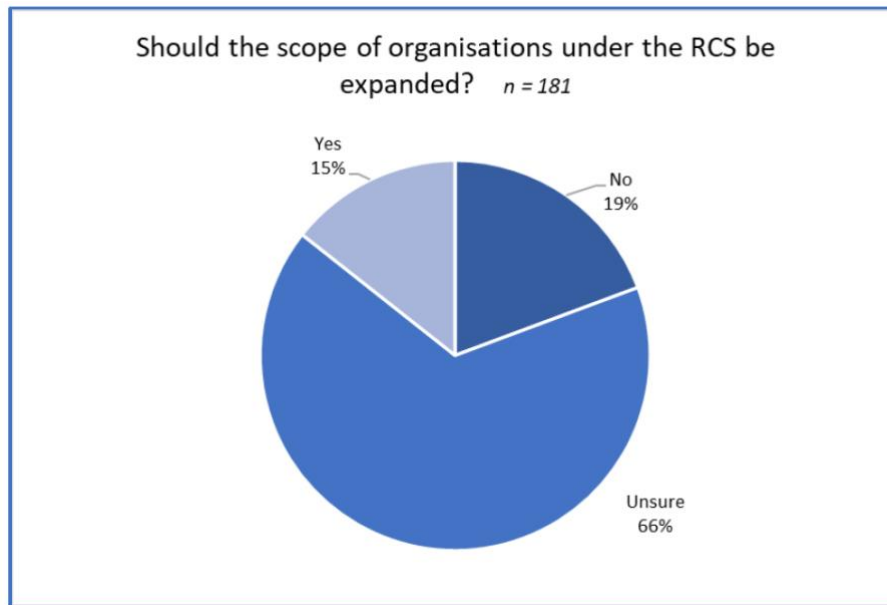
Most respondents to the public survey about the review were unsure whether the scheme's scope should be expanded, with only limited support for more organisations to be covered (refer to **Figure 5.1**).

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<sup>55</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, *Final report: Improving institutional responding and reporting, Volume 7*, p. 285.

<sup>56</sup> *Ibid.*, p. 293.

**Figure 5.1: Responses to the public survey for the review – Should the scope of organisations required to comply with the scheme be expanded?<sup>57</sup>**



Some submissions to the review commented that the scheme could benefit from more organisations being in scope. This included the Commission, which noted that:

*... expanding the scheme to include other high-risk organisations means that perpetrators of child abuse or harmful conduct against children in these organisations are investigated thoroughly and referred to Working With Children Check Victoria so their future exposure to children can be limited.*

Examples of suggestions made to expand the scope included applying the scheme to:

- sporting organisations
- child safety regulators
- private prisons
- immigration detention facilities
- professional babysitting services
- coaching or tuition services
- non-registered schools
- transport services for children
- disability services
- charities that work with children
- emergency services such as the Country Fire Authority and Victoria Police
- other health services, such as privately run services
- local councils
- organisations that must comply with the Child Safe Standards.<sup>58</sup>

<sup>57</sup> This figure excludes 3 blank responses from the survey data.

<sup>58</sup> Victoria's child safe standards apply to more than 50,000 organisations that provide services specifically to children, provide facilities specifically for use by children or employ or engage children. It is a broader range of services than must follow the scheme. For example, the standards apply to beauty pageants for children, photography services for children and sporting organisations.

Other stakeholders noted that risk and scale need to be balanced against the regulatory burden of complying with the Reportable Conduct Scheme, when considering if the scheme should be expanded.

In its submission to this review, the Commission supported the reasoning behind the Commonwealth Royal Commission's recommendation that reportable conduct schemes apply to a narrower range of organisations than covered by the Child Safe Standards and Working with Children Checks. In recommending more organisations come under the scheme, the Commission also noted that any expansion would require extra resources for the Commission to perform its functions under the scheme.

Any consideration of expanding the organisations that must comply with the scheme needs to assess several factors including:

- the degree of responsibility that the organisation has for children and young people and the related risks to children and young people of abuse and misconduct by staff
- the scope of the scheme to address those risks (including the role of other child safeguarding schemes)
- the burden on organisations to comply with the scheme
- the ability of the Commission to monitor and oversee an expanded scheme.

For example, VicSport, a peak body for sport and recreation in Victoria, has 16,000 member clubs and associations.<sup>59</sup> This, alone, represents more organisations than currently need to comply with the scheme. Expanding the scheme to even a subset of sporting organisations in Victoria would result in a significant expansion of the scheme.

Continuing to monitor and gather evidence of relative risk is an important aspect of the scheme's operation. This can inform whether in-scope organisations should stay in scope and if new organisations should be included under the scheme.

For instance, assessing whether certain public places such as galleries, museums, libraries and parks should remain with the scheme is something that could be considered. It is currently unclear what level of risk is present in these organisations.<sup>60</sup> Likewise, there may be higher risk organisations that are not otherwise covered by other regulatory schemes that should be brought within the scheme's remit.

A more detailed and careful consideration, with input from a range of stakeholders, is necessary to properly assess the question of scope. There must be a clear focus on:

- the risks of abuse and misconduct to children
- the ability of the scheme and other schemes to address those risks
- the regulatory burden on organisations
- the need to ensure the scheme is sustainable.

Understanding if and how the risk profile of organisations has changed over time will be central to this work.

It is suggested that this assessment be progressed in close consultation with key stakeholders including:

- the Commission

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<sup>59</sup> VicSport, 2023, 'About Us', [VicSport website](https://vicsport.com.au/about-us) <<https://vicsport.com.au/about-us>>.

<sup>60</sup> The Commission has not reported the number of reportable conduct allegations in public spaces in its annual reports.

- government departments responsible for funding or regulating organisations covered by the scheme
- other relevant regulators
- child safety advocates
- representatives of organisations that would be impacted by a change to the scheme's scope.

### Opportunity 5.3

*The scheme's scope has grown in the first 5 years of its operation, and recent legislative changes will lead to more growth in the scheme's scope. Maintaining a risk-based approach to protecting children and young people requires ongoing monitoring of risk and of the scheme's efficacy. Further careful assessment should be undertaken in consultation with stakeholders to assess whether the scheme's scope should be changed to reflect current circumstances.*

## Employees under the scheme

The scheme aims to protect children and young people from abuse and misconduct in organisations. It does this by requiring allegations of reportable conduct committed by an 'employee' to be reported and appropriately responded to.

'Employee' has a wide definition, as noted in the second reading speech for the Bill:

Excerpt from second reading speech:

*'Employee' has a wide definition under the bill and includes adult employees, contractors, officers, volunteers and religious personnel. This will ensure that the scheme is able to receive allegations of child-related harm and misconduct regardless of the legal status of the person that is alleged to have caused the harm, and irrespective of whether there is a formal employment relationship with the organisation, such as where the person is a religious leader. This will ensure that all children receive the same degree of protection and that child abuse is prevented, wherever it occurs.<sup>61</sup>*

The definition of employee was amended in 2018 and 2023. The amendments are consistent with the original policy intent that all workers of an organisation are within the scheme's scope. This is regardless of how they are employed or whether there is a formal employment relationship with the organisation.

Currently under the Act, an employee of an organisation includes any person 18 years or older who is:

- employed or engaged by an organisation covered by the scheme, including as a volunteer, contractor, office holder or officer
- a minister of religion, religious leader, a person employed or engaged by a religious body, or officer of a religious body
- a foster or kinship carer.

The 2023 legislative amendments expand the definition of 'employee' to apply to labour hire workers, secondees and sole traders that employ or engage others. The amendments will ensure workers such as relief teachers, nurses and youth justice workers in custodial settings who are

<sup>61</sup> [Victoria, \*Parliamentary Debates, Legislative Assembly, 7 December 2016, Martin Foley\*](https://hansard.parliament.vic.gov.au/search/?LDMS=Y&IW_FIELD_ADVANCE_PHRASE=be+now+read+a+second+time&IW_FIELD_IN_SpeechTitle=Children+Legislation+Amendment+Reportable+Conduct+Bill+2016&IW_FIELD_IN_HOUSENAME=ASSEMBLY&IW_FIELD_IN_ACTIVITYTYPE=Second+Reading&IW_FIELD_IN_SittingYear=2016&IW_DATABASE=*)  
<https://hansard.parliament.vic.gov.au/search/?LDMS=Y&IW\_FIELD\_ADVANCE\_PHRASE=be+now+read+a+second+time&IW\_FIELD\_IN\_SpeechTitle=Children+Legislation+Amendment+Reportable+Conduct+Bill+2016&IW\_FIELD\_IN\_HOUSENAME=ASSEMBLY&IW\_FIELD\_IN\_ACTIVITYTYPE=Second+Reading&IW\_FIELD\_IN\_SittingYear=2016&IW\_DATABASE=\*>.

contracted through labour hire or similar arrangements are covered. The amendments will begin on or before 1 July 2024.

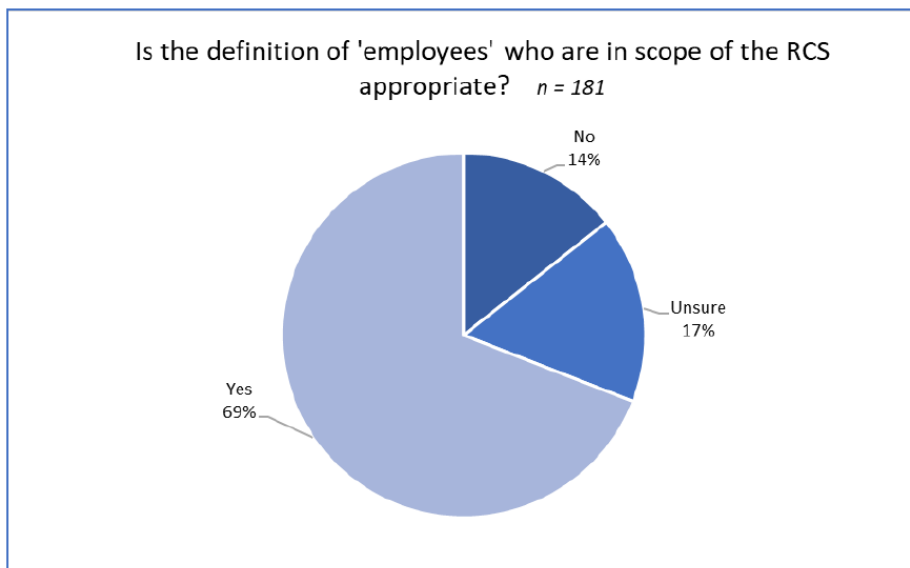
The definition of ‘employee’ extends to any person employed in an in-scope organisation, regardless of whether the person engages in work or activities that relate to children. The New South Wales scheme similarly applies to all workers within an organisation, whether or not a person engages in work relating to children.

Most respondents to the public survey for the review (69% of 181 respondents) indicated that the current definition of ‘employee’ (not including the most recent amendments that bring into scope labour hire, secondees and sole traders<sup>62</sup>) is appropriate (refer to **Figure 5.2**). However, some respondents said that the definition should be expanded to include investigating conduct in relation to:

- employees or volunteers regardless of age (as opposed to the current scope which is 18 years or older) who have direct contact with children as part of their work
- councillors for local government and Members of Parliament.

Other respondents said that the definition of employee should be narrowed to exclude volunteers and people who do not have direct contact with young people.

**Figure 5.2: Responses to the public survey for the review – Is the definition of ‘employees’ who are in scope of the scheme appropriate?<sup>63</sup>**



Because the scheme is intended to prevent and respond to allegations of abuse and misconduct of children by ‘adult’ employees in organisation, it is not appropriate that it considers conduct of a person under 18 years of age. Alleged misconduct by children and young people can be addressed by other aspects of Victoria’s safeguarding framework such as the police and child protection systems.

<sup>62</sup> The survey was released in October 2022. Amendments to the definition of employee were before parliament at that time but had not passed. As such, the survey didn’t mention the amendments. The survey question outlined that the definition of employee ‘includes all people 18 years of age and over who are an employee, contractor, consultant or volunteer of the organisation. This includes all people directly engaged by an organisation covered by the scheme to provide services, including as a volunteer, contractor, office holder, officer or other position even if they don’t have direct contact with children as part of their work, or if the conduct occurred outside of their work’.

<sup>63</sup> This figure excludes 3 blank responses from the survey data.

In its submission to the review, the Commission noted that employee–employer relationships are changing and that the Commission commonly encounters non-traditional methods of engaging workers. The Commission considers that the 'scheme should cover people used by organisations to provide services for children regardless of their employment relationship' and recommended that the scheme expand to cover:

- 'labour hire employees
- sole traders who carry on a business and employ or engage persons to assist the business
- secondees
- trainees and work placements as part of an education course such as a university degree
- apprentices
- workers who perform work for an organisation subject to the scheme but are employed via another entity that is not subject to the scheme.<sup>64</sup>

The Commission also asked about extending the scheme to elected officials such as local councillors and ministers, as well as to partners and other adult residents living in a foster care or kinship care home.

Many of the Commission's recommendations for expanding the definition of employee are addressed in the 2023 amendments to the Act that will come into force before July 2024 (refer above). Suggestions to expand the scheme to also apply to elected officials did not include evidence of risk to children.

The Commission, and one other stakeholder, recommended including other adults living in a foster care or kinship care home. This could include as a partner or adult relative who lives with the foster carer on a part-time or full-time basis. However, this would expand the scheme's scope beyond the concept of applying to employees. There are other child safeguarding schemes that can address this risk such as the child protection system.

*The current scope of employees as set out in the Child Wellbeing and Safety Act, and incorporating amendments in the Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Act 2023, is appropriate and adopts a risk-based approach to protecting children and young people.*

## Employees who leave an organisation

The scheme aims to cover alleged conduct by a person who was an employee of an in-scope organisation at the time the conduct occurred. This means that if a person has stopped being an employee of an organisation, their conduct is still reportable under the scheme. This applies even if the allegation was made after they stopped working with an organisation.

In its submission to the review, the Commission noted its interpretation of the Act is consistent with the above, noting the Act does not specifically state this.<sup>65</sup> One submission to the review refuted this interpretation, stating that the Act is clear that the scheme only applies to 'current' employees, given the Act's use of the present tense in the definition of employee: 'employee, in relation to an entity to which the reportable conduct scheme applies, means a person of or over the age of 18 years **who is** – (a) employed by the entity'.<sup>66</sup>

<sup>64</sup> Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's Reportable Conduct Scheme*, p. 25.

<sup>65</sup> *Ibid.*, p. 24.

<sup>66</sup> Excerpt of definition of 'employee' from s 3 of the Child Wellbeing and Safety Act.

The review considers that the Commission's interpretation is consistent with the context and purpose of the Act, the context being to respond to the Betrayal of Trust Inquiry, with the purpose set out in the second reading speech for the scheme:

Purpose of the scheme as set out in the second reading speech:

*'... to better protect children from abuse and child-related misconduct by establishing a reportable conduct scheme. A reportable conduct scheme will improve oversight of responses to allegations of child abuse, sexual misconduct and other child-related misconduct in organisations that exercise care, supervision and authority over children.'*

If conduct by a former employee was not covered, it would allow a person to avoid an investigation into the allegation by leaving their employment. This would undermine the scheme's integrity and make it unworkable in some cases.

Some respondents to the review noted that the obligation to investigate a former employee can be challenging. Respondents noted that:

- there may be no ability to direct the person subject to the allegation to be interviewed
- there can be other challenges when the conduct being investigated occurred outside the workplace (discussed below)
- there can be confusion about who is responsible for undertaking an investigation when an allegation is received about a person that relates to conduct that occurred at a time when the person was an employee of one organisation, but the person now works with another organisation covered by the scheme.

In cases where a person has moved to a different organisation, it is possible that the obligation to investigate may fall to both the former and current organisation. There is scope for the 2 organisations to work together to run one investigation. This would reduce duplication and promote efficiency in the investigation process.

The Commission called for legislative amendments to:

- make it clearer that the scheme applies to conduct of former employees
- specify that this obligation applies for 5 years after the employee leaves the organisation
- clarify what should happen if the former employee is later employed by another organisation covered by the scheme.<sup>67</sup>

It is appropriate that the scheme applies to allegations of reportable conduct about former employees where the conduct occurred while the person was an employee of an organisation under the scheme. This ensures that the scheme's integrity is maintained and that a person cannot sidestep an investigation by leaving an organisation. The review notes there is some confusion about this application and considers there is an opportunity to amend the Act to clarify the intent of the scheme to apply to former employees. Any amendment will need to be carefully considered to ensure the scope of the scheme is not unintentionally broadened and does not cast doubt on the interpretation of other requirements under the scheme.

#### **Opportunity 5.4**

*There is an opportunity to amend the Child Wellbeing and Safety Act to clarify the application of the scheme to former employees. Any amendment will need to be carefully considered to ensure the scope of the scheme is not unintentionally broadened and does not cast doubt on the interpretation of other requirements under the scheme.*

<sup>67</sup> Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's Reportable Conduct Scheme*, pp. 24–25.

## Reportable conduct

The scheme requires organisations to report and appropriately respond to allegations of 'reportable conduct' against children, committed by an employee. Reportable conduct is defined under s 3 of the Act as:

- a sexual offence committed against, with or in the presence of, a child, whether or not a criminal proceeding in relation to the offence has been commenced or concluded
- sexual misconduct committed against, with or in the presence of, a child
- physical violence committed against, with or in the presence of, a child
- any behaviour that causes significant emotional or psychological harm to a child
- significant neglect of a child.

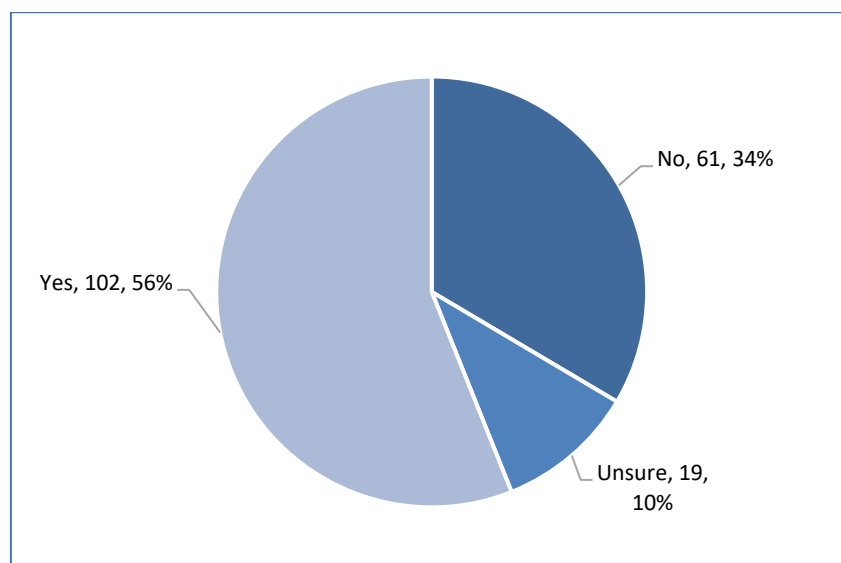
Section 3 of the Act clarifies some elements of reportable conduct. Sexual offences mean an offence in Schedule 1 to the *Sentencing Act 1991*, which includes sexual assault, indecent acts, possession of child abuse material and grooming offences. Sexual misconduct includes 'behaviour, physical contact or speech or other communication of a sexual nature, inappropriate touching, grooming behaviour and voyeurism'. Also, the Act defines 'significant' in relation to emotional or psychological harm or neglect, to mean 'that the harm or neglect is more than trivial or insignificant, but need not be as high as serious and need not have a lasting permanent effect'.

The Commission has developed guidance to help providers understand what is meant by reportable conduct, including specific guidance on:

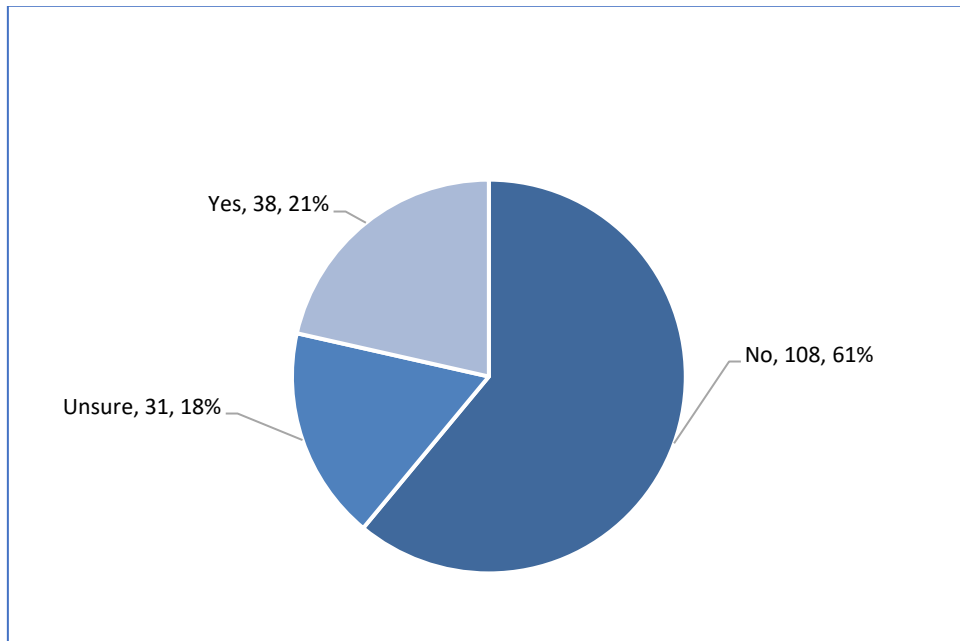
- sexual misconduct
- physical violence
- behaviour that causes significant emotional or psychological harm
- significant neglect.

More than half of respondents to the public survey for the review thought that reportable conduct was clearly and appropriately defined (56% of 182 respondents). When asked if reportable conduct is being consistently interpreted by all parties, most respondents (61%) did not think it was (refer to **Figures 5.3** and **5.4**).

**Figure 5.3: Responses to the public survey for the review – Is reportable conduct clearly and appropriately defined? (182 respondents)**



**Figure 5.4: Responses to the public survey for the review – Is reportable conduct consistently interpreted by all parties? (177 respondents)**



Several submissions to the review commented on the definition of reportable conduct. Some submissions said that the definition is clear.

*'The definitions of reportable conduct and reportable allegations are generally clear, and the information sheets published by the [Commission for Children and Young People] provide useful information.'*

Other submissions responded that some elements of reportable conduct are confusing, difficult to interpret and are too broad. Examples of comments from submissions about the various elements of reportable conduct are in **Table 5.1**.

**Table 5.1: Examples of comments in submissions to the review about areas of confusion and challenges implementing the definition of reportable conduct**

Type of conduct	Examples of comments in submissions
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Sexual offences	<ul style="list-style-type: none"> <li>• It is unclear why the definition refers to 'whether or not a criminal proceeding has been commenced or concluded', as a sexual offence will not have been 'committed' if it has not been proven in Court.</li> </ul>
Sexual misconduct	<ul style="list-style-type: none"> <li>• Grooming behaviours, which go to a person's future intent, are difficult to identify.</li> <li>• Concern that the reference to 'inappropriate touching' in the definition captures accidental touching.</li> <li>• Confusion that the Commission's guidance about sexual misconduct refers to 'overly personal or intimate conduct' regardless of whether it is sexual in nature.</li> <li>• Overly cautious employers will treat any type of physical contact between staff and students or conversations with students which reference themes relating to sex, as sexual misconduct. The definition does not allow for 'a valid context' to be considered.</li> </ul>
Physical violence	<ul style="list-style-type: none"> <li>• A lack of definition of physical violence in the Act means employers treat any physical contact between staff and students as physical violence.</li> </ul>
Any behaviour that results in significant emotional or psychological harm	<ul style="list-style-type: none"> <li>• Harder to interpret than other forms of reportable conduct.</li> <li>• While these categories are important, they can be open to interpretation.</li> <li>• The reference to 'any behaviour' rather than 'unreasonable behaviour' means some behaviours, which may be considered reasonable in the circumstances, must be reported.</li> <li>• The Commission's guidance about behaviours that result in significant emotional or psychological harm include exceptions, however no exceptions exist in the Act.</li> </ul>
Other	<ul style="list-style-type: none"> <li>• Recommendation for a general category of 'misconduct' to be included in the definition.</li> </ul>

## Sexual offences

Where an allegation relates to a sexual offence, the offence does not need to be proven in court before it can be considered reportable conduct. This is appropriate because there may not be enough evidence to support a matter going to court. But in these cases the person's conduct can still be considered under the scheme.

## Sexual misconduct

The Commission's guidance on sexual misconduct says that this definition can include conduct that is overly personal or intimate and does not necessarily have to be sexual in nature. Some respondents said that this interpretation conflicts with the definition of sexual misconduct in the Act and may expand the scope of the conduct that was intended to be reported under the scheme.

The definition of sexual misconduct in the Act refers to behaviours of a sexual nature but also to inappropriate touching, grooming behaviour and voyeurism. The second reading speech for the scheme noted the intent of the definition of reportable conduct in identifying 'grooming and other inappropriate patterns of behaviour' in the early stages to ensure risks to children are appropriately responded to.

Grooming behaviours can include non-sexual behaviours such as giving a person treats or gifts or showing a person special attention. The Department of Justice and Community Safety's website includes guidance on the criminal offence of grooming introduced in 2014. It notes that 'grooming does not necessarily involve any sexual activity or even discussion of sexual activity – for example, it may only involve establishing a relationship with a child, parent or carer for the purpose of facilitating sexual activity at a later time'.

As one respondent mentioned to the review (as did the Commonwealth Royal Commission), grooming behaviour can be difficult to identify because it may not be possible to know a person's future intent. For example, an isolated behaviour of giving a child a gift or paying a child particular attention, without the intent of grooming, would not be captured by the scheme. However, the exact same behaviour, by a person with the intent of grooming, would be captured by the scheme. The context of the behaviour is also relevant. For example, a foster carer hugging a child would be seen in a different context to a teacher or sports coach hugging a child.

As such, to identify grooming behaviour, a person may need to consider other factors such as:

- patterns of behaviour
- the context surrounding the behaviour
- the expected standards of behaviour in a particular circumstance.

The Commonwealth Royal Commission noted the importance of clarity in definitions. It suggested that legislation should define key terms, such as sexual misconduct, by describing the included behaviours and providing examples of behaviours that are *not* captured. The Act defines sexual misconduct, providing some guidance to organisations and employees about what conduct this includes. However, the Act does not define grooming behaviour, or provide examples of behaviour not captured.

It is important to identify grooming behaviour early to protect children and young people from sexual abuse. It is appropriate that this behaviour is within the scheme's scope.

