COMMISSION FOR CHILDREN AND YOUNG PEOPLE

Submission to the Department of Families, Fairness and Housing

Review of Victoria's Reportable Conduct Scheme

Submission