There is an opportunity to consider clarifying the definition of sexual misconduct in the Act. This is particularly the case for grooming behaviour. One option may be to take grooming out of the definition of sexual misconduct and to include it as its own category of reportable conduct. This would help clarify that grooming itself does not need to be sexual in nature but can be a pattern of behaviour that involves inappropriate, unprofessional and overly personal conduct that is not what a reasonable person would expect from a worker in the relevant circumstances. This will be a difficult concept to define, and more work will need to be done to balance the need to clarify that grooming does not require a demonstrated sexual intent, with the need to avoid over-capturing trivial or harmless behaviour.

## Less serious conduct

The various elements in the definition of reportable conduct focus on conduct that is serious and that has detrimental impacts on children. Focusing on serious conduct balances the risks to children and the impact of an allegation and investigation on an employee. As highlighted in submissions to the review, investigations into reportable conduct can take months, and an employee may be stood down with or without pay during this time. This may be appropriate to manage risks to children but can also have considerable impacts on the employee.

Some respondents to the review noted that confusion with elements of reportable conduct is leading to organisations reporting and investigating less serious conduct than was intended be captured under the scheme. For example, one respondent commented that due to 'physical violence' not being defined, organisations 'treat any physical contact between staff and students as physical violence'. This is despite the Commission's guidance, which states that 'where the contact is minor, trivial or negligible', it is not physical violence under the scheme.

Another respondent expressed concern at the reference to 'inappropriate touching' in the definition of sexual misconduct, and that accidental touching is currently being captured. The respondent also noted that 'allowing a prep or preschool student to hug or sit on a teacher's knee or braid their hair' had been 'found to be sexual misconduct'. It's unclear from the submission who made the finding or whether there were any other circumstances that led to the finding.

Reportable conduct includes 'any behaviour that causes significant emotional or psychological harm to a child'. One respondent to the review noted that the reference to 'any behaviour' in this element of the definition means some behaviours, which may be reasonable in the circumstances, must be reported. The respondent suggested the Act be changed to apply to 'unreasonable behaviour' that causes significant emotional or psychological harm to a child. The Commission's guidance goes some way to defining behaviours that shouldn't be reported under this category, including:

- where the conduct relates to lawful and reasonable discipline, such as raising a voice to attract a child's attention and restore order in a classroom
- the giving of medical treatment in good faith by an appropriately qualified person such as a doctor or first aid officer
- where the conduct was reasonable to protect a child from immediate harm.

While the Act does not set out the above exceptions included in the Commission's guidance, the Act provides that behaviour is reportable where it causes 'significant' emotional and psychological harm. As such, the Commission would be expected to be considering the context and purpose of the scheme and interpreting what may amount to 'significant' emotional or psychological harm, which an organisation must report and respond to within this context. It is reasonable and necessary for a regulator to interpret requirements in an Act to be able to provide advice and guidance about how an Act works, in order for a regulatory scheme to operate efficiently.

The definitions of reportable conduct in other states and territories largely align with Victoria's definition. All the schemes include sexual offences, sexual misconduct and neglect, and most cover conduct that causes significant emotional or psychological harm to a child. Also, most capture physical abuse in some way.

Western Australia and the Australian Capital Territory have taken a direct approach to ensure their schemes do not capture less serious conduct. For example, in the Australian Capital Territory, the legislation provides that reportable conduct does not include:

- 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
- touching a child to attract the child's attention, to guide a child, or to comfort a distressed child
- a school teacher raising their voice to attract attention or restore order in a classroom
- accidental conduct.

In its submission to the review, the Commission noted that not all allegations of misconduct should be covered by the scheme. It recommended the Act be changed to clarify that trivial or minor conduct that presents a lower-level risk to children be excluded from the scheme.

The review finds that the main elements of the definition of reportable conduct are appropriate. However, given the Commission's extensive guidance on the elements of reportable conduct and responses to the review showing a variety of low-level conduct is being reported under the scheme, there is an opportunity to consider amending the Act to clarify that less-serious conduct is not covered by the scheme. This could include providing examples of behaviours not intended to be captured, as recommended by the Commonwealth Royal Commission,<sup>68</sup> and similar to the approach taken in the Australian Capital Territory. This could be particularly helpful in restricting the scheme's growth. It will ensure the scheme focuses on conduct that presents greatest risks to

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<sup>68</sup> The Commonwealth Royal Commission noted the importance of clarity in definitions and suggested that legislation should define key terms, such as sexual misconduct, by describing the included behaviours and providing examples of behaviours that are not intended to be captured.

children and may help alleviate the scheme's regulatory burden on the Commission, organisations and employees.

### Opportunity 5.5

*There is an opportunity to amend the Child Wellbeing and Safety Act to:*

- *clarify the definition of sexual misconduct, particularly for grooming behaviour, or consider whether grooming should become a separately defined category of reportable conduct*
- *clarify that less-serious conduct is not covered by physical violence under the scheme. This could include examples of behaviours not intended to be captured, as recommended by the Commonwealth Royal Commission, and similar to the approach taken in the Australian Capital Territory.*

## Conduct outside the workplace

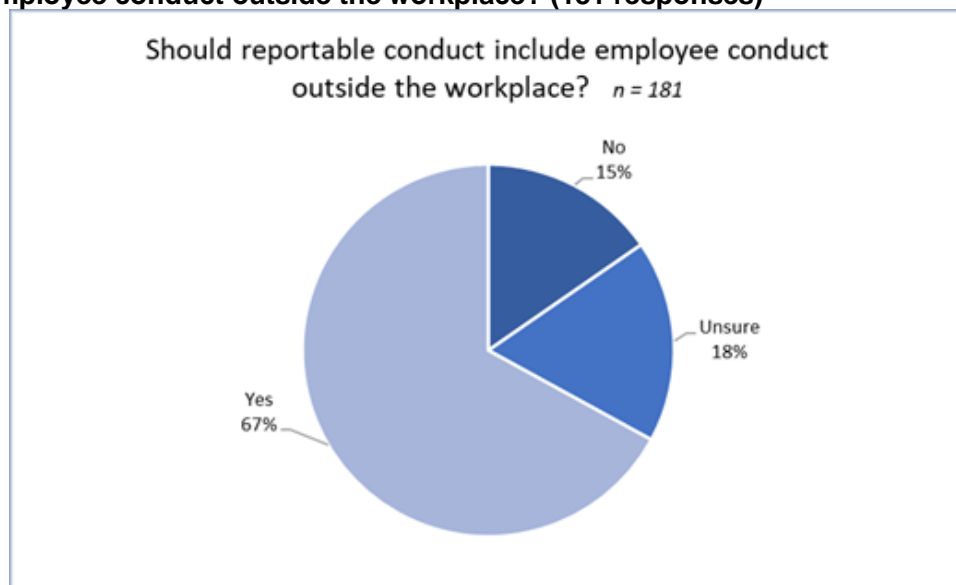
The Victorian scheme applies to allegations of reportable conduct by employees whether or not the conduct occurred 'in the course of the person's employment'.<sup>69</sup> This means that organisations have to investigate allegations of reportable conduct that happen outside the workplace, including, for example:

- reportable conduct that occurred in the person's home
- reportable conduct that occurred when taking part or volunteering in other activities outside of work, such as volunteering at a local soccer club.

Including conduct outside the workplace recognises that inappropriate behaviour outside of work towards children can point to risks of similar behaviours by that person within the organisation. It ensures that risks to children in organisations are identified and managed regardless of where the risk occurs.

Most respondents to the public survey for the review (67%) supported the scheme including an employee's conduct outside the workplace (refer to **Figure 5.5**).

**Figure 5.5: Responses to the public survey for the review – Should reportable conduct include employee conduct outside the workplace? (181 responses)**



<sup>69</sup> Section 3(1) definition of reportable allegation.

Several stakeholder submissions noted that including conduct outside the workplace is appropriate because it could show a risk to children within the organisation. In its submission to the review, the Commission said, 'a person's conduct with children outside the workplace is a pertinent consideration when assessing their suitability to work with children'.

However, comments from stakeholders also noted that there are challenges in investigating conduct outside the workplace. These may be increased where the person no longer works for the organisation. As a result, one respondent queried the effectiveness of these types of investigations, and some respondents did not consider that these matters should be covered by the scheme. Stakeholders noted the following challenges in their submissions to the review:

- no authority to conduct investigations about conduct outside the workplace
- challenges in gathering evidence due to lack of access to information, victims and witnesses
- inability to compel an employee to take part in an interview given the conduct did not occur during their employment
- challenges in conducting interviews with witnesses who have no connection to the organisation.

Comments in submissions to the review:

*'Our priority is keeping children and vulnerable people safe. In this regard it is important that if any conduct outside of the workplace is unsafe towards a child, it be included as it could demonstrate a risk to children within the workplace.'*

*'It is appropriate that conduct with children outside the workplace is in scope; however, it has created challenges.'*

*'The challenge in dealing with allegations regarding conduct outside the workplace is that the employer's capacity to investigate the alleged conduct may be very limited in respect of gathering evidence, including conducting witness interviews with persons who are not subject to any direction by the employer.'*

In its submission to the review, the Commission recognised the challenges for organisations in investigating conduct outside the workplace. However, it also noted that 'the Commission has seen many occasions where investigations [into conduct outside the workplace] have been successfully undertaken by organisations'.

The Commission said that where an investigation about conduct outside the workplace relates to a family violence matter, it may raise safety risks for family members. Some other stakeholders commented on the challenges and risks in investigating reportable conduct allegations involving a family violence matter and said that these matters should not be covered by the scheme. One respondent expressed concern about being able to undertake an investigation into a family violence matter appropriately and without placing anyone involved at more risk.<sup>70</sup>

An Aboriginal Community Controlled Organisation commented that it has experienced concerning issues when including conduct outside the workplace due to systemic racism against Aboriginal people, and in particular in the context of family violence. Another participant noted that it is inappropriate to carry out an investigation into a family violence-related reportable conduct matter because the staff member and children are experiencing distress and difficulty. It was also noted that if a staff member is 'experiencing a family violence crisis, organisations should be responding with support and safety, not with an investigative scheme that punishes and traumatises them further'.

<sup>70</sup> Comment in submission to the review – Local Government 1075012.

A family violence matter may fall under the scheme in a variety of circumstances – for example, where an employee:

- is accused as a perpetrator of family violence against or in the presence of a child or young person
- is a victim survivor of family violence and was accused of physical violence in the presence of a child or young person, for example the use of force or resistive violence while defending themselves or a child from another person.

The Commission noted in its submission that in a small number of cases it 'formed the view that an investigation into family violence matters should not go ahead due to safety concerns'.<sup>71</sup> In these cases, the Commission informed the organisation that it could advise the Commission that it is unable to investigate.

The Act does not specify how an investigation must be undertaken, providing flexibility for an organisation to put strategies in place to identify and manage risks. However, the Act requires every allegation of reportable conduct to be investigated. There are no provisions in the Act that enable an investigation not to be undertaken if, for example:

- the organisation cannot find ways to minimise or prevent an investigation into a family violence matter causing more harm to family members
- another part of the child safeguarding framework, such as child protection, is dealing with the matter.

This approach differs from New South Wales where the Children's Guardian can exempt an organisation from starting or continuing an investigation under that scheme.

The Commission recommended the Act be amended to 'better support organisations and the Commission to respond to family violence related reportable allegations by including dedicated provisions in the Act that:

- require organisations to confer with the Commission before proceeding with an investigation relating to family violence
- empower the Commission to direct an organisation not to proceed with an investigation involving family violence due to safety concerns for any person'.

The Commission's proposal could place a significant burden on the Commission in triaging and determining if an investigation should proceed. This could have flow-on effects such as delays to investigations. Also, careful consideration would need to be given to ensuring any agency responsible for making such decisions about an investigation proceeding would have the necessary skills, including family violence risk expertise.

Reportable conduct schemes in all other Australian states and territories consider conduct outside the workplace. But some schemes have taken a more targeted approach to covering conduct outside the workplace. For example, in the Australian Capital Territory, the scheme covers conduct of employees while at work and while volunteering in a personal capacity for another organisation. It does not cover conduct in a person's private home. In New South Wales, reportable conduct outside the workplace is in scope only for a specific subset of employees.

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<sup>71</sup> Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's Reportable Conduct Scheme*.

The Commonwealth Royal Commission acknowledged there may be practical problems for organisations undertaking certain investigations such as investigations into historical conduct. But it may still be appropriate that such conduct be reported.<sup>72</sup>

Although conduct outside the workplace is an important indicator of a person's risk to children within an organisation, there are particular complexities in undertaking investigations into family violence–related reportable conduct allegations. These issues go beyond conduct that occurs outside the workplace. For example, the scheme applies to foster carers and kinship carers in the out-of-home care sector, where their workplace under the scheme is their private home. As such, family violence–related reportable conduct allegations for a foster carer or a kinship carer may arise within the context of the person's workplace. It is therefore important that the scheme has enough flexibility to manage risks relating to reportable conduct allegations that may involve family violence.

The handling of conduct outside the workplace is a complex issue, particularly when there are allegations of family violence–related matters. The review is not able to make a conclusion on these matters. The government should investigate these matters more, including considering whether:

- there should be limitations on conduct outside the workplace that is within the scheme's scope, such as the limits in the Australian Capital Territory and New South Wales
- family violence matters outside the workplace should continue to be in scope of the scheme, considering whether there are circumstances where reportable conduct allegations about family violence matters can be safely and effectively undertaken under the scheme
- guidance and education activities could support organisations to identify and manage risks during an investigation into reportable conduct allegations involving family violence
- there are opportunities for the scheme to better support organisations to conduct investigations into reportable allegations involving family violence, such as speaking with the Commission before starting an investigation
- whether the scheme should have flexibility to enable an organisation to not go ahead with an investigation in certain cases.

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<sup>72</sup> Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final report: Improving institutional responding and reporting*, p. 269.

**Opportunity 5.6**

*Including conduct outside the workplace within the scheme can create challenges for organisations that have to investigate allegations. There are also risks to employees if a workplace investigates a reportable allegation related to family violence. There is an opportunity to consider whether there should be limitations on what conduct outside the workplace is within the scheme's scope, including whether family violence matters should fall within the scheme's scope and, if it should, how risks of investigations into family violence can be managed. This could include whether:*

- *there should be limitations on conduct outside the workplace that is within the scheme's scope, such as the limits in the Australian Capital Territory and New South Wales*
- *family violence matters outside the workplace should continue to be in scope of the scheme, considering whether there are cases where reportable conduct allegations relating to family violence matters can be safely and effectively investigated under the scheme*
- *guidance and education activities could adequately support organisations to identify and manage risks during an investigation into reportable conduct allegations involving family violence*
- *there are opportunities for the scheme to better support organisations to conduct investigations into reportable allegations involving family violence, such as speaking with the Commission before starting an investigation*
- *the scheme should have flexibility to enable an organisation to not go ahead with an investigation in certain cases.*

# Chapter 6: Education and advice

## Background – education and advice

Under the Child Wellbeing and Safety Act, the Commission must give education and advice to:<sup>73</sup>

- entities to help them identify reportable conduct and to report and investigate reportable allegations
- regulators to promote compliance by entities with the Reportable Conduct Scheme.

These obligations are consistent with the role of a regulator outlined in Better Regulation Victoria's *Towards best practice implementation handbook*.<sup>74</sup> Providing 'support to comply' is at the lower end of the enforcement pyramid and aims to improve compliance by providing regulated entities with information, guidance and education about their obligations under the scheme the regulator administers. This is a critical part of any regulated activity.

## Education for entities

Since the scheme began in phases from 1 July 2017 the Commission has:

- delivered a range of general and sector-specific educational activities
- developed educational materials
- provided a significant amount of phone and email advice.

The Commission has published materials to raise awareness about the scheme and to help entities identify, report and investigate allegations of reportable conduct. The Commission's website includes information sheets and guidance for regulated entities on topics including:

- what constitutes reportable conduct
- entities and people covered by the scheme
- different types of reportable conduct
- the Commission's powers under the scheme
- the responsibilities of a head of organisation
- investigation and reporting obligations and processes
- involving children and young people in investigations
- managing child safety risks generated through greater online presence.

The Commission has delivered 15 information sessions per year on the scheme on average, as well as some targeted sessions and initiatives for particular sectors including religious organisations and early years providers. The Commission has also developed an investigations forum for investigators and those conducting investigations.

The Commission partnered with Prof. Martine Powell from the Griffith University Centre for Investigative Interviewing, and Dr Jenny Dwyer who has specialised in working with trauma, to develop video and written resources on interviewing children.

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<sup>73</sup> *Child Wellbeing and Safety Act 2005* (Vic), s.16G.

<sup>74</sup> Refer to the [Towards best practice implementation handbook](https://www.vic.gov.au/sites/default/files/2023-03/Towards-Best-Practice-Handbook.pdf) <<https://www.vic.gov.au/sites/default/files/2023-03/Towards-Best-Practice-Handbook.pdf>>.

## Impact of the Commission's educational activities

The Commission's educational activities have had a significant reach. The Commission reports that, for example:

- More than 10,000 copies of its document *Guidance for organisations investigating a reportable conduct allegation* have been accessed online or distributed in hard copy since its publication in 2017.<sup>75</sup>
- A video resource developed with Griffith University to help organisations when interviewing children had been viewed more than 12,000 times as of June 2021.<sup>76</sup>
- An estimated 4,000 services were engaged with during an extensive campaign for including early childhood education organisations in the scheme in 2019.<sup>77</sup>
- In 2022 the Commission's online videos were viewed 29,847 times and publications were downloaded 115,954 times.<sup>78</sup>

Most staff in entities who engaged with the review through the survey and consultation forums were aware of, and had engaged with, the Commission's education materials and information sheets. Many staff in entities reported that they found the information sheets helpful as an overview of the scheme.

- Ultimately, the Commission's education activities appear to have been effective in driving an increased awareness of the scheme, with a substantial increase in notifications since it began (Chapter 2).
- Stakeholders agreed that there has been an increasing awareness of the scheme since its introduction. Stakeholder responses to the survey conducted for this review (**Appendix 3**) revealed a high level of awareness of the scheme and understanding of its requirements among respondents. (Most respondents were volunteers or employees of entities subject to the scheme.) Respondents who were employees of regulatory bodies also said they understood the scheme and its requirements 'well' or 'very well', although the sample size was much smaller.

Stakeholders noted that since introducing the scheme, staff, volunteers and contractors had increased their awareness of their obligations to keep children safe, and to report concerns.

Stakeholders' survey responses reported organisational improvements due to the scheme, including:

- fewer reportable incidents due to behaviour change following training and better organisational risk mitigation
- increased awareness among staff, volunteers and contractors of their obligations to keep children safe and report concerns
- increased complaints handling competency in organisations
- better ways to manage staff behaviour
- improved pathways to escalate concerns – for example, to police or other regulators when appropriate
- increased accountability of staff, volunteers and contractors.

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<sup>75</sup> Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's Reportable Conduct Scheme*.

<sup>76</sup> Commission for Children and Young People 2021, *Annual report 2020–21*, p. 71.

<sup>77</sup> Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's Reportable Conduct Scheme*.

<sup>78</sup> This figure includes guidance for the Child Safe Standards as well as the Reportable Conduct Scheme. Source: Commission for Children and Young People 2022, *Annual report 2021–22*, p. 77.

Some stakeholders said that they have embedded the Commission's resources in staff training. Other stakeholders outlined that entities do not rely solely on the Commission's resources but will also use sector-specific guidance from the Victorian Registration and Qualifications Authority or the Department of Education. Some entities reported having developed or sourced external training to help staff understand their roles and responsibilities under the scheme.

Some staff in entities noted they had experienced some confusion around the scheme's requirements, its scope and how to identify reportable conduct. (This was particularly the case in smaller entities and those with limited experience with the scheme.) They considered this may partly be due to the complexity of the child safeguarding landscape and staff turnover in entities. Some staff noted that they have found it challenging to understand their obligations under multiple schemes when working in fast-paced environments. Stakeholders suggested expanding the Commission's guidance material to include best practice examples on how to implement the scheme.

Despite the above, the Commission has advised it considers there is likely under-reporting occurring in some sectors. It said that notification numbers are an underestimate of current allegations that should be notified to the Commission. The Commission's 2021–22 annual report notes that the regulator 'expects that notifications will continue to increase in future years as awareness of the scheme's requirements grows and organisations strengthen their reporting processes'.<sup>79</sup>

## Advice provided to entities

In addition to the above educational activities, the Commission also gives information and advice through a telephone and email enquiry service.<sup>80</sup> This service provides general information about the scheme including how to raise a reportable allegation and how to notify the Commission. The Commission received 2,634 telephone and email enquiries in 2021–22 across all its functions (including and beyond the Reportable Conduct Scheme).<sup>81</sup> In 2021–22, 89% of enquiries were resolved within 3 days.<sup>82</sup>

During consultations, stakeholders reported mostly positive experiences with the Commission's telephone support line when seeking clarification. They generally found the Commission to be approachable and supportive.

Some stakeholders and the Commission noted that staff in organisations will often seek advice from the Commission on whether a specific incident is reportable conduct. Some commented that they want the Commission to give them advice on this point and were not satisfied with the Commission's approach.

The Commission can and does form a view as to whether a head of an organisation has an obligation to notify the Commission of reportable obligations. But it cannot determine this in all instances. The Commission may not have all the information held by the head of an organisation about the circumstances of an allegation. In these instances, this is a matter for organisations to decide, using the available guidance.

While many staff in organisations reported finding the advice and guidance from the Commission to be helpful and timely, some organisations may benefit from more clarity around certain aspects of

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<sup>79</sup> Commission for Children and Young People 2022, *Annual report 2021–22*, p. 81

<sup>80</sup> *Ibid.*, p. 77.

<sup>81</sup> This included 1,412 telephone calls and 1132 emails. Commission for Children and Young People 2022, *Annual report 2021–22*, p. 77.

<sup>82</sup> *Ibid.*

the scheme and the advice the Commission is able to provide. This was particularly the case for those with less experience identifying, reporting and investigating allegations under the scheme.

To support organisations more and to build on the extensive material that is available about the scheme, there may be an opportunity for the Commission to develop assessment tools to help organisations assess allegations and identify reportable conduct. The Commission could potentially draw on examples from other states and territories to inform this work. One example is the New South Wales Office of the Children's Guardian's notification criteria assessment tool. This tool helps organisations determine whether a reportable conduct notification needs to be made. The tool asks yes/no questions that are assessed until the user is instructed to notify the Children's Guardian or provided with a reason why they do not need to make a notification. This type of simple, easy-to-use and efficient tool could help staff decide whether an incident needs to be reported.

## Education and advice provided to regulators

Under the Act, the Commission has to educate and advise regulators to promote scheme compliance among organisations. To fulfil this role, the Commission meets with regulators and has also worked with them to produce guidance material.

Regulators noted that their interactions with the Commission focus more on investigations than education and advice. Some regulators have embedded Commission information into internal training and have noted that the educational resources have been sufficient to train staff.

The Commission has worked with regulators to develop guidance material tailored to certain sectors. In 2021–22 the Victorian Institute of Teaching developed an online *Conduct reporting guide*.<sup>83</sup> It did this in conjunction with:

- the Commission
- the Victorian Registration and Qualifications Authority
- the Quality Assessment and Regulation Division of the Department of Education.

The guide raises awareness of regulatory schemes for registered teachers, schools and for early childhood services. It includes hypothetical reporting scenarios to help community members understand when and to whom to report reportable allegations to.<sup>84</sup>

## Feedback from children and young people

Survey respondents were asked about children and young people's awareness of the scheme. More than two-thirds of respondents believed children and young people were not aware of the scheme or the process for making an allegation of reportable conduct. This was reflected in the youth workshops, in which most participants (aged 12–25) reported a low level of awareness of the scheme.

Given the Commission's education and advice is largely targeted at organisations, a lower level of awareness from children and young people is to be expected because children and young people do not have any obligations under the scheme. However, they can make allegations of reportable conduct. As the targets of that conduct it is important that they are aware of the avenues of complaint available to them. Increasing young people's knowledge of the scheme could be a focus of future education activities.

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<sup>83</sup> Refer to the [Victorian Institute of Teaching website](https://www.vit.vic.edu.au/conduct/reporting-guide) <<https://www.vit.vic.edu.au/conduct/reporting-guide>>.

<sup>84</sup> This refers to conduct of a [registered teacher, school or early childhood service](https://www.vit.vic.edu.au/conduct/reporting-guide) <<https://www.vit.vic.edu.au/conduct/reporting-guide>>.

While they were not aware of the scheme specifically, many youth workshop participants did have a high awareness that a child safeguarding framework operated in the organisations they attended. Many knew there is an adult in organisations who they could raise concerns about inappropriate behaviour with.

Some young people wanted to know more about what the scheme meant for them and what they should expect from employees in the organisations they attend. Young people highlighted that the communications from organisations about child safeguarding focused on staff obligations and requirements. Communications did not usually explain what it meant for children and young people.

Youth workshop participants noted that they could better identify and report allegations of reportable conduct, and feel safer to do so, if they knew:

- what they should expect from employees
- what to expect from the reporting and investigation process and how they would be involved
- who would be told about their report and how they would be protected
- how to report an allegation and who they could report to.

This feedback suggests scope for organisations to provide children and young people with more information about the scheme and how they implement it. Any educational resources provided would need to be appropriate and tailored for each age group.

## Education and advice – future work

This review acknowledges and commends the Commission's work to educate staff and heads of organisations about the scheme and about their obligations to identify, report and investigate allegations of reportable conduct. Education, particularly education that supports organisations to comply, is critical to the scheme's functioning.

The Commission's education and advice function has been effective in raising awareness of the scheme and supporting organisations to report and investigate reportable conduct. Continuous education activities will likely raise awareness of the scheme and help organisations to meet their obligations under the scheme.

While the Commission has limited resources, now that awareness of the scheme has grown over the first 5 years of its life, there may be an opportunity to adjust the focus of the Commission's education activities. The review identifies several opportunities in other chapters for the Commission to provide additional education or guidance in other areas. In each case, this is a matter for the Commission to decide, given its limited resources, whether this is an area that it wants to pursue. It may be that over the next 5 years, the Commission chooses to focus on different areas of education at different times.

Bearing this in mind, 2 areas where the Commission could consider targeting further activity are:

- provision of a simple assessment tool to help organisations judge if an incident is reportable conduct
- education targeted at the young people who use the services provided by organisations.

### Opportunity 6.1

*The Commission's education and advice has been effective in raising awareness of the scheme and supporting organisations to investigate allegations of reportable conduct. Subject to resourcing and other priorities, future education activities could focus on supporting organisations to assess whether incidents are reportable conduct and raising awareness of the scheme among young people.*

## Chapter 7: Responding to allegations

### Reportable allegation and 'reasonable belief'

For the scheme to run effectively, anyone must be able to make an allegation of reportable conduct. The organisation that receives the allegation must in turn notify the Commission of the allegation. For this system to work in practice, what amounts to reportable conduct must be clear. Appropriate systems must be in place (and awareness of and access to those systems) to allow anyone to make an allegation of reportable conduct.

Under the Child Wellbeing and Safety Act, a 'reportable allegation' is any information that leads a person to form a reasonable belief that an employee has committed:

- reportable conduct, or
- misconduct that may involve reportable conduct – whether the conduct or misconduct is alleged to have occurred within the course of the person's employment.

Central to this definition is the concept of 'reasonable belief'. Stakeholders spoke of confusion within regulated organisations about what a reasonable belief is, how it can be formed, and by whom.

'Reasonable belief' is not explicitly defined in the Act. But the Commission has tried to clarify its meaning and scope in various online resources. These include information sheets (publicly available in an accessible format on the Commission's website) that explain:

*A reasonable belief is more than suspicion. There must be some objective basis for the belief. It does not require proof but must be more than rumour or speculation.<sup>85</sup>*

Stakeholders are also confused about *who* needs to form a reasonable belief for the purposes of reporting conduct under the scheme. Specifically, there is a view among stakeholders that the head of the organisation must also form a reasonable belief about the reportable conduct as well as the person making the report, before the allegation can be reported to the Commission.

The Commission has published guidance for organisations to address this misconception. It has clarified that:

*... heads of the entity do not need to agree with or share the belief that the alleged conduct has occurred. However, they do not need to notify the Commission about the allegation if it is plainly wrong or had no basis at all.<sup>86</sup>*

Despite this guidance, survey responses reflect ongoing confusion on this issue, which often leads to organisation heads conducting preliminary investigations to try and substantiate an allegation before reporting to the Commission. There is no requirement under the Act to undertake a preliminary investigation before notifying the Commission. But some stakeholders have noted that, to form a reasonable belief about an allegation and determine whether a police report is needed, they feel obliged to gather information about the allegation first. The timing of notifications to the Commission is discussed below.

One option to address this would be to remove the need to form a 'reasonable belief' before reporting conduct to the Commission. This is the approach in New South Wales. However, some stakeholders have commented that such a change may lead to over-reporting and the possibility of

<sup>85</sup> Commission for Children and Young People 2017, [Information sheet 2 – What is reportable conduct?](https://ccyp.vic.gov.au/assets/resources/What-is-reportable-conduct.pdf), <<https://ccyp.vic.gov.au/assets/resources/What-is-reportable-conduct.pdf>>, p. 3

<sup>86</sup> Ibid., p. 4.

vexatious or frivolous reports under the scheme. It might also lead to over-reporting out of concern for not meeting obligations under the scheme. Other approaches are used in:

- Tasmania, which requires a 'reasonable suspicion that a worker has committed reportable conduct'
- the Australian Capital Territory, which defines a reportable allegation as 'an express assertion that reportable conduct has happened'
- Western Australia, which requires a 'belief on reasonable grounds'.

The Commission will soon have powers to enforce compliance with the requirement in s 16M for a head of an organisation to notify the Commission of reportable allegations. Clarifying the definition of a reportable allegation will therefore become more important. The addition of this power may surface cases where organisations are not reporting because the head of the organisation does not share the reporter's reasonable belief. The Commission's compliance powers, such as a notice to comply, will help draw attention to the intended operation of the definition of reportable allegation.

In this context, and subject to resourcing and other priorities, there may be benefits in the Commission adding to its already available guidance material. One option would be to use case studies to resolve any confusion and promote a shared understanding of the terms 'reportable allegation' and 'reasonable belief'.

### Opportunity 7.1

*Although some stakeholders are uncertain about the definition of a 'reasonable belief'. Removing this requirement would lower the reporting threshold and may lead to over-reporting and the possibility of vexatious or frivolous reports.*

*Despite the Commission's ongoing education efforts, some organisations continue to mistakenly believe that the head of an organisation must also form a reasonable belief about the employee's conduct before notifying the Commission.*

*Subject to resourcing and other priorities, the Commission could offer continued guidance on this point. This could include developing de-identified case studies that may help address this confusion.*

## Reporting obligations and activity

As part of its obligations under s 16K of the Act, a head of an organisation subject to the scheme must have a system to:

- allow any person, including an employee of that organisation, to notify the head of the organisation of a reportable allegation
- allow any person, including an employee of that organisation, to notify the Commission of a reportable allegation involving the head of the organisation
- investigate and respond to a reportable allegation against an employee of the organisation.<sup>87</sup>

Once the head of an organisation becomes aware of a reportable allegation against an employee, the head must notify the Commission in writing that an allegation has been made (alongside other details of the allegation). This must happen within 3 business days of becoming aware of the reportable allegation (discussed below).

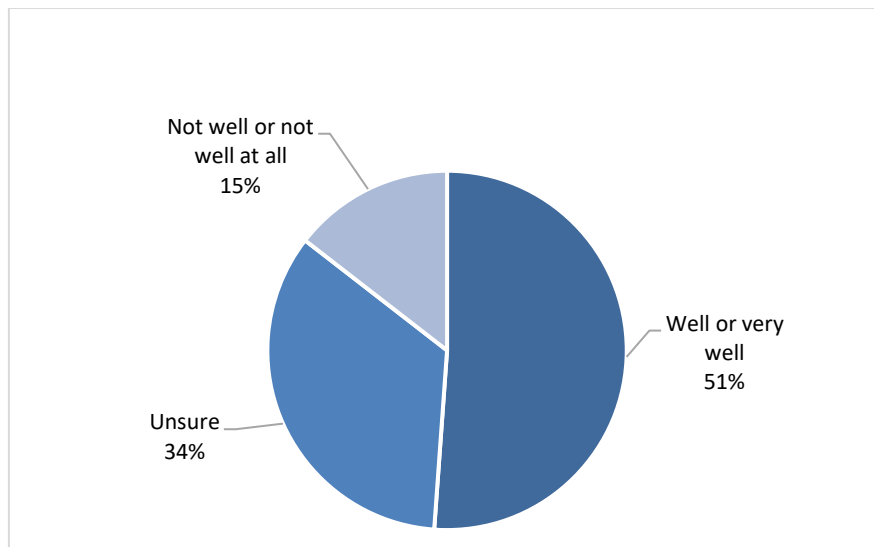
<sup>87</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16K.

The systems requirements include 'having clear and well communicated systems to facilitate and support the reporting of concerns'.<sup>88</sup> In-scope organisations must already meet the Child Safe Standards, under which they should already have internal reporting processes to notify allegations.

A person does not have to go through the organisation to make a report. Any person may report an allegation directly to the Commission.<sup>89</sup>

However, data suggests (**Figure 7.1**) there are areas of the scheme's operation that are still maturing. For example, only 51% of survey respondents agreed that their organisational systems respond well or very well to internally identifying and reporting conduct allegations. This may mean some reportable conduct is going unreported.

**Figure 7.1: How well organisation systems identify and internally report allegations of reportable conduct (n = 131)**



## Barriers to reporting

The review engaged with children and young people aged between 13 and 21 years in a series of forums. Through these forums, it became clear that most children and young people are unaware of what happens after a report is made. Also, more than two-thirds of survey respondents believe that most children and young people are neither aware of the scheme nor what is involved in making an allegation.<sup>90</sup>

Forum participants highlighted the barriers they face in reporting conduct to organisations or the Commission. A key requirement under the scheme is that the head of an organisation must have systems in place, including a system for 'enabling any person, including an employee of the entity, to notify the head of the entity of a reportable allegation of which the person becomes aware'.<sup>91</sup> Such a system must enable a child or young person to make a reportable conduct allegation. But to do so, they must be aware that they can do this and know how to do it.

<sup>88</sup> Commission for Children and Young People 2017, [Information sheet 3: Responsibilities of the head of an organisation](https://ccyp.vic.gov.au/assets/resources/RCSInfoSheetUpdates/Information-Sheet-3-Responsibilities-of-the-head-of-an-organisation-30.05.17.pdf) <https://ccyp.vic.gov.au/assets/resources/RCSInfoSheetUpdates/Information-Sheet-3-Responsibilities-of-the-head-of-an-organisation-30.05.17.pdf>, p. 1.

<sup>89</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16L.

<sup>90</sup> It should be noted that the Engage Survey data did not include any direct feedback from children and young people.

<sup>91</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16K(1)(b).

Further, during the consultation process, children and young people had mixed views about whether they felt confident to report an incident, should one occur. They expressed the following concerns about reporting:

- power imbalances between themselves and organisations, retribution or other negative fallout for them if they reported allegations
- concern about information being shared with the subject of the allegation, other workers or their family/carers
- a belief that no action would be taken in response to a report.

However, most children and young people could name one adult in the organisation who they felt comfortable reporting to. Children and young people also noted that it would be helpful if that was a person from the same gender or cultural background as them. Established trust and a feeling of safety with the person working with them are the most important factors to support children and young people in reporting misconduct.

As discussed in **Chapter 6: Education and advice**, children and young people consider the following to be important in deciding whether to make a report:

- help to understand the process and what happens after a report is made
- seeing change after reports have been made
- receiving one-on-one support throughout the process
- experiencing a caring environment
- providing different options to report allegations rather than in person, such as reporting through email, phone or in writing.

### Opportunity 7.2

*Children and young people need accessible, supportive and confidential ways to report. Online communication options are central to this. Subject to resourcing and other priorities, there is an opportunity for the Commission to update its online communications in consultation with children and young people.*

Employees of organisations also mentioned a range of barriers to making reportable conduct allegations including:

- a lack of clarity of what reportable conduct is
- concerns about retribution or social isolation
- a desire to avoid being involved in a lengthy reporting and investigation process.

## Reportable allegations about the head of an organisation

Under the Act, the head of an organisation must also have a system for allowing anyone, including employees, to notify the Commission of a reportable allegation *involving the head of the organisation*. There may also be situations where the reportable allegation may not involve the head of the organisation, but there is a potential conflict of interest if the head of the organisation was involved in the response to a reportable allegation. For example, if the allegation involves a relation or close colleague or friend of the head.

Survey data reflects that some stakeholders experience challenges in notifying a reportable allegation when the matter involves the head of the organisation. The Commission has also noted that it experiences practical challenges when a reportable conduct allegation against the head of an organisation is reported to the Commission.

In practice, the Commission seeks an alternate contact within the organisation to perform the role the head usually performs under the scheme. However, the requirement to have a system in place to allow an employee to notify the Commission does not extend to requiring an entity nominate an alternate head as part of the system. Without this, the Commission must usually initially contact the head of the organisation, thereby alerting the head about an allegation against them. This has the potential to impair an investigation.

Also, the legal obligations to notify the Commission and respond to reportable allegations sit with the head of an organisation. The powers to share and receive information or documents are also only with the head of the organisation. Given these challenges, the Commission recommends changing the Act so an organisation must have a standing nomination as part of its systems, to ensure that there is an alternate head to report and respond to reportable allegations against the head of the organisation.

**Opportunity 7.3**

*Reportable conduct allegations about the head of an organisation are not uncommon, but when the situation arises it can take some time for an alternative contact to be identified, meaning that the Commission may initially have to contact the head of the organisation about an allegation involving them.*

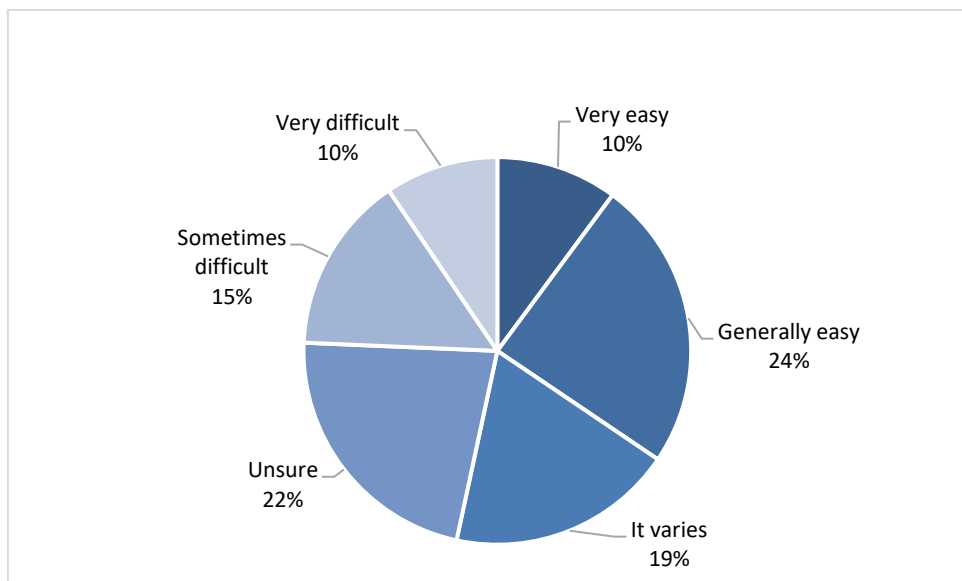
*There is an opportunity to amend the Child Wellbeing and Safety Act to include, in s 16K(1), a requirement that the head of an entity must ensure the entity has a nominated alternative contact person, in the event that there is a reportable allegation against the head of the entity.*

**Three-day notifications to the Commission**

A head of an organisation must notify the Commission in writing of a reportable allegation within 3 business days of becoming aware of the allegation. By 1 July 2024 the Commission will be able to enforce compliance with this requirement.

While notification numbers are strong, as shown in **Figure 7.2**, many organisations (or heads of organisations) are uncertain about this requirement. They find meeting the 3-day notification period difficult, or that it can be difficult, depending on the allegation.

**Figure 7.2: How organisations find the 3-day notification to Commission for Children and Young People requirement (n = 148)**



As noted, survey data shows that organisation heads are often reluctant to report allegations to the Commission in the 3-day notification period without first conducting a preliminary investigation and assessment. This is due to some stakeholder concerns that:

- an allegation may not be within the scope of reportable conduct or may not be substantiated
- that reporting the allegation will have a detrimental and unfair impact on the employee concerned
- affording natural justice to an employee requires the organisation to undertake its own investigation before making a report to the Commission.

It may be possible that there is some confusion about the timeframes for an organisation to:

- notify the Commission in writing after becoming aware of the reportable allegation – 3 days<sup>92</sup>
- investigate the reportable allegation or allow a regulator, or an independent investigator engaged by the entity or regulator, to investigate the reportable allegation after becoming aware of the reportable conduct allegation as soon as practicable.<sup>93</sup>

The purpose of the 3-day notification period is primarily to alert the Commission to the allegation. It can then prioritise high-risk allegations of imminent harm to children or more serious alleged conduct. It can also advise and support the organisation to investigate the allegation and complete the investigation as soon as possible.

Some stakeholder feedback supported a longer initial notification period, extending the timeframe from a 3-day to a 5- or 7-day period.<sup>94</sup> However, a 3-day notification period allows the Commission to adopt a risk-based approach to monitoring and overseeing the scheme and prioritise serious allegations of misconduct. It also reinforces the intent that organisations pass on *all* reportable allegations. This reduces the chances of the organisation filtering allegations based on whether they consider them to be reasonable.

## Notifications to Victoria Police

Reportable allegations may also constitute a criminal offence and therefore require a report to Victoria Police. Under the Crimes Act a person (aged 18 years or older) who has information that leads them to form a reasonable belief that a sexual offence has been committed in Victoria against a child under 16 years must disclose that information to police as soon as practicable.

The Victorian Government's fact sheet on the offence states that a belief is 'reasonable' if a reasonable person in the same position would have formed the belief on the same grounds.<sup>95</sup> The Crimes Act is clear about what a sexual offence against a child is, as well as conduct that results in physical and psychological harm or injury requiring notification to the police. But some stakeholders noted a lack of certainty about what constitutes criminal conduct. Police investigations are discussed in **Chapter 8: Investigations and findings**.

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<sup>92</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16M(1)(a).

<sup>93</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16N(1)(a).

<sup>94</sup> There is some variability in other Australian schemes with notification timeframes ranging from 3 days to 30 days.

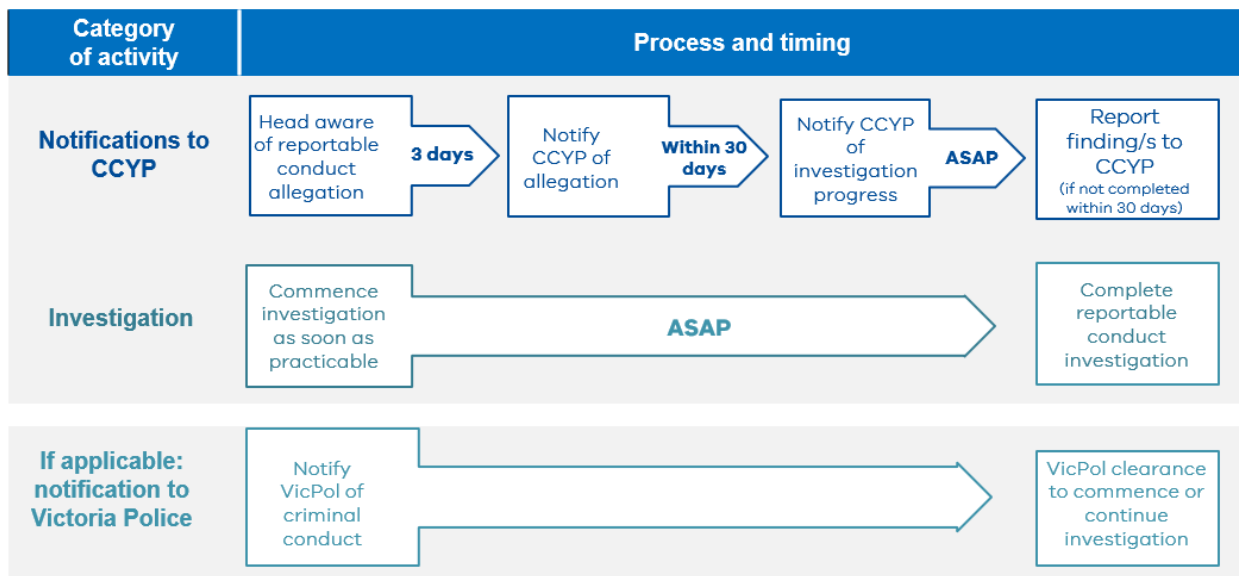
<sup>95</sup> Victorian Government 2014, *Betrayal of Trust fact sheet – The new 'failure to disclose' offence*, <<https://providers.dffh.vic.gov.au/failure-disclose-offence-fact-sheet-word>>.

## Thirty-day notifications to the Commission

Following the head of the organisation’s notification to the Commission, the organisation must submit detailed information about the reportable allegation to the Commission. It must do this as soon as is practicable and within 30 business days at the latest.<sup>96</sup>

This detailed information must include whether the organisation intends to take any disciplinary or other action against the employee and the reasons why the organisation intends to take that action or not against the employee. It must also include any written submissions the employee has made to the head of the organisation about the reportable allegation.

**Figure 7.3: Timeline for responding to reportable conduct allegations**



During consultation, organisations reported that they did not find any difficulties with submitting detailed information to the Commission within 30 days. However, some organisations also noted that investigations (depending on the alleged conduct) can often take much longer than 30 days. Sometimes, they said, there is not much more information to give at this stage of the process than was provided at the initial 3-day notification.

The Act does not specify the timeframe within which an organisation must complete an investigation into a reportable conduct allegation. Organisations are not required to complete investigations within the 30-day notification period. Some stakeholders have said that including a timeframe for completing an investigation may be beneficial. However, it may result in pressure to forgo some measures that are necessary to provide procedural fairness to subjects of allegations. This conflicts with the principles of the Act that outline that employees subject to reportable allegations deserve natural justice.<sup>97</sup> Refer to **Chapter 8: Investigations and findings**.

Although a complex investigation may take longer than 30 days, the information the Commission requires after 30 days appears reasonable. However, some organisations reported being able to either complete an investigation well before the 30 days or it quickly became apparent during the investigation that the reportable allegation was unsubstantiated. Some stakeholder feedback showed that the Commission may be reluctant to accept the findings of an investigation that has been completed quickly. However, the Commission states that in these cases the reluctance is due to concerns about the thoroughness of the investigation, rather than the timeliness.

<sup>96</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16M(1).

<sup>97</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16B(1).

If, before the 30-day notification and as part of the required investigation, an organisation finds that the reportable allegation has no substance, an organisation can conclude the investigation at that time and advise the Commission that the investigation is complete.

The 30-day notification requirement works alongside s 16N(3) under the Act. This requires an organisation to provide the Commission at the conclusion of an investigation with:

- a copy of the findings of the investigation and the reasons for those findings
- details of any disciplinary or other action that the organisation proposes to take in relation to the employee and the reasons for that action
- if the organisation does not intend to take any action against the employee, the reasons why no action will be taken.

Under these provisions in the Act, there is no legal obstacle to organisations finishing their investigations before the 30-day notification period if those investigations are adequate.

Investigations are discussed in **Chapter 8: Investigations and findings**.

#### Opportunity 7.4

*Where an organisation has adequately concluded its investigation within 30 days, notification of the investigation findings under s 16N can also acquit the requirement for the 30-day update under s 16M. Subject to resourcing and other priorities, there is an opportunity for the Commission to consider making this clear in its guidance materials.*

## Protections for reporters

The review's stakeholder survey asked respondents whether there are there any unintended effects of reporting internally. Unintended effects could include 'paybacks' or other detrimental action taken against reporters.

**Figure 7.4** shows the breakdown of responses to this question, with 38% of stakeholders reporting that there are or have been. Another 37% were unsure about any internal fallout of making reportable conduct allegations within their organisation.

**Figure 7.4: Are there any unintended consequences of reporting internally? (n = 175)**

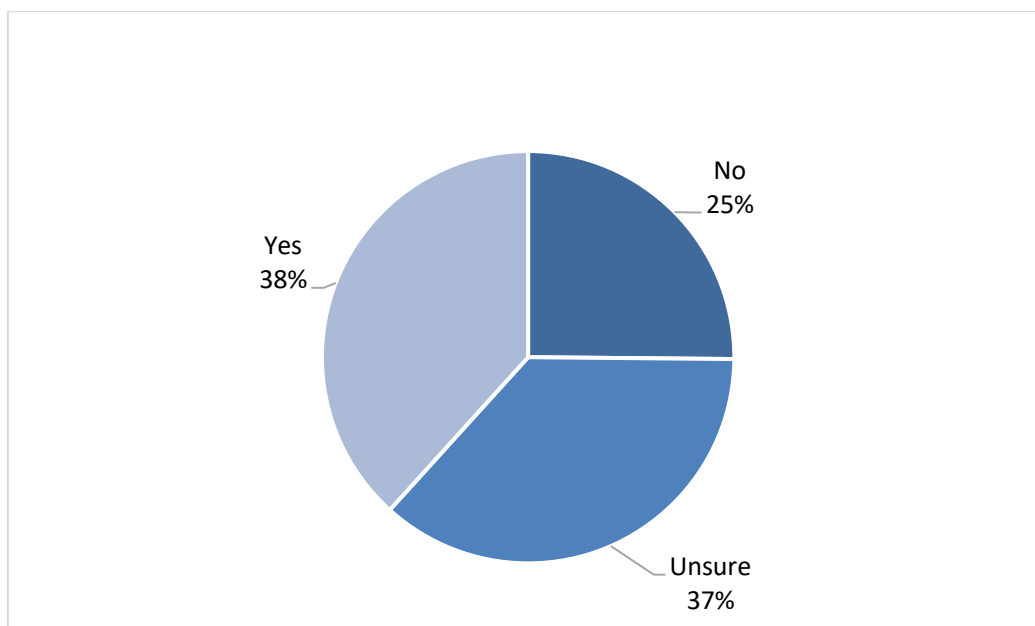
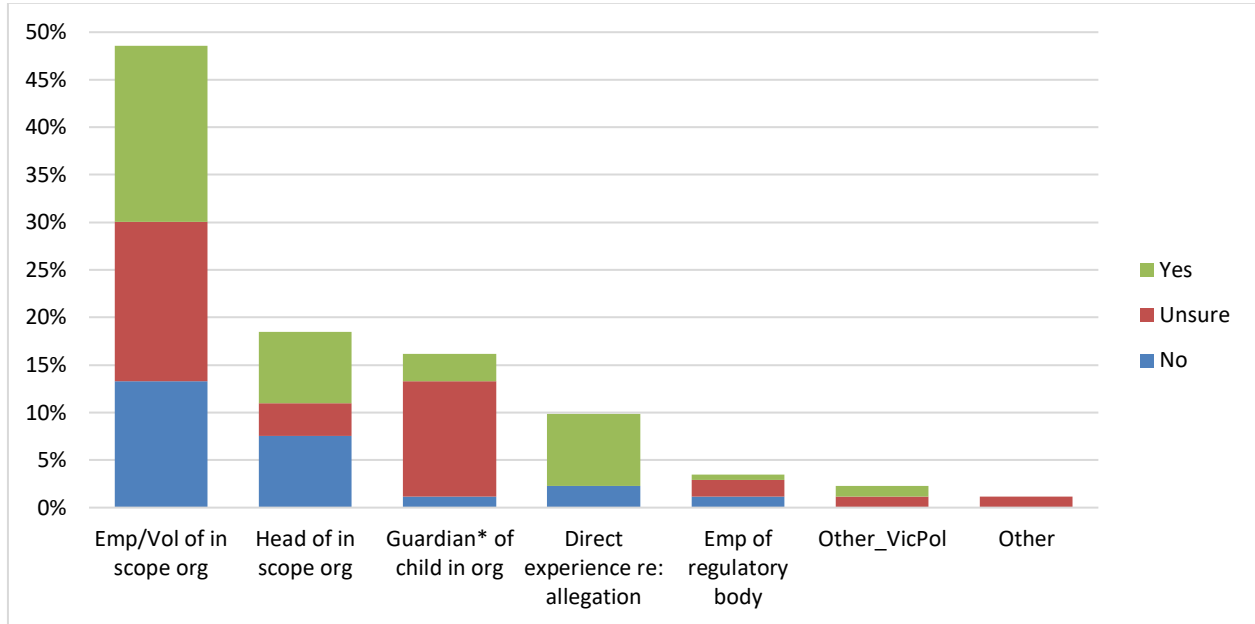


Figure 7.5 shows the unintended effects that classes of reporters experienced under the scheme. It reveals that employees of organisations, heads of organisations, guardians of children and others have all experienced consequences from making reportable allegations.

**Figure 7.5: Unintended consequences of reporting by primary experience with the Reportable Conduct Scheme (n = 173)**



The Commonwealth Royal Commission documented gaps in the legal protection for reporters from civil and criminal liability, as well as in protection from reprisals or other detrimental action.<sup>98</sup> A lack of protections for reporters can discourage both internal reporting and complaints, as well as external reporting.

There is only one legal protection under the scheme that relates to a person making a disclosure of information or documents in good faith to the Commission. In these instances, the Act specifies that such a disclosure:

- does not amount to unprofessional conduct or breaking professional ethics on the part of the person by whom it is made
- does not make the person by whom it is made subject to any liability in respect of it
- does not go against confidentiality provisions under the *Health Services Act 1988* (Vic) or the *Mental Health and Wellbeing Act 2022* (Vic).

Beyond this provision, there are no legal protections for employees who internally allege reportable conduct or for any other people reporting to the organisation. There is also a gap in protections for people who make complaints about an organisation’s response to a reportable conduct allegation. Schemes in other states and territories offer more protection for people who allege reportable conduct (**Table 7.1**).

<sup>98</sup> Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final report: Improving institutional responding and reporting, Volume 7*, pp. 10, 12–13.

**Table 7.1: Comparison of legal protections for reporters**

Jurisdiction	Protections for reporters under reportable conduct scheme
<b>New South Wales</b>	A person who gives a report, or makes a complaint, or gives the Children's Guardian a notification is not subject to any civil or criminal liability or any liability arising by way of administrative process, including disciplinary action, for giving the report, complaint or notification, if the person is acting in good faith. <sup>99</sup>
<b>Western Australia</b>	<p>If a person acting in good faith —</p> <ul style="list-style-type: none"> <li>(a) gives a report, notification, or information to the Commissioner under the reportable conduct scheme or in the course of, or for the purposes of, an investigation into a reportable allegation or reportable conviction, or</li> <li>(b) gives a report, notification or information to the head of a relevant entity for the purposes of the reportable conduct scheme, or</li> <li>(c) gives information to an investigator conducting an investigation under the scheme.</li> </ul> <p>In giving the information or making the report or notification the person —</p> <ul style="list-style-type: none"> <li>(a) does not incur any civil or criminal liability or liability to be punished for contempt of court, and</li> <li>(b) is not to be taken to have breached any duty of confidentiality or secrecy imposed by law, and</li> <li>(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.<sup>100</sup></li> </ul>
<b>Australian Capital Territory</b>	A person disclosing information is not civilly liable for anything done or omitted to be done honestly and without recklessness in compliance with the scheme or in the reasonable belief that the disclosure complied with the scheme. <sup>101</sup>
<b>Tasmania</b>	<p>The disclosure of information or documents to the Regulator, head of an organisation, or organisation regulator by a person that is made in good faith under this Act does not cause the person by whom it is made —</p> <ul style="list-style-type: none"> <li>(a) to incur any civil or criminal liability in respect of the disclosure; or</li> <li>(b) to be held to have breached any code of professional etiquette or ethics, or departed from any accepted standard of professional conduct, or contravened any Act.<sup>102</sup></li> </ul>

The Commonwealth Royal Commission's recommendation 7.5, which the Victorian Government accepted in principle, stated that:

*... state and territory governments should ensure that legislation provides comprehensive protection for individuals who make reports in good faith about child sexual abuse in institutional contexts. Such individuals should be protected from civil and criminal liability and from reprisals or other detrimental action as a result of making a complaint or report...*

<sup>99</sup> *Children's Guardian Act 2019* (NSW), s 68.

<sup>100</sup> *Parliamentary Commissioner Amendment (Reportable Conduct) Act 2022* (WA), s 30AA.

<sup>101</sup> *Ombudsman Act 1989* (ACT), s 17O.

<sup>102</sup> *Child and Youth Safe Organisations Act 2023* (Tas), s 55.

The Victorian Government noted in its 2021 annual implementation report<sup>103</sup> that the Commonwealth Royal Commission found that fear of payback can prevent the reporting of child abuse. In response, the government has amended the Children, Youth and Families Act to include reprisal protections for reporters to Child Protection.<sup>104</sup> This addresses situations where a reporter may not make a report to Child Protection due to a fear of reprisal from their workplace or family members or others connected to the child and family, despite confidentiality provisions.

The Reportable Conduct Scheme would benefit from similar protections for those who allege reportable conduct.

### Opportunity 7.5

*There is an opportunity to amend the Child Wellbeing and Safety Act to extend existing protections for people who disclose information to the Commission, to people who disclose information when making reports to the head of an organisation.*

## Immunity

Just as it is important for there to be protections in place for reporters, there is a need to have similar provisions for:

- the Commission
- regulators
- people employed or engaged by them.

An immunity provision in the Act means that those organisations or people covered by the provision cannot be held personally liable for anything done or omitted to be done in good faith while exercising powers or functions under the scheme. However, the investigation and enforcement powers of the Commission or regulators would not be covered by an immunity provision. Any civil liability that would result from an act or omission would instead attach to the Crown. A model immunity provision already exists under Part 6 – as it relates to the Child Safe Standards – under the Act.

### Opportunity 7.6

*There is an opportunity to amend the Child Wellbeing and Safety Act to insert an immunity provision for the Commission, so staff are not personally liable for anything done or omitted to be done in good faith while exercising powers or functions under the Reportable Conduct Scheme. Consistent with the Victorian Government's policy, the immunity provision would not extend to monitoring and enforcement powers.*

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<sup>103</sup> Victorian Government 2021, *Annual report – Royal Commission into Institutional Responses to Child Sexual Abuse*, p. 7.

<sup>104</sup> *Children, Youth and Families Act 2005* (Vic), s 189.

# Chapter 8: Investigations and findings

## Background – investigations and findings

Investigations into reportable allegations are an essential part of the Reportable Conduct Scheme. The scheme places obligations on the head of an organisation to conduct these investigations. Also, the Commission has powers to track and oversee organisational responses to and investigations of reportable conduct allegations. It can also undertake own motion investigations under certain circumstances. Over time, the Commission has adjusted its approach based on risk, as informed by the Commonwealth Royal Commission's evidence and the Commission's own experience overseeing child abuse allegations. All investigations should be fair, effective and timely. They should be driven by rules of procedural fairness that ensure employees who are the subject of allegations receive natural justice. As a matter of paramount importance, children must be protected.<sup>105</sup>

This chapter examines each key stage of investigations undertaken by organisations, regulators and the Commission:

- the investigation process
- findings made at the end of the investigation process
- the Commission's internal review and Victorian Civil and Administrative Tribunal review of investigation findings on behalf of subjects of reportable allegations.

The chapter:

- examines how each of these key stages are working in practice
- identifies risks and challenges
- makes findings and recommendations for improving the scheme's effectiveness.

## System to investigate and respond

Under s 16K of the Child Wellbeing and Safety Act, a head of an organisation within the scheme's scope must ensure the organisation has a system to investigate and respond to a reportable allegation against an employee.<sup>106</sup> As soon as practicable after becoming aware of a reportable allegation against an employee, the head of an organisation must:

- investigate the reportable allegation, or
- permit a regulator to investigate, or
- engage an independent investigator to investigate the reportable allegation.

As part of the 3-day notification requirement (Chapter 7), the head of an organisation must inform the Commission about who is investigating the allegation.<sup>107</sup>

This chapter will examine how well these systems to investigate an allegation are working and identify issues, as well as opportunities for improvement.

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<sup>105</sup> *Child Wellbeing and Safety Act 2005* (Vic), ss 16B(1)(a), (d) and (e).

<sup>106</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16K(d).

<sup>107</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16N(1).

## Organisation-based investigations

### Organisational capability

Overall, the Commission has noted that the standard of organisational investigations into reportable allegations has improved over the life of the scheme. However, the Commission has noticed common systemic issues relating to organisational investigations including:

- a lack of appropriate engagement with the scheme's purpose and principles
- not enough resources or appropriately skilled people to investigate an allegation
- not having arrangements that support engagement with children or support involving children in an investigation
- not having good policies, systems or processes for reporting and responding to allegations
- a lack of systems to keep alleged victims and their carers informed about investigations.

Larger organisations and sectors are typically better equipped and resourced (through inbuilt capability) to conduct investigations. These organisations are more likely to have a dedicated team to manage investigations. Generally, smaller organisations and sectors are more likely to either not fully understand their obligations, and/or to face capability, capacity and cost constraints. These constraints may affect their ability to effectively investigate reportable allegations within a reasonable timeframe.

Although investigation capability, capacity and cost constraints are legitimate challenges for all organisations, investigations are a vital part of the scheme. The Act is not specific about how to investigate a reportable allegation. It gives organisations choice to manage investigations in their own way. Organisations must find a way to meet their obligations to investigate reportable conduct allegations.

#### Opportunity 8.1

*The Commission undertakes a significant amount of education to support in-scope organisations. While an organisation's size is not the only factor influencing its investigatory capability, and the Commission should prioritise support for those organisations where children are considered to be at greatest risk, there is an opportunity for the Commission, subject to resourcing and other priorities, to consider focusing its support on smaller organisations and sectors. It could focus on those sectors without a regulator, to support them to build their capability to meet their obligations to investigate reportable allegations under the scheme.*

### Natural justice

The Act includes a principle that 'employees who are subject to reportable allegations are entitled to receive natural justice in investigations into their conduct'.<sup>108</sup> But it neither defines what this is nor explains how to provide it.

'Natural justice', sometimes referred to as 'procedural fairness', is not a strictly defined term. It is intended to be a flexible notion that can be applied to a wide range of circumstances. This intent aligns with the lack of clarity in the Act about how to investigate a reportable allegation. It empowers organisations conducting investigations to make decisions about how to:

- conduct investigations
- determine findings

<sup>108</sup> *Child Wellbeing and Safety Act 2005* (Vic), s (1)(e).

- decide on any disciplinary or other action against the subject of the allegation.

However, guidance from the Australian Law Reform Commission suggests that the 2 key pillars of procedural fairness are the right to a fair hearing and the rule against bias.<sup>109</sup>

In practice, this means that procedural fairness is concerned with the procedures a decision-maker uses rather than the actual outcome. It requires an investigator to use a fair and proper procedure when making a decision. The rule against bias means that the decision maker is impartial and has not pre-judged a decision.

The purpose of natural justice is to promote good decision making.<sup>110</sup> It is good practice to consider procedural fairness requirements at every stage of an investigation. Procedural fairness is an essential part of an investigation and benefits both parties to the allegation.

Under the scheme and based on stakeholder feedback about how organisations conduct investigations, the extent to which individuals receive natural justice in an investigation varies. The right to a fair hearing generally includes:

- the opportunity to be heard before a decision is made
- notice that a decision that may affect the person's interest will be made
- disclosure of the critical issues to be addressed
- a substantive hearing with reasonable opportunity to present a case.

The review has heard from stakeholders that this does not always happen or happen in a timely way. Individuals are not always afforded natural justice, despite it being one of the scheme's main principles.

The Commission provides clear, detailed, step-by-step guidance for scheme investigations, including reference to natural justice. The guidance is not specific (to accommodate different types of reportable conduct and organisational needs) and is therefore subject to organisational interpretation, capability and capacity.

The guidance recommends that, to support procedural fairness, organisations should ensure before any findings are made or disciplinary action is proposed or taken, the subject of an allegation:

- is given a letter of allegation and put on notice of the nature, scope and details of the allegation before any interview is undertaken
- is given an opportunity to have a support person present or (if entitled through an award, enterprise agreement, individual employment contract or workplace policy) a lawyer or union representative present with them
- is given an opportunity to respond to the allegations and any relevant evidence revealed during an investigation
- is told of the consequences of the investigation if adverse findings are made
- has a reasonable opportunity to respond to the evidence and give their side of the story
- is notified of any adverse information that is credible, relevant and significant
- has a reasonable opportunity to respond to that information.<sup>111</sup>

Natural justice varies in organisational investigations – much more so than in the Commission's own motion investigations or investigations by regulators (noting that very few of these have occurred in

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<sup>109</sup> Australian Law Reform Commission 2016, 'Procedural fairness: the duty and its content', *Traditional rights and freedoms: Encroachments by Commonwealth Laws*, p. 396.

<sup>110</sup> Ombudsman Western Australia 2019, Procedural fairness (natural justice) guidelines, p. 1.

<sup>111</sup> Commission for Children and Young People 2018, *Guidance for organisations: Investigating a reportable conduct allegation*, p. 18.

practice). Beyond the investigation process, there is no right to seek an internal review of an organisational investigation's finding or appeal to the Victorian Civil and Administrative Tribunal. Where an organisation undertakes the investigation and makes a substantiated finding, the worker can take further action in the Fair Work Commission.

### Opportunity 8.2

*Stakeholder concerns about natural justice are generally not due to problems with the wording of the Child Wellbeing and Safety Act and are unlikely to be resolved by prescribing investigation processes in law.*

*Although the review notes that the Commission's current guidance is clear, subject to resourcing and other priorities, there is an opportunity for the Commission to consider addressing concerns through:*

- *updates to its resources, training and materials*
- *advice to further educate and improve organisational understanding of how to provide natural justice to a person during an investigation.*

## Inclusive investigations

Early in the scheme, the Commission noted that some organisations did not involve alleged victims and child witnesses in reportable allegation investigations. As the Commission said in its submission to the review:

*... excluding children and young people from investigations without good reason can send a damaging message to them that their voice is not valued. It can contribute to them not feeling listened to or heard. It also potentially deprives investigators of valuable evidence relevant to deciding whether an adult has engaged in child related misconduct or abuse.<sup>112</sup>*

The Commission has worked to address this issue and has published on its website a useful and accessible package of resources to support organisations to include children and young people in reportable conduct investigations.<sup>113</sup>

Despite these resources, stakeholder feedback to the review signalled that some organisations do not feel well equipped or capable of involving or protecting a child throughout the course of an investigation. Planning and undertaking interviews were particular areas of concern.

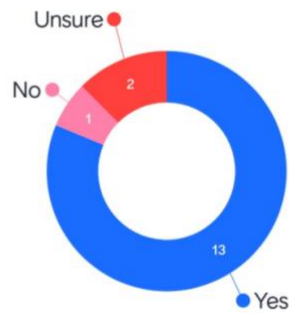
A key theme arising from the review's engagement with children and young people was that children and young people want to be informed on the processes and outcomes of a reportable allegation investigation in which they are involved (**Figures 8.1 and 8.2**). Specifically, participants noted that they would like to be told:

- if they make a complaint, who will be able to access the information
- how they will need to be involved in the process
- how long will it take
- possible outcomes from the allegation and response
- how they will be treated moving forward (whether the allegation is substantiated or not).

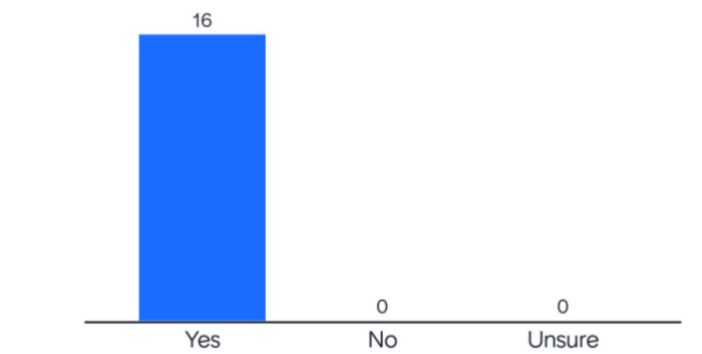
<sup>112</sup> Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's Reportable Conduct Scheme*, pp. 21–22.

<sup>113</sup> Commission for Children and Young People, [Including children and young people in reportable conduct investigations](https://ccyp.vic.gov.au/resources/reportable-conduct-scheme/including-children-and-young-people-in-reportable-conduct-investigations/) <https://ccyp.vic.gov.au/resources/reportable-conduct-scheme/including-children-and-young-people-in-reportable-conduct-investigations/>.

**Figure 8.1: Do children and young people want to know about an investigation process in which they are involved?**



**Figure 8.2: Do children and young people want to be informed on the outcome of an investigation they are involved in?**



### Opportunity 8.3

*The review shares the Commission's concerns about the reported lack of involvement of children (either as alleged victims and/or witnesses) in organisational reportable allegation investigations.*

*In-scope organisations should ensure children and young people understand how the organisation investigates a reportable allegation. In-scope organisations also need to ensure their systems, policies and processes to investigate and respond to a reportable allegation are inclusive and adequately involve and support children and young people to take part in the investigation.*

*To help resolve this issue, subject to resourcing and other priorities, there is an opportunity for the Commission to consider:*

- *other opportunities to continue its significant work in promoting its package of resources when liaising with organisations during their response and investigation*
- *enquiring how organisations that are investigating a reportable allegation intend to or have included children and young people in the process.*

## Timeliness and completion of an investigation

Under the Act, one of the Commission's objectives is 'to ensure that reportable allegations are properly investigated'.<sup>114</sup> The Commission looks to achieve this objective through its efforts to support organisations investigating reportable allegations, as well as relying on the requirement for

<sup>114</sup> *Child Wellbeing and Safety Act 2005 (Vic)*, s 16F(b).

organisations to provide the Commission with information on the response to the allegation within 30 days (Chapter 7).

The scheme requires the head of an organisation to provide information to the Commission about the investigation as soon as practicable after an investigation is concluded. The required information includes the findings and reasons for those findings.<sup>115</sup> The Act does not specify a time limit to complete investigations. The Commission has reported that some organisations do not supply the required evidence to show they have completed a full investigation.

It would better support the scheme's principles and objectives if organisations were formally required to complete an investigation as soon as practicable. However, it is not appropriate to prescribe a time limit within which an organisation must complete an investigation. This would risk undermining the investigation's integrity and breadth.

Currently, New South Wales is the only state that imposes requirements on the timing of investigations. In the first instance, the report on the investigation must be provided to the Children's Guardian within 30 days of becoming aware of the investigation. If this is not possible, the organisation must:

- supply an interim report
- include a timeframe for when the report will be completed
- complete the investigation 'within a reasonable time'.<sup>116</sup>

The Australian Capital Territory,<sup>117</sup> Western Australian<sup>118</sup> and Tasmanian schemes<sup>119</sup> simply require a written report to be provided as soon as practicable after the investigation.

#### Opportunity 8.4

*There is an opportunity to amend the Child Wellbeing and Safety Act to explicitly require the head of an organisation to complete an investigation into a reportable allegation 'as soon as is practicable' and within a reasonable time.*

## Police investigations

A key part of the scheme is the requirement that, on becoming aware that a reportable allegation may involve criminal conduct, the Commission, an organisation, a regulator or an independent investigator must report the matter to Victoria Police.<sup>120</sup>

On becoming aware that Victoria Police is investigating a reportable allegation, the Commission, an organisation, a regulator or an independent investigator must not start or continue to investigate the reportable allegation until Victoria Police has advised them that the police investigation is complete or agrees that the investigation may proceed. If asked by the Commission, Victoria Police must advise whether it is investigating and share the result of the investigation.

Of the 1,238 notifications of reportable allegations made to the Commission in 2021–22, 55% were reported to Victoria Police by either the organisation or the Commission due to possible criminal

<sup>115</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16N(3).

<sup>116</sup> *Children's Guardian Act 2019* (NSW), s 34(3).

<sup>117</sup> *Ombudsman Act 1989* (ACT), s 17J(1).

<sup>118</sup> *Parliamentary Commissioner Amendment (Reportable Conduct) Act 2022* (WA), s 19Z.

<sup>119</sup> *Child and Youth Safe Organisations Act 2023* (Tas), s 35(4).

<sup>120</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16U.

conduct. The Commission referred 230 notifications (19%) that had not previously been reported to police.<sup>121</sup>

In practice, when a disclosure is made to Victoria Police, the Commission advises organisations not to start a reportable conduct investigation until the organisation is given clearance by Victoria Police. Feedback from stakeholders, including Victoria Police, suggests that this notification and clearance process can be confusing and duplicate the centralised information sharing arrangement between the Commission and Victoria Police. This is explained in the anecdotal case study below.

### **Case study: Reporting to and gaining clearance to investigate from Victoria Police**

An organisation has reported on their 3-day notification form to the Commission that they have notified Victoria Police about the reportable allegation. Victoria Police has already cleared the organisation to proceed with its investigation into the reportable allegation.

After receiving the organisation's 3-day notification form, the Commission has also notified Victoria Police about the reportable allegation through a different channel and without the contextual information provided on the 3-day notification form.

At this time, the Commission instructs the organisation not to start or continue its investigation until the Commission receives its clearance that the investigation may proceed.

This duplicative approach and time required for Victoria Police to advise the Commission that the organisation may proceed with an investigation, rather than to advise the organisation directly, has the potential to delay the investigation.

### **Opportunity 8.5**

*While the Commission must also report an allegation that may involve criminal conduct to Victoria Police, the Child Wellbeing and Safety Act does not require it to pass on the police clearance to the organisation. However, in practice, the Commission and Victoria Police have set up a centralised information sharing process that seeks to promote consistency in how reportable conduct allegations are handled and overseen.*

*While the Commission and Victoria Police are satisfied with the current process, feedback suggests that stakeholders feel otherwise. There is an opportunity for the Commission and Victoria Police to consider any residual issues with the clearance process. For example, consider whether and how this process could be streamlined and clarified to improve organisational understanding and make the police notification and clearance process as quick as possible.*

## **Regulator investigations**

The Act provides for regulator investigations under certain circumstances – for example, where requested by the Commission or where 'permitted' by an organisation.<sup>122</sup> The scheme's provisions distinguish between regulators of employees and regulators of organisations. These regulators are listed in **Tables 8.1 and 8.2**.

<sup>121</sup> Commission for Children and Young People 2022, *Annual report 2021–22*, p. 108.

<sup>122</sup> *Child Wellbeing and Safety Act 2005* (Vic), ss 16V and 16N(1) respectively.

**Table 8.1: Regulators of employees for the purposes of the Reportable Conduct Scheme**

Regulators of employees (for the purposes of the scheme)
Suitability Panel
Australian Health Practitioner Regulation Agency (Ahpra)
A National Health Practitioner Board
Victorian Institute of Teaching

**Table 8.2: Regulators of organisations for the purposes of the Reportable Conduct Scheme**

Regulators of organisations (for the purposes of the scheme)
A department that provides funding to the organisation
Victorian Registration and Qualifications Authority
Any other body that regulates or funds the organisation and that is prescribed to be a regulator in respect of the organisation. <sup>123</sup>

However, while regulators can oversee and monitor an investigation, regulator investigations under the scheme are rare. The Commission advises that, in practice, these investigations have only occurred in a small number of cases where the head of the organisation is conflicted.<sup>124</sup> The Commission is yet to formally request that an employee regulator investigates a reportable allegation under the scheme.

However, the Commission has discussed the possibility of some employee regulators investigating reportable allegations in cases where the regulator was already planning to investigate as part of its own regulatory functions. In these discussions, employee regulators have raised concerns including:

- whether they have the necessary powers to investigate reportable allegations
- whether evidence the regulator has gathered using its own powers could also be used for an investigation under the scheme
- how the regulator can manage 2 different processes (for the reportable allegation investigation and its own investigation) with the potential for 2 different outcomes from the same investigation.<sup>125</sup>

Beyond this direct role in investigations, regulators can also have a role in sharing information and findings between themselves and the Commission. This is discussed in Chapter 10.

### Opportunity 8.6

*There is an opportunity for the government to work with relevant regulators to examine whether there are any barriers that may exist to regulators conducting reportable allegation investigations.*

<sup>123</sup> When the new social services regulatory scheme begins, the Social Services Regulator will also be added to this list of regulators under the scheme.

<sup>124</sup> Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's Reportable Conduct Scheme*, p. 33.

<sup>125</sup> Ibid.

## Commission's own motion investigations

A key element of the scheme is that the Commission can act as an oversight body and can effectively monitor institutional complaints handling.<sup>126</sup> This includes the power to conduct own motion investigations into any reportable conduct allegations of which it becomes aware.<sup>127</sup>

The Commission has the power to undertake own motion investigations if:

- it receives information about the reportable allegation from any person
- it believes on reasonable grounds that reportable conduct may have been committed by an employee of the organisation
- it considers that it is in the public interest to do so.<sup>128</sup>

The Commission may also undertake an own motion investigation if it is in the public interest and if the organisation or the employee's regulator advises that it cannot investigate or engage an independent investigator.<sup>129</sup>

On completing an investigation and after consulting with the relevant regulator, the Commission must make and provide to the organisation:

- the findings
- reasons for the findings
- recommendations (if any)
- any other relevant information.

In 2021–22 the Commission completed 3 own motion investigations and began 4 new ones. As of 30 June 2022, there were 10 open own motion investigations. Nine of these were investigations into reportable allegations and one was about an organisation's inappropriate handling of, or response to, a reportable allegation.<sup>130</sup>

The Commission's powers to undertake own motion investigations are broadly consistent with other reportable conduct schemes in Australia.

In its submission to the review, the Commission advised that, while the number of own motion investigations were low in the first years of the scheme's operation, the number of these investigations has increased in recent years. The Commission considers that this power is a critical element of the scheme. Given the increasing number of complex investigations, it expects the number of own motion investigations will increase.<sup>131</sup>

Previous or current own motion investigations have related to instances where:

- the head of an organisation is the subject of the allegation, and the organisation cannot investigate and appropriately manage the conflict of interest that allegation presented
- the serious grooming allegations and allegations involving the organisation's failure to respond to sexual abuse allegations were beyond the organisation's capacity to investigate
- the allegations were about historical matters.<sup>132</sup>

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<sup>126</sup> Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final report: Improving institutional responding and reporting*, (Volume 7), p. 20

<sup>127</sup> *Ibid.*, recommendation 7.10, pp. 121–122.

<sup>128</sup> *Child Wellbeing and Safety Act 2005* (Vic), s. 16O(1).

<sup>129</sup> *Child Wellbeing and Safety Act 2005* (Vic), s. 16O(2).

<sup>130</sup> Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's reportable conduct scheme*, p. 11.

<sup>131</sup> *Ibid.*, pp. 11 and 67.

<sup>132</sup> *Ibid.*, pp. 11–12.

In some instances where, for example, the own motion investigation related to an organisation's inappropriate handling of, or response to, a reportable allegation, the Commission has argued that it is reasonable to expect that findings and recommendations it may make about child safety system and process concerns should be on the public record. The Act does not specifically allow this.

Most schemes in other states and territories allow information disclosure only if the identity of the reporter and the child who is the subject of the allegation is protected. For example, in Tasmania, the oversight body 'may disclose information to any person' only if:

- the identity of the child who is the subject of the information is protected as far as is practicable, and the disclosure is taken
  - to protect and promote the safety and wellbeing of children
  - to enable the investigation or enforcement of a law
  - for investigatory, disciplinary or employment-related purposes related to the safety or wellbeing of children
  - to share information with other states and territories, and other child safety oversight bodies (to collect, analyse and publish data on child safety approaches), or
  - for a prescribed purpose or in connection with its powers and functions.<sup>133</sup>

The New South Wales scheme does not specifically allow the public disclosure of information arising from an own motion investigation by the Children's Guardian. However, it does allow information sharing with relevant entities and people, as appropriate.

If the Act were amended to allow the Commission to publish details of an own motion investigation, it could choose to do this in its annual report, or perhaps as a stand-alone report. There may be instances, such as in the example cited above by the Commission, where it would be beneficial for the Commission's findings to be published. Publication could help to demonstrate what the Commission expects of entities and provide examples of good and bad practice. The Commission should only publish details of its own motion investigations when publication is in the public interest.

There would also need to be restrictions on what the Commission could publish, to preserve the privacy of the people involved in the allegation. The name of the person accused of reported conduct, or any other third parties, should not be published. In some cases, the name of the employer or the entity may lead to the identification of the individuals involved, and so should not be published. The Commission would also need to ensure that it did not publish any information that may interfere with any investigation.

While the name of the child who is the victim of the allegation should not generally be published, some victims do want to identify themselves. This is discussed further in Chapter 10.

### Opportunity 8.7

*There is an opportunity to amend the Child Wellbeing and Safety Act to allow the Commission to publish own motion investigation findings, recommendations and relevant information when it is in the public interest to do so. This is provided that this will not:*

- *interfere with that investigation or any other investigation under the Act*
- *disclose the name or other identifiable information of a person who reported the allegation or enable a reporter to be identified if they do not want to be identified*

<sup>133</sup> *Child and Youth Safe Organisations Act 2023* (Tas), s 38.

- disclose the name of a child or young person who is the subject of the reportable allegation or enable them to be identified if they do not want to be identified<sup>134</sup>
- include identifying details of third parties including the name of the subject of the allegation.

## Balance of probabilities

At the end of a reportable allegation investigation, the decision-maker must make a finding about whether the reportable conduct happened. The decision-maker must review and assess the evidence from the investigation and make a finding on the balance of probabilities.

*In an investigation into a reportable allegation, a finding needs to be made by the decision maker that, on the balance of probabilities, reportable conduct either did or did not happen. This is a lower standard than is needed in criminal cases, where an allegation must be proved beyond reasonable doubt. The balance of probabilities means that it must be more likely than not.*<sup>135</sup>

Given the serious nature of reportable allegations, the Commission expects that, in making a finding, the head of an organisation (or the decision-maker, if a different person) should generally apply the 'Briginshaw test' (from the case of *Briginshaw v Briginshaw* (1938) 60 CLR 336). This test requires the decision-maker to consider the:

- seriousness of the allegation
- likelihood of the conduct occurring based on the evidence
- gravity of the consequences flowing from a particular finding.<sup>136</sup>

## Review rights

### Internal review

Under the Act, the subject of a reportable allegation who has been the focus of a Commission's own motion investigation may ask the Commission to review its finding.<sup>137</sup> There is no legal provision requiring the head of an organisation to have a policy, system or process to conduct an internal review of a finding made on completing an organisation's reportable allegation investigation.

Feedback from some organisational stakeholders was that a small proportion of organisations consider the scheme does not provide enough provision to review investigation findings. Therefore, it does not ensure natural justice for a subject of an allegation or finding. In response, these organisations have implemented their own internal review policy and process. This includes updating the Commission at the end of the review.

The Commission's advice to employees and volunteers proposes that the first step for someone who disagrees with an investigation finding or action an organisation takes is to refer to the

<sup>134</sup> Some victim survivors may wish to self-identify.

<sup>135</sup> Commission for Children and Young People 2018, *Information sheet 8: Investigation findings*, p. 1.

<sup>136</sup> Commission for Children and Young People 2018, *Guidance for organisations investigating a reportable conduct allegation*, p. 3.

<sup>137</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16Z1.

organisation's internal dispute resolution processes.<sup>138</sup> An employee may also want to get advice or support from their union, a lawyer, the Fair Work Ombudsman and/or the Fair Work Commission.

In its submission to the review, the Commission explained that the current internal review rights – that only apply to employees of organisations against whom a reportable allegation has been made – should be extended. This would allow alleged victims to ask for a review if they are not satisfied with the finding or process of a Commission's own motion investigation.<sup>139</sup>

## External review

When the Commission conducts an own motion investigation and finds that an employee has committed reportable conduct, the employee can apply to the Victorian Civil and Administrative Tribunal to review the decision. This right can only be exercised after the employee has asked for an internal review of the decision.<sup>140</sup> To date, no Commission decisions in own motion investigations were subject to a Victorian Civil and Administrative Tribunal review under s 16ZJ of the Act.

A substantiated finding from an organisation's investigation into workplace conduct may result in workplace disciplinary action and dismissal that may be subject to review by the Fair Work Commission.<sup>141</sup> A substantiated finding that a person has committed reportable conduct that is notified to Working with Children Check Victoria by the Commission will trigger the process to reassess a person's eligibility to hold a Working with Children Check.<sup>142</sup>

The eligibility reassessment process may result in suspending or cancelling a person's Working with Children Check. This may exclude a person from all child-related work in Victoria<sup>143</sup> and other states and territories (subject to review by the Victorian Civil and Administrative Tribunal). Chapter 10 has more information about the interaction between the scheme and the Working with Children Check.

To compare the review rights under Victoria's scheme, **Table 8.3** outlines the internal and external review rights under other states and territory's reportable conduct schemes.

**Table 8.3: National analysis – review rights**

Jurisdiction	Internal review rights	External review rights
New South Wales	An application may be made to the Civil and Administrative Tribunal to review a reportable allegation investigation or conviction decision made by the Children's Guardian if the investigation is finalised and a finding made. <sup>144</sup>	N/A
Tasmania	The regulator must prepare and implement a process for the internal review of a finding made by the	If the regulator makes a reviewable decision at the end of an own motion reportable allegation investigation, and

<sup>138</sup> Commission for Children and Young People 2018, *Information sheet 13: Workers and volunteers and the reportable conduct scheme*, p. 4.

<sup>139</sup> Commission for Children and Young People, 15 November 2022, *Submission to the Department of Families, Fairness and Housing: Review of Victoria's Reportable Conduct Scheme*, p. 69.

<sup>140</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16ZJ.

<sup>141</sup> *Fair Work Act 2009* (Cth), s 394.

<sup>142</sup> *Worker Screening Act 2009* (Vic), s 78.

<sup>143</sup> *Children, Youth and Families Act 2005* (Vic), ss 80–81.

<sup>144</sup> *Children's Guardian Act 2019* (NSW), s 154(1)(k).

Jurisdiction	Internal review rights	External review rights
	regulator at the end of a regulator's own motion investigation. <sup>145</sup> An employee of an organisation may ask for an internal review by the regulator of a decision made by the regulator in relation to the employee at the end of a regulator's own motion investigation. <sup>146</sup>	an internal review of that decision is complete, a person aggrieved by the outcome of the internal review may apply to the Magistrates Court (Administrative Appeals Division) to review the decision. <sup>147</sup>
Western Australia	N/A	A person aggrieved by a finding of the Commissioner on an own motion reportable conduct investigation may apply to the State Administrative Tribunal to review the finding. <sup>148</sup>
Australian Capital Territory	N/A	N/A

### Opportunity 8.8

*There is an opportunity to amend the Child Wellbeing and Safety Act to extend internal review rights in relation to the Commission's own motion investigations to alleged victims.*

*If internal review rights are extended to victims, government should also consider whether the ability to seek an external review of a decision at the Victorian Civil and Administrative Tribunal should also be extended to alleged victims.*

<sup>145</sup> *Child and Youth Safe Organisations Act 2023* (Tas), s 52(1)(c).

<sup>146</sup> *Child and Youth Safe Organisations Act 2023* (Tas), s 52(3).

<sup>147</sup> *Child and Youth Safe Organisations Act 2023* (Tas), s 53.

<sup>148</sup> *Parliamentary Commissioner Amendment (Reportable Conduct) Act 2022* (WA), s 19ZF.

## Chapter 9: Oversight of investigations and monitoring compliance with the scheme

Section 16D of the Child Wellbeing and Safety Act sets out that the Commission is responsible for administering, overseeing and monitoring the Reportable Conduct Scheme. This is outlined in the functions of the Commission under the Act, which include:

- 'to oversee the investigation of reportable allegations'
- 'to monitor the compliance of entities with the reportable conduct scheme'.<sup>149</sup>

The Act does not specifically say that the Commission can enforce compliance with the scheme. But this is implied in the Commission's role in monitoring compliance and the powers in the Act for the Commission to enforce requirements.

### Oversight of organisations' responses to allegations of reportable conduct

The Commission's role in overseeing investigations of reportable allegations is central to the purpose of a reportable conduct scheme.

The Betrayal of Trust Inquiry found significant variations in systems and processes for responding to suspected child abuse across organisations. Similarly, the Commonwealth Royal Commission reported that it consistently heard about problems with the ways organisations responded to allegations of child sexual abuse including:

- where complaints were mishandled
- the response was ineffective or inadequate
- where complaints were dismissed, minimised or ignored.<sup>150</sup>

The Commonwealth Royal Commission noted that 'leaving institutions to handle complaints on their own might not result in the best outcomes for children'.<sup>151</sup> Both the Betrayal of Trust Inquiry and the Commonwealth Royal Commission recommended independent oversight as a key aspect of any reportable conduct scheme.

The Betrayal of Trust Inquiry recommended:

*That the Victorian Government authorise an independent statutory body with relevant powers and legal and operational resources to oversee and monitor the handling of allegations of child abuse by relevant government departments, religious and non-government organisations.*<sup>152</sup>

Recommendation 7.10 of the Commonwealth Royal Commission:

*'Reportable conduct schemes should provide for:*

- *an independent oversight body ...*
- *oversight body powers and functions that include:*

<sup>149</sup> *Child Wellbeing and Safety Act 2005 (Vic)*, s 16G. Note that the Act refers to organisations that must comply with the scheme as 'entities'.

<sup>150</sup> Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final report – Volume 7*, p. 13.

<sup>151</sup> *Ibid.*, p. 243.

<sup>152</sup> Betrayal of Trust Inquiry final report, [Executive summary and recommendations](https://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Report/Preliminaries.pdf) <[https://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child\\_Abuse\\_Inquiry/Report/Preliminaries.pdf](https://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Report/Preliminaries.pdf)>.

- i) scrutinising institutional systems for preventing reportable conduct and for handling and responding to reportable allegations, or reportable convictions*
- ii) monitoring the progress of investigations and the handling of complaints by institutions ...'*

The Act sets out the Commission's role in overseeing organisations' responses to allegations of reportable conduct. As well as the Commission's functions detailed above, the Commission's objectives under s 16F include 'to ensure that reportable allegations are properly investigated'.

Critical to the Commission's oversight role are requirements in the Act for organisations to:

- within 3 days – notify the Commission of a reportable allegation. As noted in the second reading speech for the scheme, this ensures the Commission is aware of every reportable allegation. It allows the Commission to identify the risk level of allegations and give organisations advice and support to effectively respond to the allegation and any risks.
- as soon as practicable and within 30 days – update the Commission about the organisation's response to the allegation. This allows the Commission to monitor the progress of investigations and identify where organisations may need extra advice and support about an investigation or response to the allegation.
- as soon as practicable at the end of an investigation – send the findings and reasons for the findings to the Commission along with any action proposed to be taken as a result of the allegation and the reasons for the action. This lets the Commission to review how an investigation has been undertaken and to advise organisations, for example, about improvements that could be made.
- if requested by the Commission in writing, give the Commission information or documents about a reportable allegation or an investigation.

As outlined above, organisations must notify the Commission of the findings of an investigation and reasons for the findings. The Act also allows the Commission to ask for more information about an investigation, with which organisations must comply. The Commission's online portal for organisations to upload required information at the end of an investigation includes an option to attach an investigation report and evidence relied upon. Providing an investigation report and the evidence relied on helps the Commission examine aspects of an investigation such as who was interviewed and whether the evidence supports the findings and actions taken. It allows the Commission to see whether an investigation was conducted appropriately and supports the Commission to help organisations improve their responses to allegations. It can also help the Commission to see trends and where sector specific advice or guidance may be warranted to improve responses to reportable allegations.

Providing detailed investigative reports that include evidence relied on to make a finding will likely complement the new Worker and Carer Exclusion Scheme when it starts on 1 July 2024.<sup>153</sup> The Worker and Carer Exclusion Scheme replaces the Victorian Carer Register and will allow the Social Services Regulator to investigate allegations of harmful conduct by out-of-home carers. The scheme includes provisions to avoid duplicating investigations into the same matter. Where appropriate, the new Social Services Regulator will be able to rely on an investigation report under the Reportable Conduct Scheme to prevent having to conduct another investigation into the same matter.

<sup>153</sup> At time of writing the Disability and Social Services Regulation Amendment Bill 2024 currently in Parliament proposes to delay the commencement of the Worker and Carer Exclusion Scheme for up to two years. Existing protections for children and young people will continue if the Bill passes and the Worker and Carer Exclusion Scheme is delayed.

The Commission's experience with the scheme allows it to take a risk-based approach to its oversight role and to see which allegations in which areas need the most focus. For example, the Commission has advised it only requests missing details or evidence not submitted by organisations where it considers it necessary based on risk. This determines the level of oversight the Commission provides.

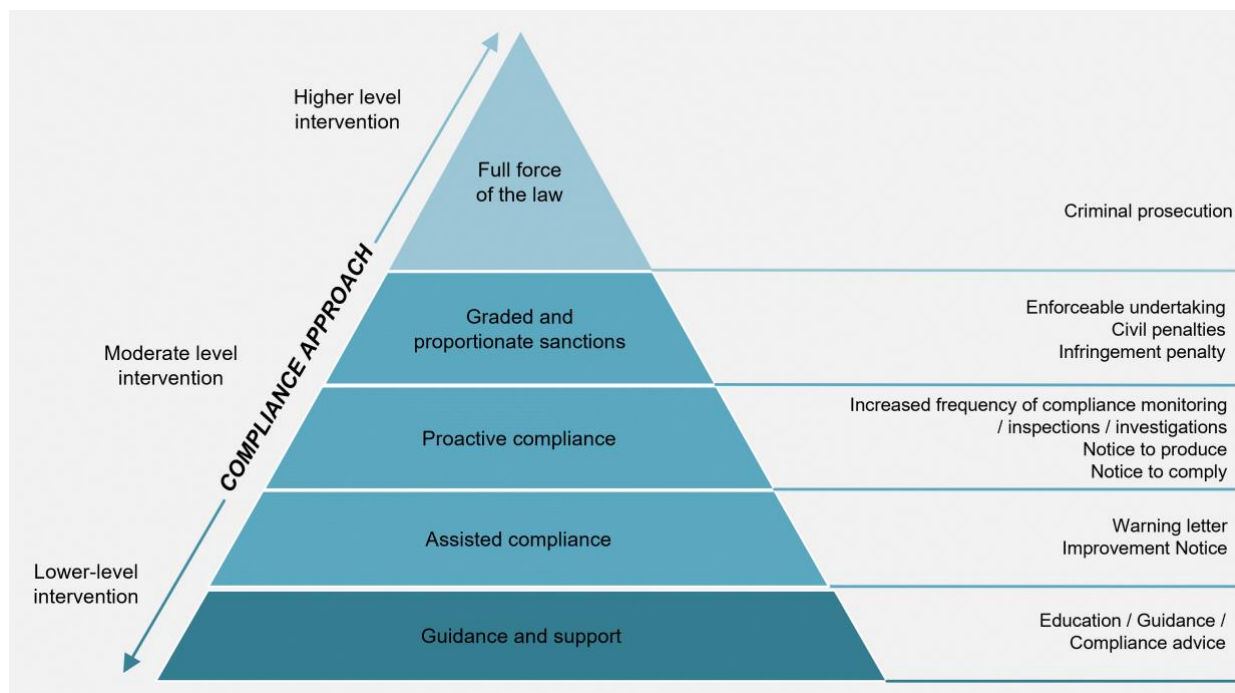
## Monitoring compliance with the scheme

It is essential that organisations respond appropriately to allegations of abuse and misconduct against children. This is the only way to address the harms highlighted in the Betrayal of Trust Inquiry and the Commonwealth Royal Commission reports. The Commission's ability to educate organisations about their obligations, monitor organisations' compliance with those obligations and enforce noncompliance appropriately and effectively is critical to ensuring organisations respond appropriately.

Modern regulatory schemes give regulators a broad set of proportionate powers and tools. A suite of contemporary powers allows regulators to take a risk-based approach to educating, monitoring and enforcing compliance. It equips a regulator with the resources it needs to respond quickly and efficiently to matters of concern to encourage compliance and realise the benefits of the scheme. An appropriate set of powers and tools can create regulatory efficiencies by providing cost-effective ways to encourage compliance. They let regulators reserve the need for more costly interventions, such as prosecutions, for more serious matters of noncompliance, or for organisations with repeated noncompliance where lower-level interventions have been ineffective.

A proportionate modern set of powers and tools would generally be spread across the spectrum of an enforcement pyramid as detailed in **Figure 9.1**, with a range of:

- lower-level tools such as education activities and warning letters to educate organisations about their obligations and respond to lower levels of risk
- mid-level tools such as notices to produce and infringement penalties to address moderate levels of noncompliance such as not complying with reporting obligations or not handing over information
- higher-level tools such as enforceable undertakings or prosecution to address areas of higher levels of risks such as where behaviour poses a significant risk of harm or where an organisation has been consistently noncompliant.

**Figure 9.1: Compliance and enforcement tool pyramid for regulatory schemes**

The Commission has powers under the Act to:

- request information and make recommendations about an entity's systems
- issue 'notices to produce' requested information about an entity's systems
- begin civil proceedings for noncompliance with a notice to produce
- prosecute offences under the Act.

Recent amendments<sup>154</sup> will give the Commission a new set of powers and tools to investigate and enforce compliance with the requirement under s 16M to notify the Commission of a reportable allegation. This will include powers to:

- appoint authorised officers to monitor and investigate compliance with s 16M
- enter and inspect premises to investigate possible noncompliance with s 16M
- exercise a range of powers when inspecting a premises – for example, search the premises, seize evidence, take copies of documents, make recordings and secure electronic equipment
- issue notices to produce certain documents or information, or notices to comply with certain requirements to address potential noncompliance with s 16M
- issue fines and start court proceedings for a declaration of noncompliance with a notice to produce or notice to comply in relation to action taken to enforce compliance with s 16M.

The amendments also introduce offences and penalties for the new enforcement powers. These will allow the Commission to act where an organisation is not complying with regulatory action.

The new powers align with similar powers introduced for regulators enforcing the Child Safe Standards. They are similar to powers under the soon-to-begin Social Services Regulatory Scheme. The new powers for the Commission will come into effect by 1 July 2024.

The new powers address a critical gap in the scheme. They will enable the Commission to appropriately investigate and enforce the requirement for organisations to notify the Commission of a reportable allegation.

<sup>154</sup> *Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Act 2023*, Part 4, Division 3.

These new powers are only available in relation to s 16M. The Commission does not have investigation powers to gather evidence for a prosecution, or powers to enforce compliance with other requirements under the scheme.

The Commission will be able to use its new enforcement powers from 1 July 2024. To do this, it will need to recruit new authorised officers and develop new policies and procedures guiding the use of these powers. This will be a significant change for the Commission.

While it would be possible to further amend the legislation to expand these new powers to support other obligations under the Act, it would be premature to do this before the current expansion of powers had been operationalised and there had been an opportunity to evaluate their use and impact on the scheme. The opportunity at this stage is to allow the Commission to operationalise its new powers, and then evaluate their cost, impact, and efficacy. This may provide evidence supporting the further expansion of these new enforcement powers.

While the new powers and tools address a gap in the scheme, the introduction of new offences means inconsistent offence provisions and penalty levels in the scheme. The penalty in the Act for not complying with s 16M is 10 penalty units (approximately \$1,923). In contrast, the penalty for not complying with some of the new investigative powers to monitor and enforce compliance of s 16M are much higher. For example, if a person hinders or obstructs an authorised officer who is investigating compliance with s 16M, the penalty is up to 30 penalty units for an individual and 120 penalty units for a body corporate (approximately \$5,769 or \$23,077).

Few submissions to the review commented on the Commission's powers or tools and penalty levels. Of comments received, some noted that the offence provisions are appropriate. Others commented that penalty provisions are too low. Two submissions noted that penalties are there to deter. These submissions suggested that penalties may need to increase to ensure compliance. In its submission to the review, the Commission noted that it considers the penalty for s 16M is inadequate. It believes the new enforcement powers for s 16M should apply to other offences under the scheme.

### **Opportunity 9.1**

*There is an opportunity to:*

- *evaluate the use of the new enforcement powers and their impact on the Reportable Conduct Scheme once they are operationalised, and to consider whether these powers should be expanded to support other obligations under the Act*
- *consider whether current offences and penalties under the scheme are sufficient and an effective deterrent and whether amendments to the Child Wellbeing and Safety Act are necessary.*

## Chapter 10: Information sharing

Information sharing is a key principle of the scheme.<sup>155</sup> The information sharing powers under the Child Wellbeing and Safety Act aim to ensure information can be shared appropriately to better protect children from abuse and harm.

The need to share information is balanced by the need to protect sensitive information. The Commission is bound by s 55 of the *Commission for Children and Young People Act 2012*. That Act prohibits the Commission from sharing protected information except to the extent necessary to perform its functions or where the Commission is expressly authorised to do so. Sections 16ZB and 16ZC of the Child Wellbeing and Safety Act also limit who the Commission can pass on information about reportable conduct investigations to.

Consultation for this review showed that most survey respondents either thought that information sharing provisions were appropriate or were unsure. But some felt that the scheme does not provide appropriate information sharing. They noted the information-sharing process can be difficult to navigate and considered it may not lead to thorough and fair investigations.

Any broadening of the Commission's ability to pass on information will require legislative change. It will need to carefully balance the sensitivity of the information against the fundamental principles of the scheme, including that protecting children is the paramount consideration.<sup>156</sup>

### Information sharing provisions

The Act includes powers for the Commission, organisations and regulators to pass on:

- information to each other about reportable allegations
- concerns that reportable conduct has been committed
- investigations, findings, reasons and recommendations made at the end of investigations
- any actions taken in response.

Powers are also provided for the Commission, heads of organisations and regulators to disclose information about reportable allegations to:

- Victoria Police
- an independent investigator
- relevant ministers
- the Department of Justice and Community Safety (for the purposes of a Working with Children Check)<sup>157</sup>
- the Chief Psychiatrist
- Disability Commissioners
- bodies in New South Wales and the Australian Capital Territory that oversee reportable conduct schemes.

The Commission highlighted several other examples where information-sharing arrangements with other Victorian integrity and oversight agencies, such as the Victorian Ombudsman and the

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<sup>155</sup> Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final report – Volume 8, Record keeping and Information sharing*.

<sup>156</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16B(1)(a).

<sup>157</sup> Administrative responsibility for the Working with Children Check passed from the Department of Justice and Community Safety to the Department of Government Services following the State election in 2022. The Department of Justice and Community Safety has still has policy responsibility for the Worker Screening Act. Both departments have been consulted in preparing this report.

Independent Broad-based Anti-Corruption Commission, would be valuable.<sup>158</sup> The Commission noted that these bodies will sometimes contact them to ask if the Commission is aware of a particular case that the body is considering, and whether there is scope for information to be shared between them.

The Commission is limited in its ability to reveal if it is working on a particular case, and to share information about that case. The other body must use its formal powers to compel the Commission to produce information. This creates an added burden on both the Commission and the integrity or oversight agency. It also reduces opportunities to avoid duplication and to minimise the impact on witnesses and victims of multiple investigations into the same incident. Information-sharing provisions need to be flexible enough to allow the Commission to share information with these agencies where the agency needs to know if an investigation is afoot, and where sharing information may make investigations more efficient.

In Western Australia, the Ombudsman has started administering a reportable conduct scheme. Tasmania and Queensland are also setting up reportable conduct schemes. As these schemes are established, information sharing arrangements need to be extended to capture these new bodies.

In principle, information sharing between regulators and other entities:

- creates regulatory efficiencies
- can help to reduce regulatory overlaps
- provides intelligence to other regulators about key areas to focus on.

However, information sharing is also not without cost. Systems need to be set up to allow the sharing of information, and information sharing must be done within the requirements of relevant law. The principles of the Reportable Conduct Scheme include that protecting children is paramount and that information should be shared throughout a reportable conduct investigation. Those principles are best served by efficient and comprehensive information-sharing arrangements.

#### **Opportunity 10.1**

*There is an opportunity to consider whether the reciprocal information sharing provisions between the Commission and other regulators and oversight bodies should be extended to:*

- *Victorian integrity and oversight agencies*
- *interstate bodies that are setting up new reportable conduct schemes.*

## **Information sharing under the Child Information Sharing Scheme**

The Act also establishes the broader information sharing provisions under the Child Information Sharing Scheme.

The Child Information Sharing Scheme enables proactive sharing of confidential information<sup>159</sup> between prescribed organisations and services (Information Sharing Entities). It also requires organisations to respond to information requests for the broad purpose of promoting children's safety and wellbeing. In Victoria, the Child Information Sharing Scheme covers:

- frontline services
- integrated family services

<sup>158</sup> Additional bodies are: Victorian Inspectorate, Office of the Victorian Information Commissioner, Office of the Public Advocate, the Victorian Equal Opportunity and Human Rights Commission, and the Wage Inspectorate Victoria.

<sup>159</sup> 'Confidential information' is defined in s 3 of the Child Wellbeing and Safety Act.

- Victoria Police
- universal health, education and justice services
- registered out-of-home care service providers
- the Department of Families, Fairness and Housing.

Information Sharing Entities under the Child Information Sharing Scheme and organisations required to comply with the Reportable Conduct Scheme are not necessarily the same. For example, organisations such as the Scouts and religious organisations are prescribed under the Reportable Conduct Scheme but are not included as Information Sharing Entities.

During the review's consultations, some organisations reported that this inconsistency creates barriers to sharing information between organisations. Some staff said they wanted to be able to share information more easily between them. The Reportable Conduct Scheme and the Child Information Sharing Scheme have different purposes and there is no need for organisations subject to the former to automatically be included in the latter.

The Commission is a prescribed organisation under the Child Information Sharing Scheme. It can therefore share information it collects under the Reportable Conduct Scheme with other Information Sharing Entities, when the threshold for sharing information is met.<sup>160</sup> The Commission also has the power to share information about a reportable allegation and for investigating a reportable allegation with the head of an entity and an independent investigator.<sup>161</sup> The Commission is the appropriate body to decide when information it has received through the Child Information Sharing Scheme can and should be passed to organisations outside that scheme.

## Information sharing with organisations

The Commission will sometimes receive confidential information under the Child Information Sharing Scheme that may be relevant to an organisation that is conducting a reportable conduct investigation but which is *not* an Information Sharing Entity. This may be information from organisations such as Victoria Police or Child Protection, which is not otherwise available to the organisation. Both organisations and the Commission raised issues about how confidential information obtained under the Child Information Scheme can be shared with organisations outside that scheme.

This confidential information may include evidence provided by children and other family members about injuries or drug and alcohol use issues. The subject of the allegation may not be aware that their child or family members have spoken to authorities. The Commission will only share this type of information with an organisation with the permission of organisation that supplied the information.

The Act does not say that sensitive information shared by the Commission with organisations outside the Child Information Sharing Scheme must be treated as confidential and not distributed without permission. The Commission therefore relies on deeds of confidentiality with the investigator or head of an organisation when sharing confidential documents. These deeds of confidentiality restrict the use of the shared information and prohibit further sharing of the information by the head of the organisation or the investigator.

The Commission reported during consultation that this process can be time consuming and resource-intensive. It can result in delays in relevant information being provided to an organisation to assist their investigation.

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<sup>160</sup> Refer to the *Child Information Sharing Scheme ministerial guidelines 2023*.

<sup>161</sup> *Child Safety and Wellbeing Act 2005 (Vic)*, s 16ZC

Staff in organisations also noted the importance of being able to access this information during a reportable conduct investigation. Survey responses suggested that some staff in organisations would prefer to access more confidential information from the Commission and Victoria Police during investigations of reportable conduct allegations. Some staff said they had sometimes found it challenging to receive timely information from the Commission and that the information they received was so heavily redacted that it was not useful.

For the scheme to function as intended, organisations and the Commission need to be able to share relevant information, as appropriate. While this is a sensitive area, there is scope to clarify how and when the Commission can share confidential information with organisations.

Creating a requirement that information shared by the Commission with organisations that are not Information Sharing Entities must be treated confidentially and cannot be shared further without permission, would enable the Commission to share this information more easily with organisations.

The Child Information Sharing Scheme is subject to a statutory review, due to be tabled in 2024. That review could consider any requirements for possible changes to the Child Information Sharing Scheme.

### Opportunity 10.2

*The Act does not currently state that confidential information shared by the Commission with organisations outside the Child Information Sharing Scheme must be treated as confidential and not distributed without permission.*

*There is an opportunity to amend Part 5A of the Child Wellbeing and Safety Act to clarify that confidential information the Commission obtains under the Child Information Sharing Scheme and shares with organisations and investigators that are not Information Sharing Entities for the purposes of a reportable conduct investigation must be treated as confidential and not distributed without permission.*

## Information sharing with regulators

There are 2 categories of regulators that can play a role in the scheme (Chapter 10). These are regulators of organisations<sup>162</sup> and regulators of employees.<sup>163</sup> Regulators play an important role in supporting the scheme's operation through their specific knowledge of the regulated organisations and the powers they have to investigate reportable allegations.<sup>164</sup>

The Commission regularly shares information with regulators to support them in their regulatory roles. The Commission also regularly receives information from other regulators relevant to the Commission's role. This includes where they have concerns that a mandatory notification of a reportable allegation may not have been submitted to the Commission as required under the scheme.

<sup>162</sup> These regulators include: a department that is responsible for regulating the organisation; a department that provides funding to the organisation; the Victorian Registration and Qualifications Authority if the organisation is referred to in item 1, 2, 3 or 4 of Schedule 3; and any other body – that regulates or funds the entity; and that is prescribed to be a regulator in respect of the organisation.

<sup>163</sup> These regulators include: the Suitability Panel established by s 98 of the *Children, Youth and Families Act 2005*; Ahpra, established by s 23 of the Health Practitioner Regulation National Law; a National Health Practitioner Board established by s 31 of the Health Practitioner Regulation National Law; the Victorian Institute of Teaching continued in operation by s 2.6.2 of the *Education and Training Reform Act 2006*; and any other body that is prescribed to be a regulator in respect of the employee.

<sup>164</sup> *Child Wellbeing and Safety Act 2005*, s 16B(1)(f).

For example, when a registered teacher is the subject of a reportable allegation, the Commission notifies and then refers any findings of substantiated reportable conduct to the Victorian Institute of Teaching. Since the introduction of the scheme until 30 June 2022 the Commission has notified the Victorian Institute of Teaching of 1,023 notifications relating to 968 registered teachers and has shared information about the findings in 732 finalised notifications. In 2021–22 the Commission referred all findings from completed reportable conduct investigations involving registered teachers to the Victorian Institute of Teaching.

## Information sharing with Victoria Police

Under s 16ZC of the Act, the Commission, the head of an organisation and a regulator may pass on information to the Chief Commissioner of Police about:

- reportable allegations
- concerns that reportable conduct has been committed
- investigations, findings, reasons and recommendations made at the end of investigations
- any actions taken in response.

There is no expectation that Victoria Police shares information with the Commission, organisations or regulators.

If a reportable allegation may involve criminal conduct, it must be reported to Victoria Police. Also, under the Crimes Act, any adult who forms a reasonable belief that a sexual offence has been committed by an adult against a child under 16 must report that information to Victoria Police. It is a criminal offence to not pass on that information to Victoria Police.

The Commission expressed strong support during consultations for the benefits of information sharing with Victoria Police under the scheme. The Commission advised that Victoria Police has been notified of several cases of potential criminal conduct because of the scheme. Of the 1,238 notifications of reportable allegations made to the Commission in 2021–22, 55% were reported to Victoria Police by either the organisation or the Commission due to the possibility of criminal conduct. For the period 1 July 2021 to 30 June 2022, the Commission referred 230 notifications that were not previously reported to Victoria Police.

Occasionally, the Commission has also received information from Victoria Police that has helped it identify matters that should have been reported to the Commission but were not. (One example is a breach by the head of an organisation of their obligations under the scheme.) Victoria Police noted during the consultation that it meets with the Commission regularly to discuss systemic issues under the scheme and potential improvements.

During consultations, some staff in organisations noted that they could not get information from Victoria Police. In particular, staff wanted to receive witness statements from police interviews that were relevant to reportable conduct investigations.

Victoria Police does share information with the Commission, regulators and organisations, but this does not necessarily mean that it will share witness statements. Witness statements may not always be appropriate to share because they may have been provided for another purpose, or may not be able to be shared for legal reasons – such as a statement that has been taken as a Visual Audio Recorded Evidence statement.

Victoria Police currently shares evidence on a case-by-case basis, and only with the approval of a sergeant or more senior officer. When statements cannot be shared, Victoria Police will share excerpts or a summary of a witness statement when possible.

Victoria Police investigations have priority over reportable conduct investigations. As noted in Chapter 8, organisations cannot investigate an allegation that has also been referred to police

unless Victoria Police provides clearance. If Victoria Police can share a summary or an excerpt of a statement, then this may be enough to allow a reportable conduct investigation to go ahead without the need to ask witnesses to repeat their story. In some cases, parents and guardians will, understandably, not allow their child to be interviewed again.

Organisations conducting investigations need to consider the welfare of witnesses, particularly children, when deciding whether they need more information. A full police statement should not be necessary in every case. In some cases, the welfare of a child may require a reportable conduct investigation to progress without any more evidence from a child.

## Information sharing across borders with law enforcement

The Commission cannot share information with Commonwealth or other state and territory law enforcement bodies. During consultations the Commission reported that the absence of this power has affected investigations under the scheme, including one of the Commission's own motion investigations. In some cases, law enforcement bodies outside Victoria may have information or documents relevant to a Victorian reportable conduct investigation. To get this information, the Commission would have to disclose information about the allegation but is currently unable to do so. In other cases, the Commission may hold information of interest to interstate police – for example, information about potentially criminal conduct or serious risks to children in their state or territory – but cannot share this information.

Enabling the Commission to disclose to and request information from Commonwealth, state and territory law enforcement agencies would allow the exchange of information about potentially criminal conduct or serious risks to children. Regulations to prescribe these police agencies would allow the Commission to share information with these bodies and improve child safety outcomes. This would align with the reportable conduct schemes in New South Wales and Tasmania, which allow relevant information to be passed on to Commonwealth, state and territory law enforcement. While there would be issues to consider in consultation with Victoria Police, there is an opportunity to improve information sharing across borders.

### Opportunity 10.3

*There is an opportunity to amend the Child Wellbeing and Safety Regulations 2017 to prescribe Commonwealth, state and territory law enforcement agencies to allow the Commission to share appropriate information with police from other states and territories and other law enforcement agencies.*

## Information sharing with the Working with Children Check

The Working with Children Check is linked to the Reportable Conduct Scheme in that a finding that a person has committed reportable conduct is a 'relevant disciplinary or regulatory finding' under the *Worker Screening Act 2020*.

If a finding is made by the Commission, the head of an organisation or a regulator that an employee of an organisation has committed reportable conduct, the Commission must supply certain information to the Secretary of the Department of Government Services (and previously to the Department of Justice and Community Safety).<sup>165</sup>

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<sup>165</sup> Administrative responsibility for the Working with Children Check passed from the Department of Justice and Community Safety to the Department of Government Services following the State election in 2022. The Department of Justice and Community Safety has kept policy responsibility for the *Worker Screening Act*. Both departments have been consulted in preparing this report.

This information includes:

- the fact that a finding has been made
- the reasons for the finding
- the name and date of birth of the employee.

The Commission may choose not to notify the Secretary of the finding if:

- the employee's reportable conduct would be better addressed through training or supervision
- the finding has already been referred to the department
- for any other reason it is not appropriate for the Commission to give the notification.<sup>166</sup>

## What happens when a notification is made

If a person holds a Working with Children Check, a notification will trigger a reassessment of that person's fitness to hold that clearance. That reassessment can result in the clearance being revoked or retained.

If subjects do not have a Working with Children Check at the time of the notification, but apply for one after a substantiated finding is made, the Working with Children Check will consider the previous findings of reportable conduct in its assessment of the applicant's eligibility to hold a Working with Children clearance.

From the scheme commencement until 30 June 2022, the Commission had referred 986 people found to have committed reportable conduct to the Department of Justice and Community Safety.<sup>167</sup> These individuals had a total of 2,312 substantiated allegations.

## Disclosure of information from the Commission to the Working with Children Check Unit

### Detail of reportable conduct

When the Commission notifies the Secretary to the Department of Government Services of a finding of reportable conduct, only limited information about the investigation has to be shared. The Working with Children Check Unit needs, in some cases, to get more information to allow it to assess or reassess a person's status under the Working with Children Check.

In these cases, although the Commission is limited in what information it can share,<sup>168</sup> it will routinely share the information listed in s 16ZD(1) and some limited extra information. The Commission will also share the contact details for the organisation that conducted the investigation. The Working with Children Check Unit reports that when it then asks the organisation for more information, this can create duplication and confusion for organisations because they have previously provided this information to the Commission and expect that the Commission will share it.

There are several reasons that the Commission is limited in the information it can and will share with the Working with Children Check Unit:

- The legislation restricts what information can be shared. These restrictions are in both the limited terms of the sharing allowed under s 16ZD and the overarching restrictions placed on the Commission under the *Commission for Children and Young People Act 2012* (refer to s 55).

<sup>166</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16ZD(2).

<sup>167</sup> Commission for Children and Young People 2022, *Annual report 2021–22*, p. 108.

<sup>168</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16ZD.

- The organisation that conducted the investigation is often best placed to provide the Working with Children Check Unit the most complete and up-to-date information.
- Sharing information can often be resource-intensive because information needs to be carefully checked and sometimes redacted before it can be shared.
- The Working with Children Check Unit sometimes has to share information with alleged perpetrators. The Commission considers that the unit will be better informed about the potential risks and impacts of sharing this information if it deals directly with the organisation that has contact with victims, parents and carers.

Given the broad reach of the Working with Children Check, it is important that when reportable conduct is substantiated, a person's status under the Working with Children Check is reassessed as quickly as possible. Information provided to the Working with Children Check Unit is protected under the provisions of the Worker Screening Act.<sup>169</sup> And the Working with Children Check Unit ultimately collects this information, just from the relevant organisations rather than the Commission.

If the Commission could share more details about a finding of reportable conduct with the Working with Children Check Unit, assessments and reassessments could be completed more quickly and efficiently. This would contribute to the safety of children.

Some of the limitations on information sharing are due to the Commission's capacity, and others are due to concerns about what information may ultimately need to be released to an alleged perpetrator. These are matters for the Commission and the Working with Children Check Unit, and the Commission can choose to discuss these further.

Insofar as the limitations are due to restrictions in legislation, there is an opportunity to amend the Act to give the Commission a clear power to share broader information about a substantiated finding.

### **Sharing unsubstantiated allegations and other information**

The Working with Children Check considers criminal and disciplinary decisions and processes that are governed by a level of rigour and oversight. An assessment or reassessment of a worker's eligibility to hold a clearance is only triggered by certain formal decisions or findings, including a substantiated allegation of reportable conduct. Unsubstantiated allegations under the Reportable Conduct Scheme, or ongoing investigations, cannot be used to trigger an assessment of a worker's eligibility to hold a clearance.

Given the scheme's broad impact, it is important to ensure people are only denied a clearance under the Working with Children Check scheme, or have their clearance reconsidered, if their conduct has been fairly investigated and tested in a legal or administrative process.

However, when a reassessment of a worker's clearance is triggered by one of the relevant decisions recognised by the Worker Screening Act, the Working with Children Check Unit can consider a broad range of information including:

- the person's behaviour since the allegation
- the likelihood of future threat to a child caused by the person
- any other matter the Secretary considers relevant to the reassessment.

This would allow the Working with Children Check Unit to consider information about other allegations of reportable conduct, even if they were not substantiated or were still under investigation. This information is sometimes shared, but this is infrequent and the Commission

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<sup>169</sup> *Worker Screening Act 2020*, s 130.

cannot proactively advise the unit if it becomes aware of other allegations against a person whose clearance is being reconsidered.

Although details of unsubstantiated allegations and other information, such as ongoing investigations, may add context to information held by the Working with Children Check Unit, there are many reasons why the Commission would need to be cautious about sharing this information:

- The bar for alleging reportable conduct is intentionally set very low. As noted in other chapters, sometimes trivial or irrelevant matters are reported under the scheme.
- Where an allegation is not substantiated it is important that any impact on the person who is the subject of the allegation is minimised. Allowing an unsubstantiated finding to be shared with the Working with Children Check Unit may have an impact on a person's right to work or volunteer with children.
- The perception that an allegation can permanently damage a person's career and reputation drives organisations' reluctance to notify the Commission of an allegation within the 3-day time limit. If an unsubstantiated allegation could later be used as part of the reassessment of a Working with Children Check, this may contribute to organisations' reluctance to pass on allegations.

Balanced against this is the need to protect children from harm, and the fact that this information could only be considered when there has already been a trigger (such as a criminal charge) that justifies a reassessment of a clearance to work with children. What looks like a minor or trivial incident can, when put into the context of other offences, charges or substantiated findings, reveal a pattern of behaviour.

The Commission supports greater information sharing in these circumstances. It considers that an amendment that would allow it to proactively share this type of information with the Working with Children Check Unit is critical for child safety.

While sharing will be justified, it should be limited so information is only shared when the unit can legally use that information. When a reassessment of a person's clearance is in progress, as noted above, the unit has a broad discretion to consider other information.

#### **Opportunity 10.4**

*There is an opportunity to create a broad information sharing power that allows the Commission to share information with the Working with Children Check Unit when:*

- *the Working with Children Check Unit requests more information about a substantiated allegation of reportable conduct*
- *a substantiated finding of reportable conduct has already been shared with the Working with Children Check Unit and the Commissioner becomes aware of more allegations against the same person*
- *the Working with Children Check Unit is reassessing a person's clearance to work with children and asks the Commission if it has other relevant information about the person.*

The Commission also needs to be able to ask if a person is the subject of a reassessment to decide if information it holds should be shared with the Working with Children Check Unit. This could be achieved through amending the Worker Screening Act, discussed below.

## **The Working with Children Check Unit disclosing information to the Commission**

The Worker Screening Act limits the information that the Working with Children Check Unit can share. The Commission noted in its submission that it has requested the outcome of Working with

Children Check reassessments after it has notified of substantiated reportable conduct, and that the Working with Children Check has not been able to share this information. Every substantiated finding referred by the Commission triggers an assessment or reassessment of a worker's eligibility to hold a clearance. But these assessments and reassessments may consider more information than is contained in the reportable conduct report. Each assessment or reassessment has a range of different outcomes.

As noted above, the Commission has a discretion not to notify the Working with Children Check of substantiated reportable conduct when it is 'not appropriate'.<sup>170</sup> The Commission has notified the Working with Children Check of 986 people found to have committed reportable conduct since the scheme began. It would help the Commission to evaluate the impact of these notifications if it knew the results of these cases. Even though an instance of reportable conduct may be only one part of the information the Working with Children Check considers, understanding what conduct can result in a Working with Children Check being revoked would help the Commission to exercise its discretion. It would also provide data that would help measure the scheme's impact. In an environment where the Commission has limited resources, it needs the evidence that will help it to use those resources where they have the most impact.

The Working with Children Check raises a similar issue. It reports that sometimes members of the public will report reportable conduct to the Working with Children Check. The Working with Children Check Unit directs the person to the Commission and the relevant organisation. The unit would like to be able to request confirmation that the Commission is aware of the matter. But under current settings that information cannot be shared.

There is an opportunity to improve the efficiency of the Reportable Conduct Scheme by allowing for greater information sharing from the Working with Children Check Unit to the Commission. In particular, the unit should be able to share information about the result of the Commission's referrals. Whether these are shared in every case, or in aggregate rather than case by case, are matters for these 2 agencies to discuss. However, the Worker Screening Act could change to allow greater discretion in the sharing of information between the Working with Children Check Unit and the Commission.

#### **Opportunity 10.5**

*There is an opportunity to amend the Child Wellbeing and Safety Act to give the Commission a clear power to share broader information about a substantiated finding than is currently the case, and to communicate more transparently with the Working with Children Check Unit about the progress of cases.*

*Similarly, the Worker Screening Act 2020 could be amended to allow greater discretion in the sharing of information between the Working with Children Check Unit and the Commission, to allow the Commission to:*

- *know when a person's clearance is being reassessed*
- *understand the impact of its referrals.*

## **Sharing information with the subject of an allegation**

Chapter 8 of this review noted the importance of ensuring the subject of an allegation is afforded natural justice during an investigation. The Commission noted in its submission that it is often contacted by subjects of allegations to raise concerns about natural justice. These people may also have questions about the outcome of an investigation. Questions often relate to whether the

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<sup>170</sup> *Child Wellbeing and Safety Act 2005* (Vic), s 16ZD(2)(c)

outcome has been shared with other bodies and whether the information they have received from an organisation is accurate.

The Commission has no specific power to release information to the subject of an allegation. The release may sometimes fall within the Commission's existing powers, but this will depend on the details of each case.

While the Commission would like a clearer basis to share some information with the subject of an allegation, it notes that this must be limited and that information that is highly confidential should not be released. Similarly, information that may influence any police investigation or that could create any risk to victims or witnesses should not be shared.

This is a difficult line to draw. It risks the Commission being asked to become the bridge between an organisation that is conducting an organisation and the subject of that allegation.

Nevertheless, there is an opportunity to use information sharing to help ensure the subject of an allegation gets information they are entitled to. This information may need to be restricted to:

- the fact that a finding has been made
- what other entities that finding has been shared with.

Releasing information to the subject of an allegation should be entirely the choice of the Commission.

#### **Opportunity 10.6**

*There is an opportunity to amend the Child Wellbeing and Safety Act to allow the Commission to share limited information with the subject of a reportable allegation. Sharing information with a subject should always be at the Commission's discretion.*

## **Self-identification of children**

Section 16ZE of the Act prohibits a person from publishing any information that would enable the identification of a person who has notified the commission of a reportable allegation. It also prohibits the publication of any information that would allow the identification of a child in relation to whom a reportable allegation was made, or a finding of reportable conduct was made.

While this provision exists to protect the identity of children and those who make reports, the Commission argued in its submission that those who experience reportable conduct, should be free to tell their story without fear of criminal sanction.

Giving victims the ability to tell their story without the risk of prosecution recognises their right to agency and, for some, can be an important part of the healing process.<sup>171</sup>

The *Judicial Proceeding Reports Act 1958* has recently been amended to include a process allowing victim survivors of a sexual offence to identify themselves, without asking the court for permission. These provisions include a process to allow child victim survivors to waive their right to anonymity. This process requires the child to both give permission for any publication, and for there to be a supporting statement that sets out that the child understands what it is to be identified as a victim of a sexual offence, and the consequences of this loss of anonymity. The statement must be made by a registered medical practitioner or a psychologist.<sup>172</sup>

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<sup>171</sup> Commission of Children and Young People submission , p. 48

<sup>172</sup> *Judicial Proceedings Reports Act 1958*, ss 4(1BC) and 4(1BD)

This process has been designed for children who are victim survivors of sexual offences that are within s4 of the *Criminal Procedure Act 2009*. These are, in general, sexual offences that can be tried on indictment and do not include all the types of sexual or other misconduct that are captured by the Reportable Conduct Scheme.

While there is an opportunity to ensure that children who are affected by reportable conduct can tell their stories, more work is needed to determine what the limits on this should be, and what the impact on the scheme may be.

While the Judicial Proceeding Reports Act process is designed for sexual offences, reportable conduct covers a broad range of conduct. Some instances of reportable conduct will be covered by the Judicial Proceeding Reports Act process, but many will not be. Much of the conduct that is reported under the scheme will not be tried criminally, or will not amount to a criminal offence. And not all reportable conduct amounts to sexual misconduct.

The question is both whether children should be able to self-identify (and if so, what process would there be); and should those who are the subject of reportable conduct allegations be able to be identified? While the prohibition in s 16ZE is designed to protect children, it also may have had the effect of preventing the publication of the names of people accused of reportable conduct.

More work is needed to determine whether s 16ZE should allow for an exemption for children who want to publish the fact that they were the subject of an allegation of reportable conduct. The questions that need to be considered include:

- What level of formality would be needed for children to give permission to be identified?
- Should this differ for sexual and non-sexual conduct?
- Should this differ for conduct outside the employee's workplace?
- Would permitting self-identification mean there were no barriers to publishing the name of the employee who is the subject of the allegation – other than those imposed by the Judicial Proceeding Reports Act?
- Would allowing self-identification lead to greater resistance to notifying the Commission of allegations?
- If there was a dispute about whether an allegation of reportable conduct was made, or whether the conduct reported fell within the ambit of the scheme, would the Commission be able to make a public statement to clarify?

### **Opportunity 10.7**

*The need for victim survivors of sexual assault to tell their story has been recognised in the Judicial Proceeding Reports Act 1958. There is an opportunity to consider whether this principle should be extended to the Reportable Conduct Scheme, and whether a process is included in the Child Wellbeing and Safety Act that allows children to consent to being identified as the subject of a reportable conduct allegation. This needs to include consideration of what the impact of such an exemption would be on employees accused of reportable conduct.*



# Appendix 1: Review of Victoria's Reportable Conduct Scheme

## Terms of reference

### Background

The overarching goal of Victoria's Reportable Conduct Scheme (Scheme) is to make organisations safer for children. The Scheme is established under the [Child Wellbeing and Safety Act 2005](#) (Act) and based on the fundamental principles established under section 16B, including that:

*the protection of children is the paramount consideration in the context of child abuse or employee misconduct involving a child.*

The Scheme commenced in stages from 1 July 2017. It was introduced in response to recommendations of the *Betrayal of Trust* report for the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations, which found serious incidences of child abuse in some of our most trusted and important institutions and organisations. In December 2017, the final report of the *McLellan Royal Commission into Institutional Responses to Child Sexual Abuse* also made recommendations for state and territory governments across Australia to implement reportable conduct schemes.

The Scheme works to protect children from abuse and misconduct. It applies to organisations that exercise close care, supervision or authority over children, for example schools, kindergartens, childcare, government departments, religious bodies, hospitals, disability services and overnight camps for children. The Scheme requires organisations to respond to allegations of child-related misconduct (reportable conduct) made against their employees including volunteers, and to report those allegations to the Commission for Children and Young People (the Commission).

Organisations must put systems in place to prevent reportable conduct and enable the notification of reportable conduct to the head of the organisation and to the Commission.

The Commission is responsible for administering, overseeing and monitoring the Scheme.

### Purpose

Section 16ZN of the Act requires the Minister for Child Protection and Family Services to conduct a review of the first five years of operation of the Scheme and consider whether the Scheme should be expanded to apply to any other entities.

The review will examine the operation of the Scheme since it came into effect in July 2017 to understand if it is working as intended. The review will consider whether the Scheme is achieving its overarching objective of making organisations safer for children, by examining the operation of elements of the scheme aimed at achieving the objectives, as outlined in the second reading speech, including:

- ensuring that allegations of reportable conduct by employees are appropriately reported and responded to

- improving oversight of responses to allegations of reportable conduct in organisations that exercise care, supervision and authority over children
- maintaining the primacy of an investigation by Victoria Police of any allegations of criminal misconduct and ensuring suspected criminal conduct is being reported to Victoria Police
- enabling information sharing with the Working with Children Check, relevant professional registration bodies and regulators, in relation to substantiated allegations of reportable conduct, in order to facilitate reassessment of a person's suitability to continue working or volunteering with children.

## Scope

The review will consider relevant data sources and engage with the Commission and other key stakeholders including representatives of entities required to comply with, or intended to be protected by the Scheme. The review will consider elements in the Act created to achieve the above objectives and the principles of the Scheme including the operation of the:

- provisions requiring organisations to put systems in place to ensure allegations of reportable conduct are reported, as well as reporting and investigation requirements and their impact on reporting and responses to reportable allegations
- oversight provisions and their impact on improving responses to allegations of reportable conduct
- provisions giving police investigations priority and ensuring that potential criminal conduct is reported to Victoria Police
- provisions enabling sharing of information with the Working with Children Check, professional registration bodies and regulators.

The review will also consider:

- the scope of organisations required to comply with the Scheme and whether the scope should be expanded to include additional entities, as per the statutory requirement of the review
- whether there are any opportunities for streamlining processes to reduce duplication. For example, considering alignment with similar schemes in other states and territories, the interplay with other regulatory schemes, and whether there are gaps or overlaps in the regulation of sectors subject to multiple regulatory schemes.
- other relevant matters raised throughout the review relating to the operation of the Scheme.

In conducting the review, regard will be given to recommendations from the Betrayal of Trust report and the Royal Commission into Institutional Responses to Child Sexual Abuse as well as the principles of the Scheme (see **Appendix**).

## Reporting

The department will prepare and deliver to the Minister for Child Protection and Family Services a final report documenting its methodology, research and data sources, analysis and any recommendations.

The Minister will table the review's final report in both houses of Parliament on or before 1 July 2023.

## Principles of the Reportable Conduct Scheme

Section 16B of the *Child Wellbeing and Safety Act 2005* sets out the principles of the Reportable Conduct Scheme, including:

The Reportable Conduct Scheme is based on the fundamental principles that—

- a. the protection of children is the paramount consideration in the context of child abuse or employee misconduct involving a child
- b. criminal conduct or suspected criminal conduct should be reported to the police
- c. a police investigation into the subject matter of a reportable allegation has priority and, unless the investigation may otherwise be conducted under any other Act, an investigation under the Reportable Conduct Scheme must be suspended or must not be commenced until the police advise or agree that it may proceed
- d. the Commission and others involved in the Reportable Conduct Scheme should work in collaboration to ensure the fair, effective and timely investigation of reportable allegations
- e. employees who are the subject of reportable allegations are entitled to receive natural justice in investigations into their conduct
- f. regulators have specific knowledge of the roles of the entities or the professional responsibilities of the employees they regulate and, if their functions permit, play an important role in the investigation of reportable allegations
- g. information should be shared during and after the conclusion of an investigation into a reportable allegation
- h. after the conclusion of an investigation into a reportable allegation, the Commission may share information with the Department of Justice and Community Safety for the purpose of a Working With Children Check

The Commission should educate and guide—

- a. entities in order to improve their ability to identify reportable conduct and to report and investigate reportable allegations
- b. regulators in order to promote compliance by entities with the Reportable Conduct Scheme.

## Appendix 2: List of stakeholders consulted

The review consulted with stakeholders including:

- the Commission for Children and Young People
- government departments
- other regulators
- organisations required to comply with the scheme
- unions
- representatives from various professional associations for organisations required to comply with the scheme.

Between September and October 2022, a public consultation process was undertaken through the Engage Victoria website. Members of the public were invited to complete a survey and to make a submission to the review. Feedback was sought from individuals and organisations subject to the scheme on their:

- experiences with the scheme
- involvement with organisations that engage with children and young people.

The department also engaged children and young people to gain an understanding of how they perceive the scheme is operating.

The following stakeholders provided input into the review.

### Local government and peak bodies

Casey City Council

Frankston Council

Glen Eira City Council

Melbourne City Council

Municipal Association of Victoria

Yarra Ranges Council

### Out-of-home care providers

Anglicare

Berry Street

Mackillop Family Services

OzChild

Uniting Vic Tas

Yarra Ranges Council

### Disability sector

Cerebral Palsy Support Network

Early Childhood Intervention Australia Victoria/Tasmania

National Disability Services

Victorian Aboriginal Child Care Agency

Youth Disability Advocacy Service

## **Overnight camp**

YMCA Victoria, Risk Safety, Environment and Quality

## **Regulators**

Commission for Children and Young People

Victorian Institute of Teaching

Victorian Registration and Qualifications Authority – Department of Education

Working with Children Check, Department of Government Services

Working with Children Check, Department of Justice and Community Safety

## **Interstate**

Office of the Children's Guardian (New South Wales)

## **Youth organisations**

Whitelion

Youth Affairs Council Victoria

## **Advocacy groups for victim survivors**

In Good Faith Foundation

Steven Unthank and Larissa Kaput

## **Hospitals**

Monash Health

The Royal Children's Hospital

Western Health

## **Unions**

Australian Education Union Victorian Branch

Australian Services Union

Community and Public Sector Union

Independent Education Union Victoria Tasmania

## **Organisations and individuals who made submissions to the review**

Affinity Education

Australian Capital Territory Ombudsman  
Australian Health Practitioner Regulation Agency  
Australian Services Union Victoria/Tasmania Branch  
Berry Street  
Bus Association Victoria  
Centre for Excellence in Child and Family Welfare  
Children in Care Collective  
Child Protection Advocate (Steven Unthank) – Country Fire Authority  
City of Casey  
Commission for Children and Young People  
Community and Public Sector Union  
Department of Families, Fairness and Housing  
Department of Families, Fairness and Housing / Department of Health and Human Services Support Group  
Department of Justice and Community Safety  
Diocese of Ballarat Catholic Education Limited  
Diocese of Sale Catholic Education Limited  
Frankston City Council  
Independent Education Union of Australia Victoria Tasmania Branch  
Independent Schools Victoria  
Individual – sports sector  
Junction Support Services  
Know More Legal Service  
Larissa Kaput  
Life Without Barriers  
Local government  
Mackillop Family Services  
Melbourne Archdiocese Catholic Schools  
Monash HCC  
Municipal Association Victoria  
National Disability Service  
Parent stakeholder  
Individual  
Support Group  
The Y  
Victorian Aboriginal Child Care Agency  
Victorian Disability Worker Commission and Disability Worker Registration Board of Victoria

Vicsport

Say Sorry

Salvation Army

Steven Unthank – Jehovah's Witnesses

Uniting Church in Australia Synod of Victoria and Tasmania

Uniting Vic Tas

## Appendix 3: Outcome of consultation survey

The department published a survey on the Engage Victoria website<sup>173</sup> from 16 September 2022 to 30 October 2022 along with a discussion paper and the review's terms of reference to inform submissions to the review.

The department received 184 survey responses and 44 written submissions from organisations and individuals including regulators, service providers, advocacy groups and members of the public.

### Summary of the survey's quantitative data

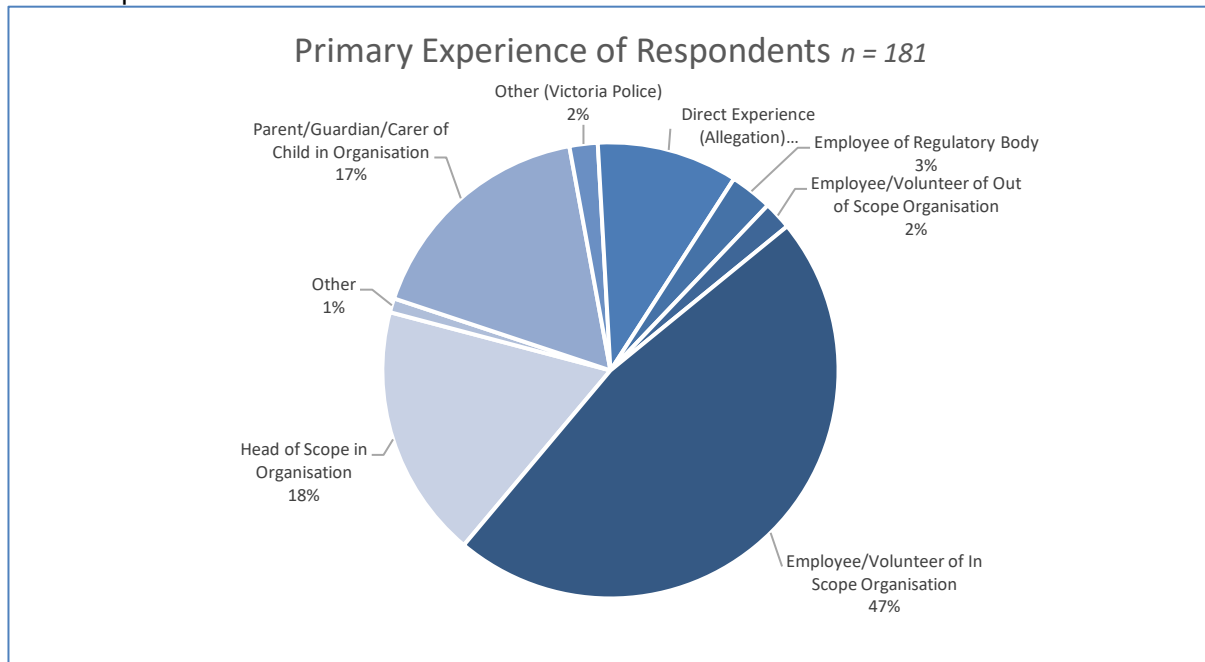
#### Profile of respondents

The table below details survey responses by sector, with the education sector making up the largest proportion of respondents to the survey.

Sector	Number of survey respondents	Survey respondents as a percentage of total survey responses (%)
Education (primary/secondary school)	82	44.5
Early childhood education	27	14.7
Other	18	9.8
Health	15	8.2
Child protection	12	6.5
Care services (out-of-home care services such as foster and kinship care)	9	4.9
Other (local government)	8	4.3
Religious body	5	2.7
Other (Victoria Police)	5	2.7
Disability	2	1.1
Youth justice	1	0.5

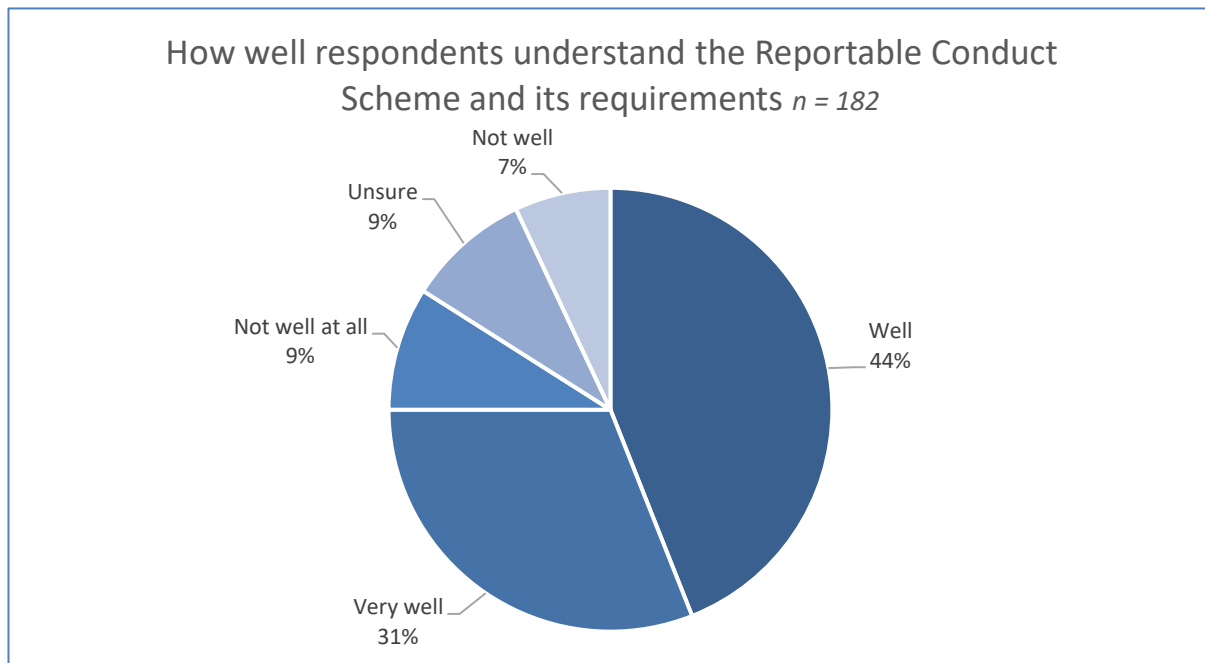
<sup>173</sup> Refer to the [Engage Victoria website](https://engage.vic.gov.au/project/review-of-Victorias-Reportable-Conduct-Scheme/participate) <https://engage.vic.gov.au/project/review-of-Victorias-Reportable-Conduct-Scheme/participate>.

Across all sectors, most respondents identified as 'employees/volunteers of an organisation subject to the Reportable Conduct Scheme'.



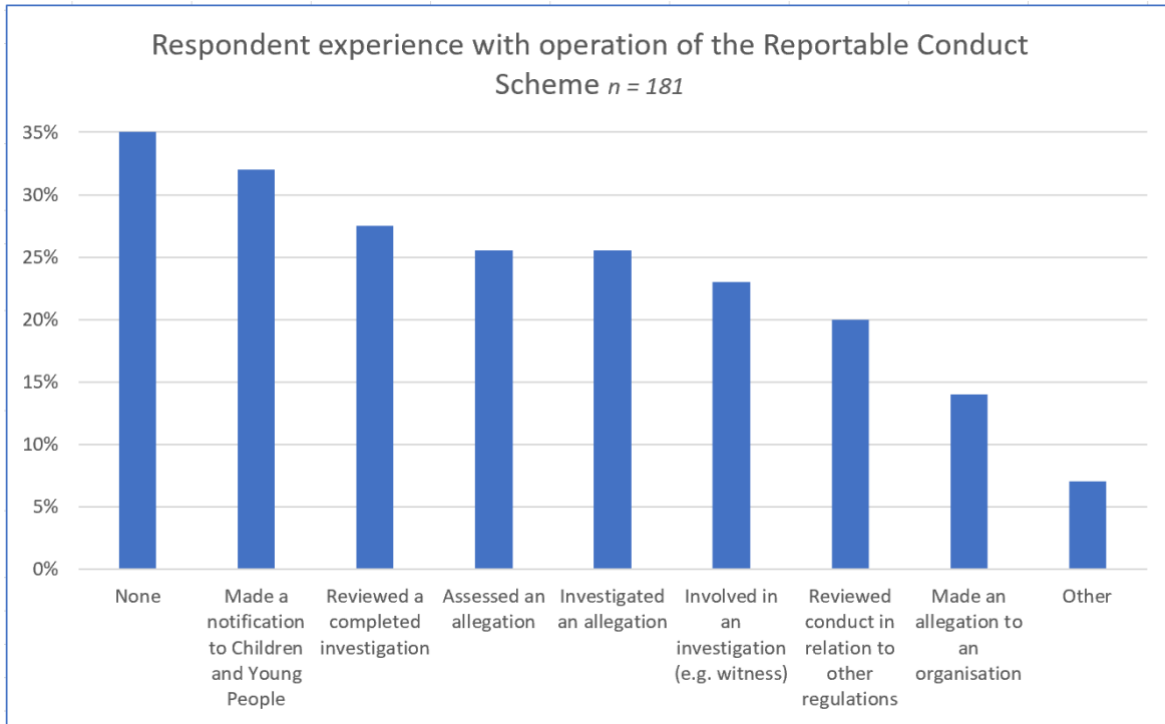
Note: This chart excludes 3 blank responses from the survey data. This question allowed multiple selections.

Most survey respondents understood the Reportable Conduct Scheme and its requirements either 'well' or 'very well'.



Note: This chart excludes 2 blank responses from the survey data.

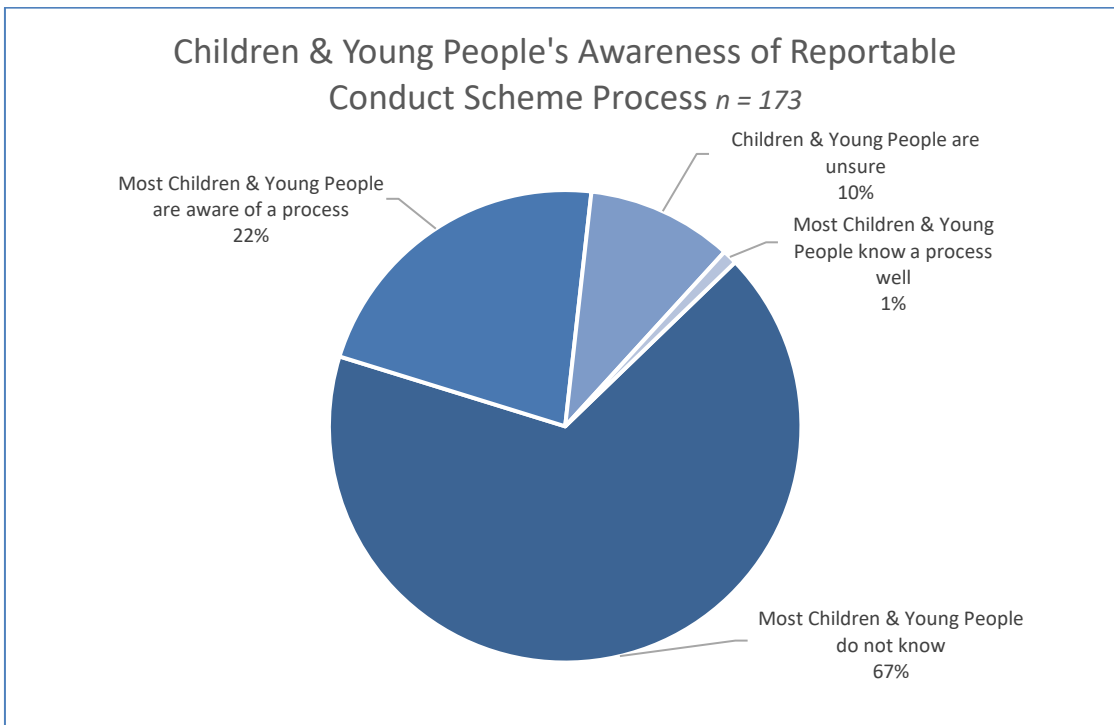
The most common interaction with the operation of the Reportable Conduct Scheme included making a notification to the Commission for Children and Young People. A third of respondents had no direct experience with the operation of the scheme.



Note: This chart excludes 3 blank responses from the survey data. This question allowed multiple selections.

### Perceptions of Children and Young People’s awareness of the process for making an allegation

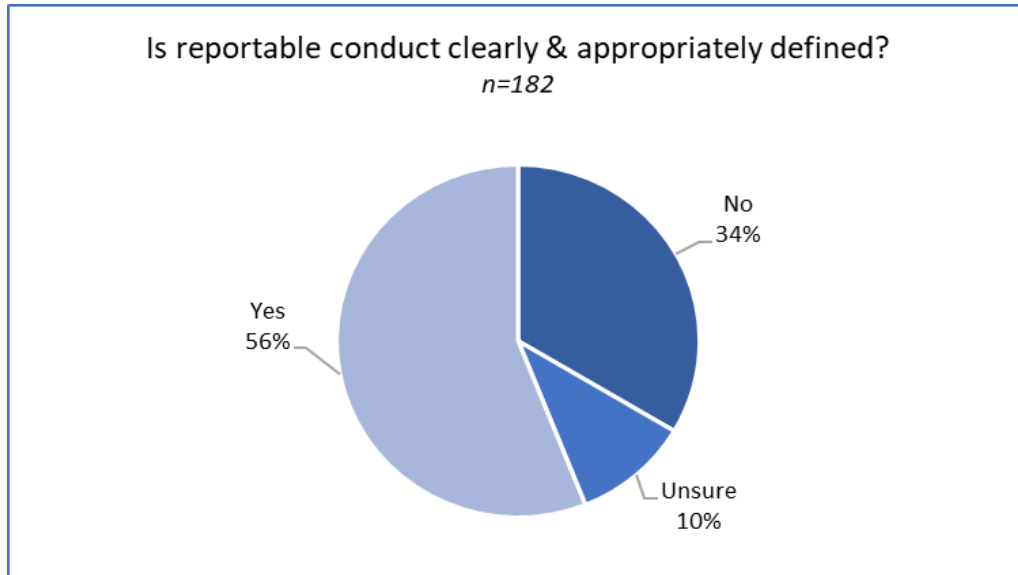
More than two-thirds of respondents believe that most children and young people are not aware of what is involved with making an allegation of reportable conduct. Only 1% believe most children and young people know the process well.



Note: This chart excludes 11 blank responses from the survey data.

## Definition and interpretation of reportable conduct

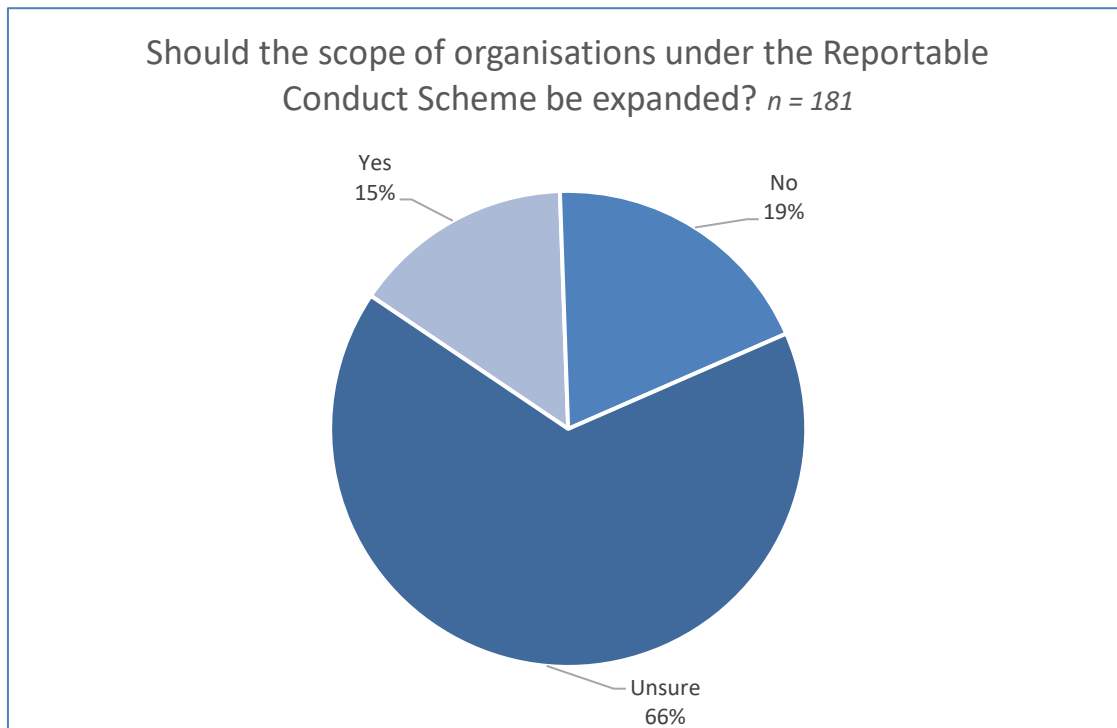
More than half of the respondents believe that reportable conduct is clearly defined.



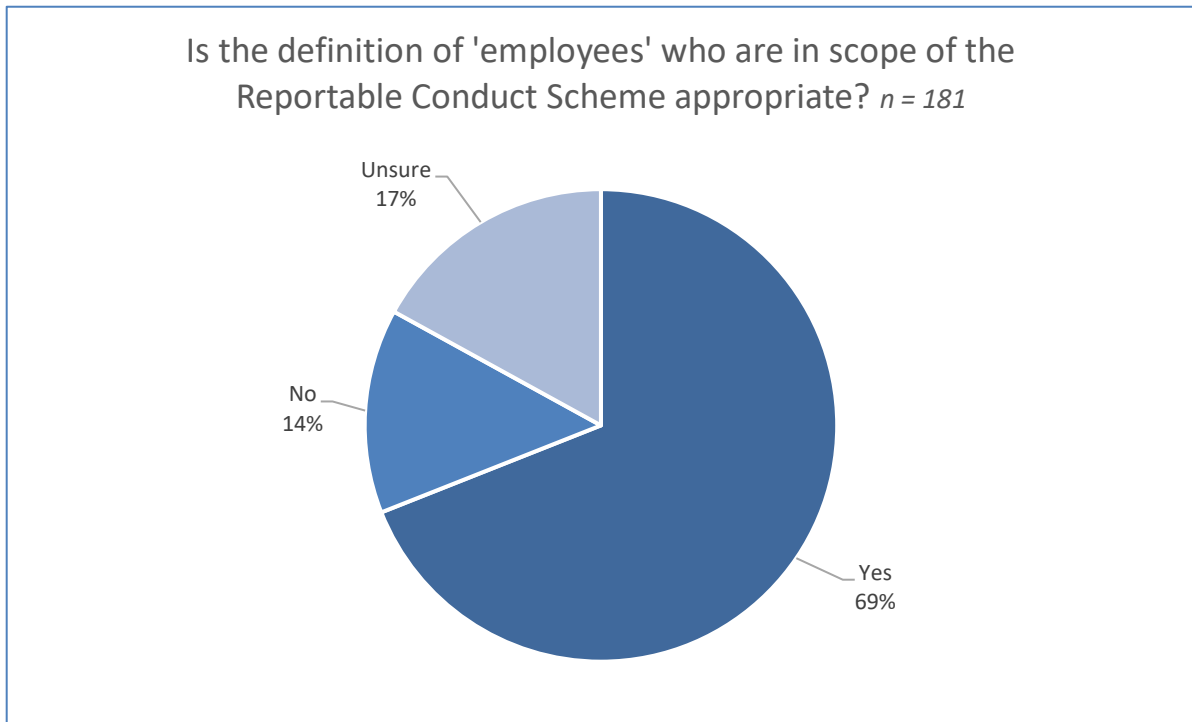
Note: This chart excludes 2 blank responses from the survey data.

## Expanding the scope of the scheme

Two-thirds of respondents (66%) said they were unsure whether the Reportable Conduct Scheme should be expanded to other organisations. Only 15% of respondents believe that the scope should be expanded.

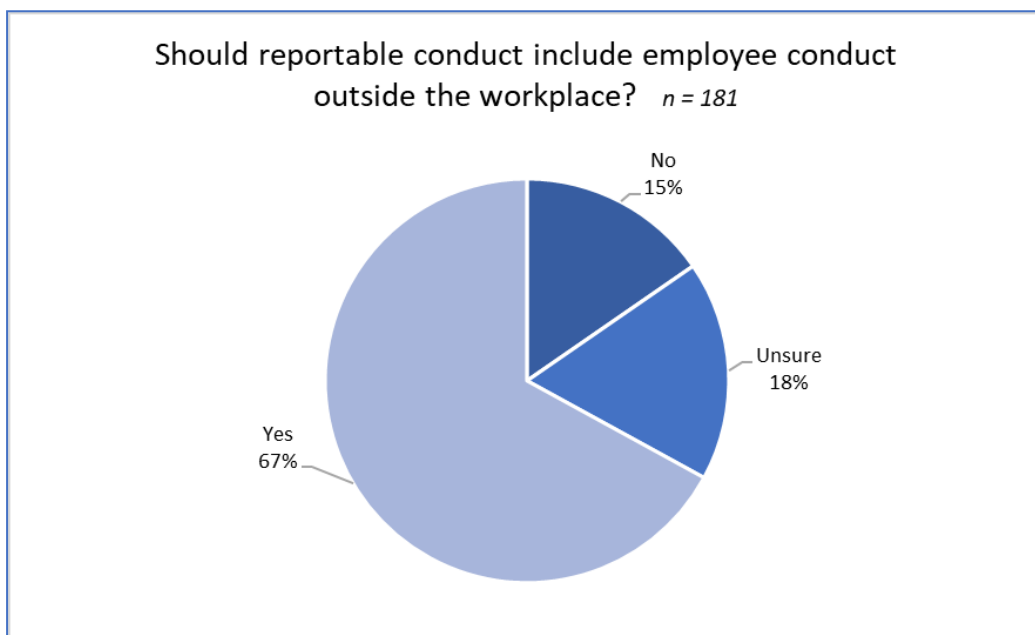


More than two-thirds (69%) of respondents also said they believe the definition of 'employees' in scope of the Reportable Conduct Scheme is appropriate.



Note: This chart excludes 3 blank responses from the survey data.

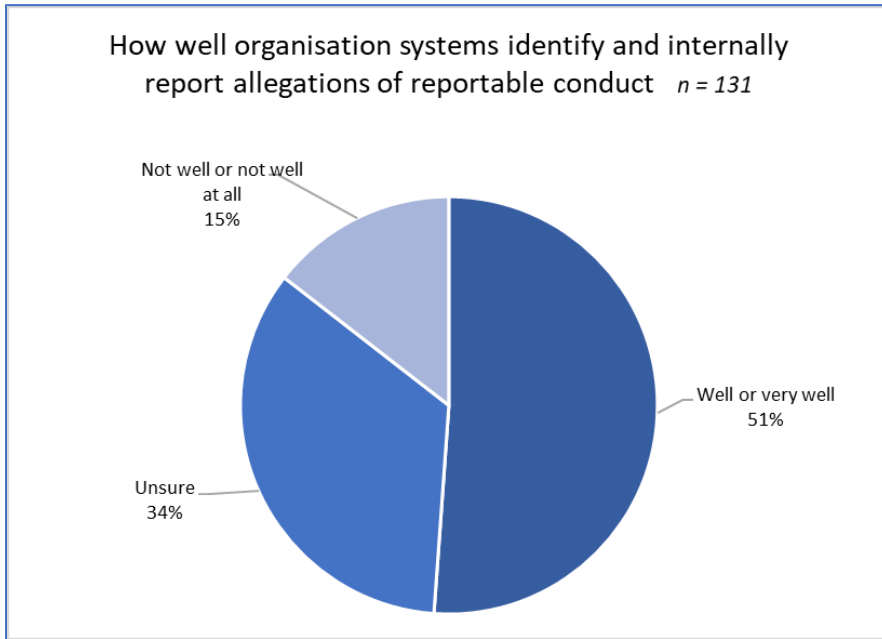
Also, about two-thirds of respondents believe that reportable conduct should include employee conduct outside the workplace.



Note: This chart excludes 2 blank responses from the survey data.

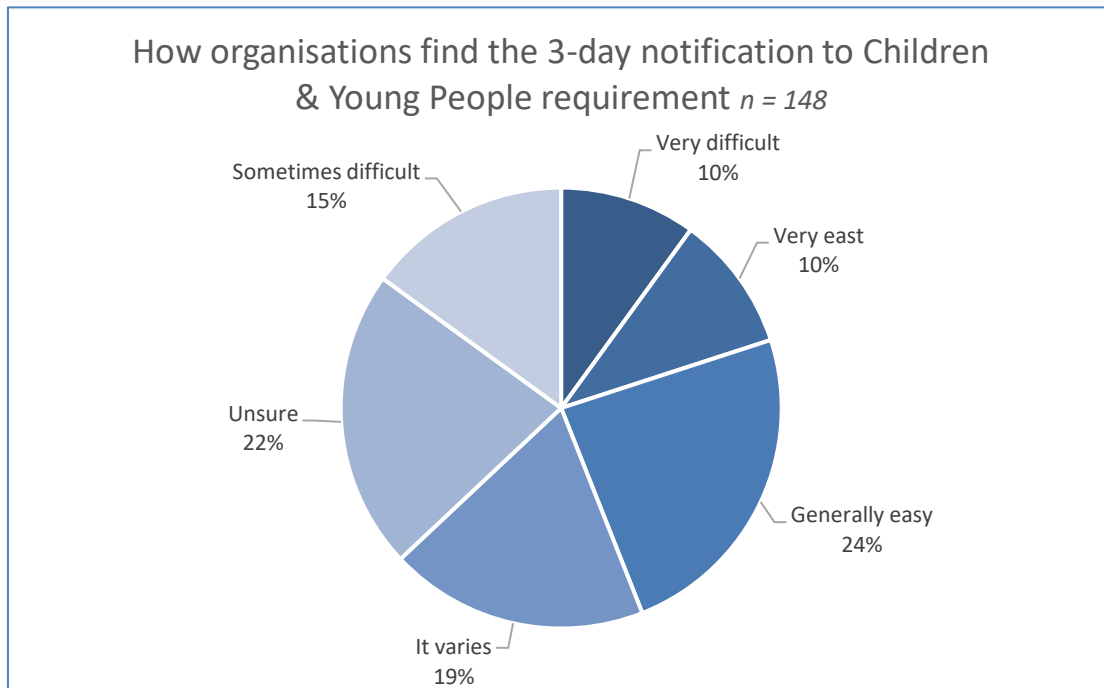
### Reporting an allegation

About half of the survey respondents believe that organisational systems identify and report allegations of reportable conduct 'well' or 'very well'.



Note: This chart excludes 53 blank responses from the survey data.

In terms of notifying the Commission for Children and Young People within 3 business days of becoming aware of an allegation, there was an equal number of respondents who said that it was 'very difficult' and 'very easy' to achieve.

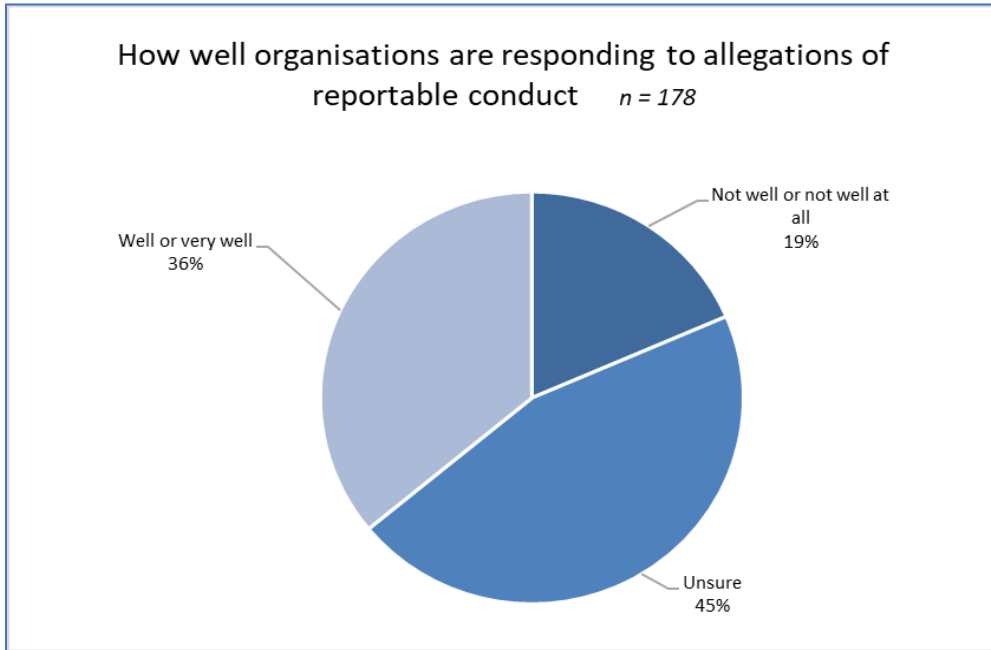


Note: This chart excludes 36 blank responses from the survey data.

Heads of organisations subject to the Reportable Conduct Scheme who are responsible for meeting the 3-day notification requirement to the Commission for Children and Young People were also divided on the ease of the notification process. Of the 32 responses from heads of in scope organisations, 37.5% noted that it was generally very easy to meet the 3-day requirement, but 34% said it was sometimes very difficult.

## Responding to allegations

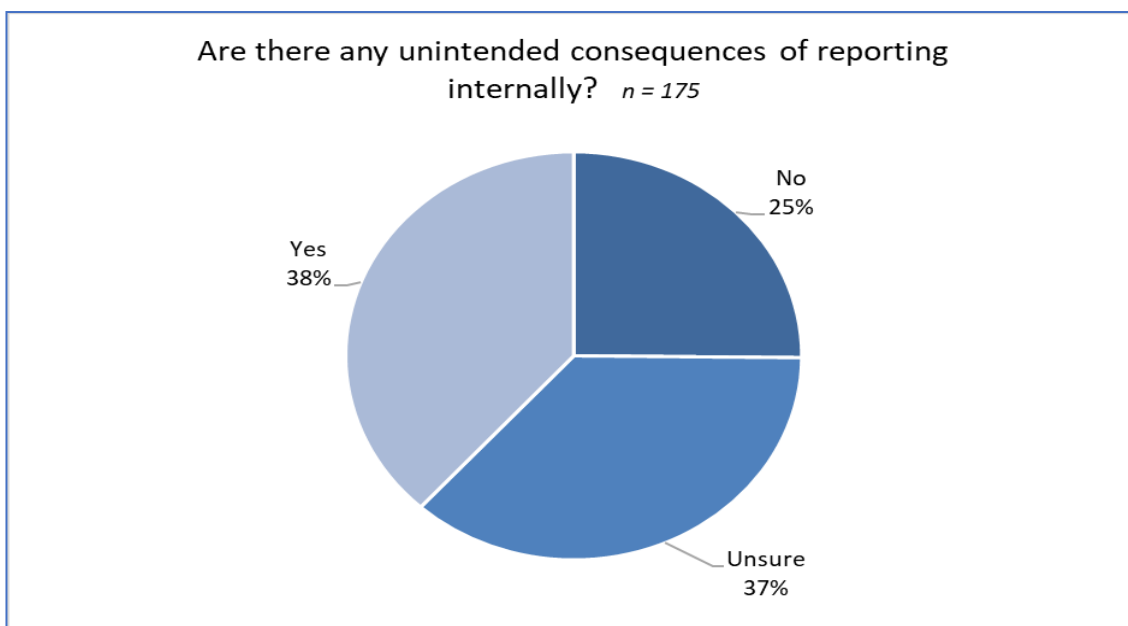
Most respondents to the survey (45%) were unsure as to how well organisations were responding to allegations of reportable conduct. There was a great level of uncertainty regarding the quality of organisational responses to reportable allegations across various levels of understanding of the scheme. More specifically, of the 133 respondents who understand the Reportable Conduct Scheme well or very well, 44% said that organisations respond to allegations of reportable conduct well or very well.



Note: This chart excludes 6 blank responses from the survey data.

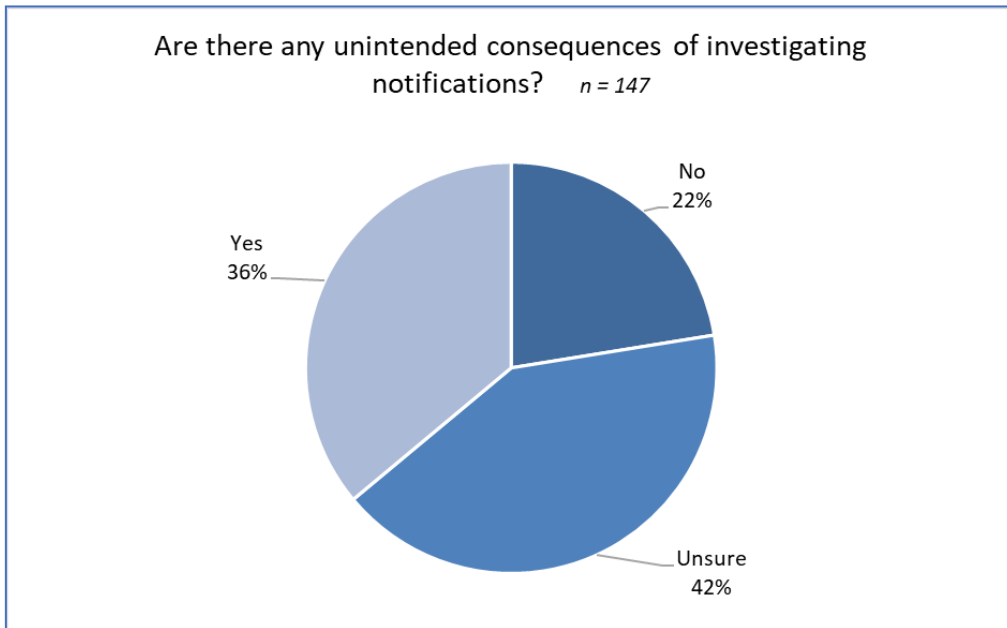
## Unintended consequences

Most respondents either believe there were unintended consequences of reporting internally or were at least unsure.



Note: This chart excludes 9 blank responses from the survey data.

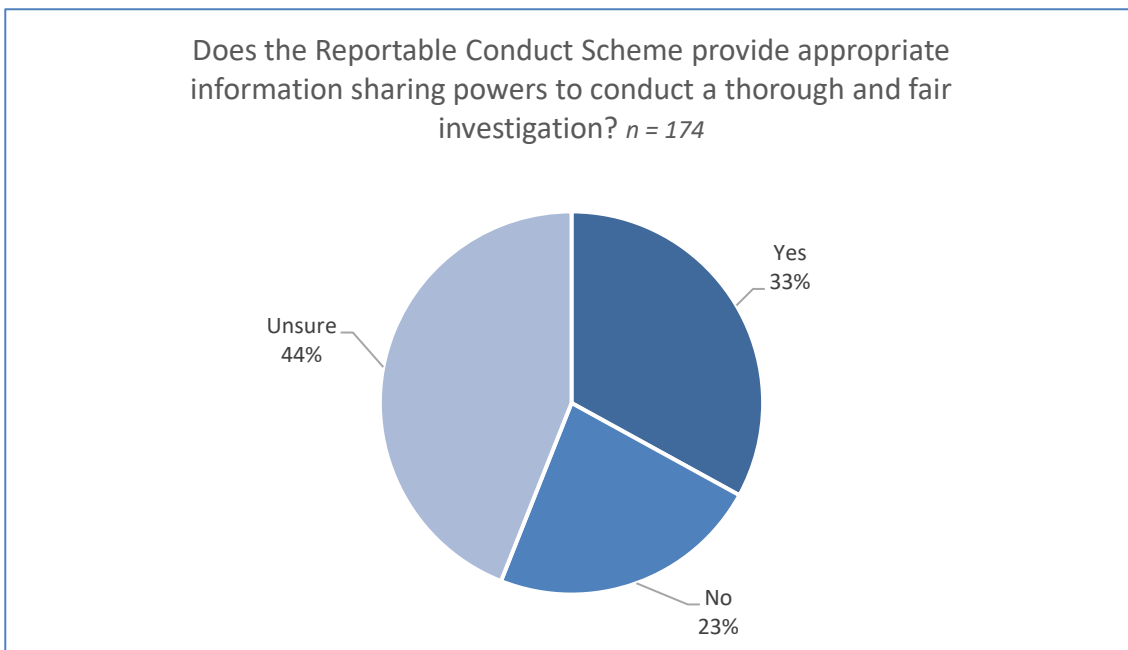
Most respondents said they were unsure as to whether there were any unintended consequences of investigating notifications. Those who had direct experience with the Reportable Conduct Scheme regarding an allegation were more likely to state that unintended consequences arose from investigating notifications.



Note: This chart excludes 37 blank responses from the survey data.

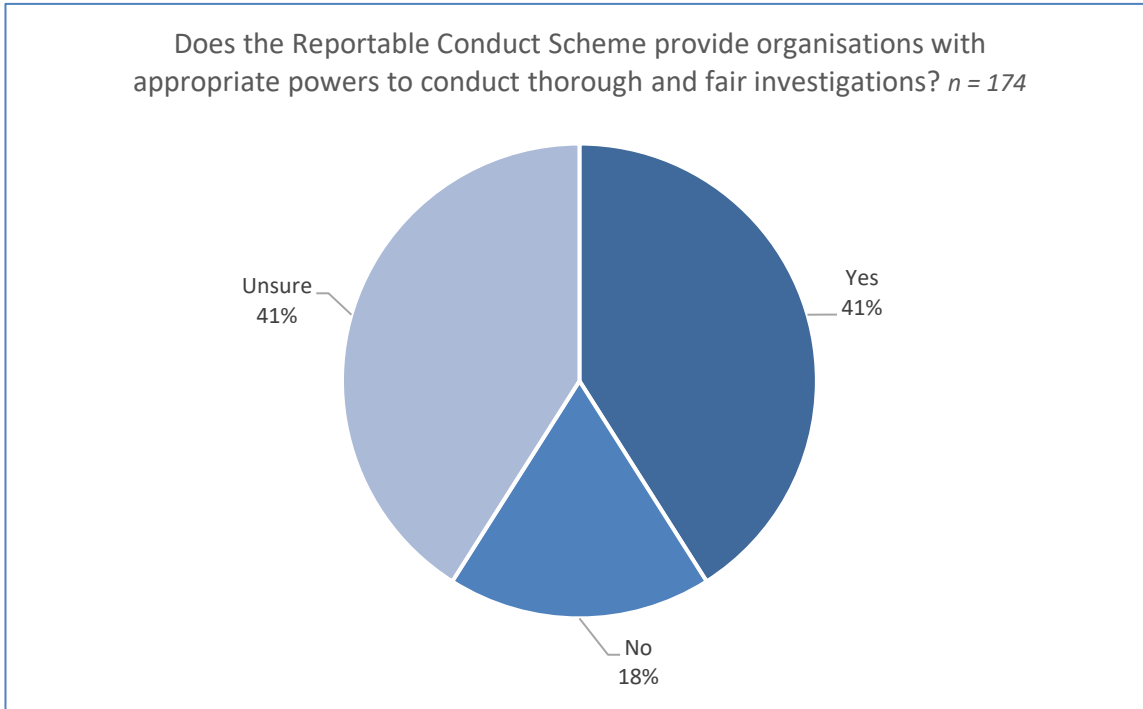
### Information-sharing powers

Many respondents were unsure as to whether the Reportable Conduct Scheme provides appropriate information-sharing powers to conduct a thorough and fair investigation. However, those who said there were inadequate information-sharing powers conferred that the information-sharing process itself was difficult to navigate and did not result in a fair and thorough investigation. People in education were more likely to say that information-sharing powers were not adequate.



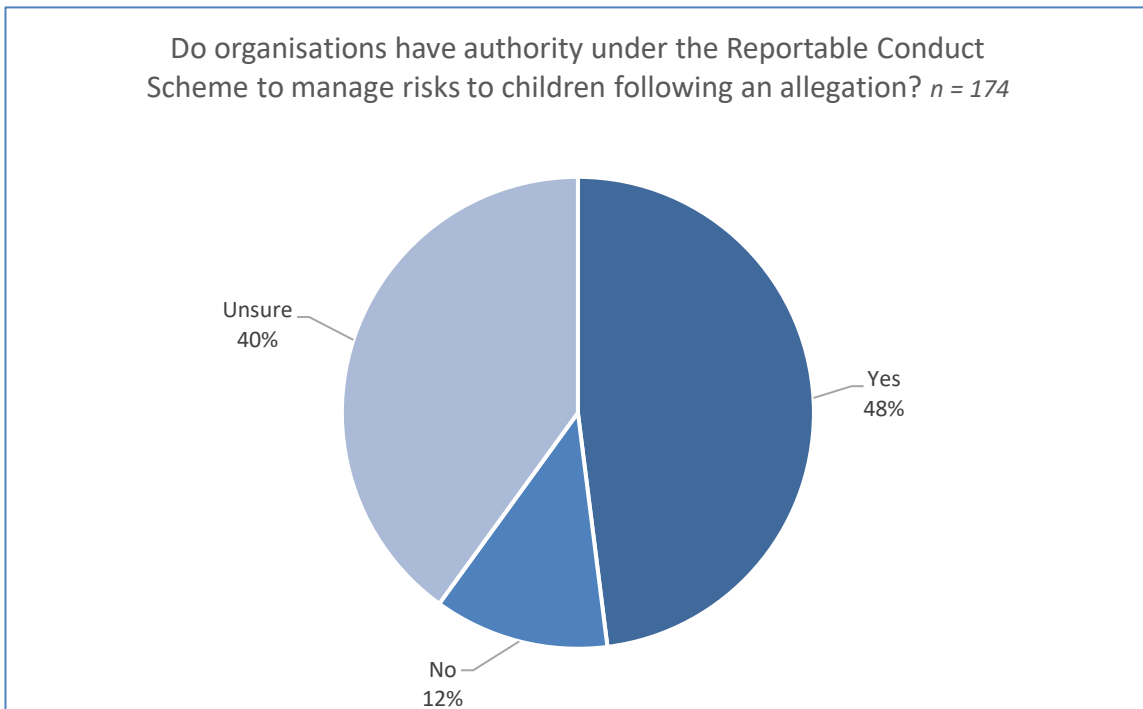
Respondents were equally divided between agreeing that the Reportable Conduct Scheme provides organisations with appropriate powers to conduct thorough and fair investigations or being unsure if

it does so. As shown in the chart below, parents/guardians/carers of children in organisations were most uncertain as to whether the scheme provides organisations with appropriate powers to investigate, which is understandable as they tended to not have experience with the process.



Note: This chart excludes 10 blank responses from the survey data.

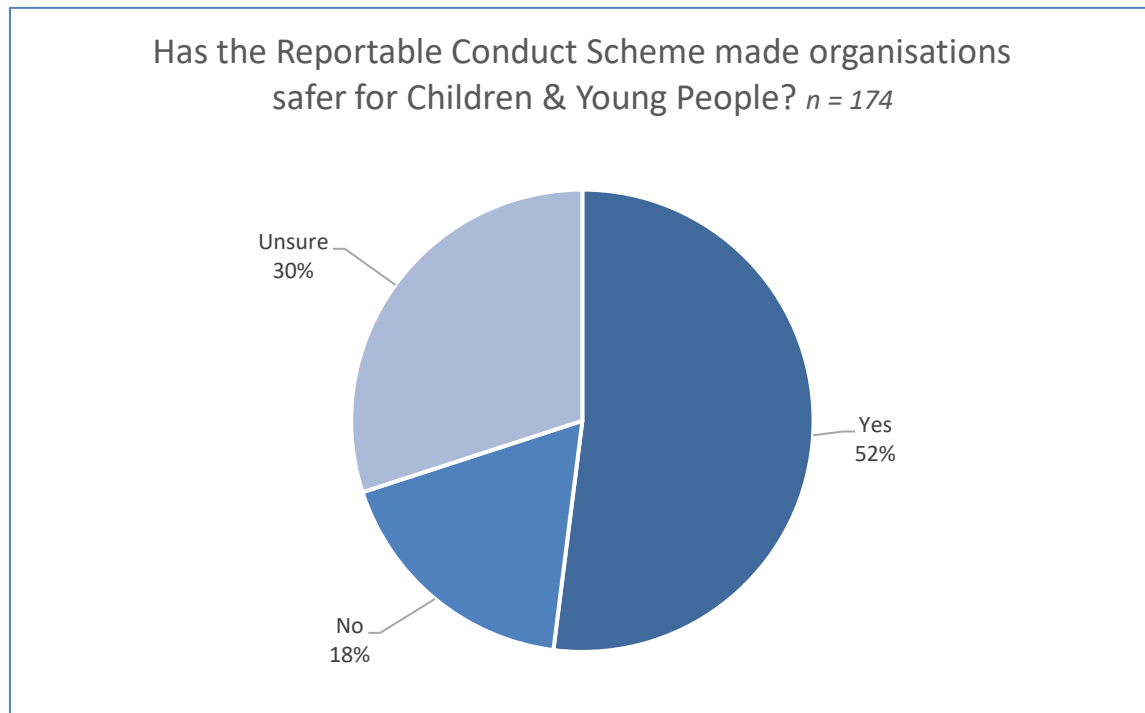
Most respondents stated that organisations do have authority under the Reportable Conduct Scheme to manage risks to children following an allegation.



Note: This chart excludes 10 blank responses from the survey data.

## Are organisations safer?

Just over half the survey respondents believe that the Reportable Conduct Scheme is making organisations safer for children and young people, agreeing the scheme has the correct motivations and has encouraged cultural shifts within organisations. Respondents who had a greater understanding of the scheme were more likely to suggest that it has made organisations safer for children and young people.



Note: This chart excludes 10 blank responses from the survey data.

## Appendix 4: Transcripts of selected figures

The following are transcripts of selected figures from the report. All other figures include alternative text.

### Figure 3.1: The regulatory framework for child protection

Figure 3.1 illustrates the regulatory framework for child protection.

The figure is a circle and in the centre of the circle is 'children and young people'. Radiating out from the centre are different sections which house different parts of the regulatory framework, the bodies responsible for these, and the tools they use. These are outlined below.

Part of the regulatory framework	Bodies responsible	Tools used
Monitoring institutional responses	Commission for Children and Young People; Department of Families, Fairness and Housing	Reportable Conduct Scheme; Client Incident Management System
Information sharing	Relevant information sharing entities	Family Violence Information Sharing Scheme; Child Information Sharing Scheme; Multi-Agency Risk Assessment and Management Framework
Reporting to Child Protection Authorities	Child Protection Authorities	Child protection system (including mandatory reporting)
Criminal Justice System	Victoria Police; Post-Sentence Authority	Victoria Police investigations; Sex Offender Register: Mandatory Reporting to Victoria Police; Serious Offender Post-Sentence scheme
Making Organisations Child-Safe	Commission for Children and Young People; other Child Safe Standards regulators	Child Safe Standards; National Principles for Child Safe Organisations
Sector-specific regulation	Human Services Regulator (Human Services Regulator will be replaced by the Social Services Regulator from 1 July 2024); Victorian Institute of Teaching; Australian Health Practitioner Regulation Agency; Other sector-specific regulators	Health sector regulation; education sector regulation; other sector-specific regulation
Prohibiting people from working with children	Human Services Regulator (Human Services Regulator will be replaced by the Social Services Regulator from 1 July 2024); Department of Government Services; Suitability Panel (the Victorian Carer's Register/	Victorian Carer's Register; Working with Children Check Scheme

Part of the regulatory framework	Bodies responsible	Tools used
	Suitability Panel will be replaced by the Worker and Carer Exclusion Scheme from 1 July 2024 <sup>174</sup> )	

### Figure 7.3: Timeline for responding to reportable conduct allegations

Figure 7.3 outlines the process and timing for responding to reportable conduct allegations for 3 categories of activity.

For the category of activity 'notifications to CCYP', the process and timing is:

1. Notify the CCYP within 3 days of the Head becoming aware of a reportable conduct allegation.
2. Notify the CCYP within 30 days of the investigation process.
3. Report findings to the CCYP ASAP (if not completed within 30 days).

For the category of activity, 'Investigation', the process and timing is:

1. Commence investigation as soon as possible.
2. Complete the reportable conduct investigation ASAP.

For the category of activity, 'if applicable: notification to Victoria Police', the process and timing is:

1. Notify VicPol of criminal conduct.
2. VicPol clearance to commence or continue investigation.

### Figure 7.5: Unintended consequences of reporting by primary experience with the Reportable Conduct Scheme (n = 173)

Row label	No	Unsure	Yes	Total
Employee/volunteer of in-scope organisation	13%	17%	18%	49%
Head of an in-scope organisation	8%	3%	8%	18%
Guardian of a child in an organisation	1%	12%	3%	16%
Direct experience re: allegation	2%	0%	8%	10%
Employee of a regulatory body	1%	2%	1%	3%
Other – Victoria Police	0%	1%	1%	2%
Other	0%	1%	0%	1%

<sup>174</sup> At time of writing the Disability and Social Services Regulation Amendment Bill 2024 currently in Parliament proposes to delay the commencement of the Worker and Carer Exclusion Scheme for up to two years. Existing protections for children and young people will continue if the Bill passes and the Worker and Carer Exclusion Scheme is delayed.

## Figure 9.1: Compliance and enforcement tool pyramid for regulatory schemes

Figure 1 is a pyramid with the levels of compliance approaches.

The lowest levels of the pyramid are the lower-level interventions. These are 'guidance and support', meaning education/guidance/compliance advice, and 'assisted compliance', meaning warning letter or improvement notice.

In the middle of the pyramid are 2 levels, which represent the moderate level interventions. The lower level is 'proactive compliance', meaning increased frequency of compliance monitoring/inspections/investigations; notices to produce and notices to comply. The level above this is 'graded and proportionate sanctions', meaning enforceable undertakings, civil penalties, infringement penalty.

The highest level of the pyramid indicates the higher level intervention. This top section of the pyramid is 'full force of the law', meaning criminal prosecution.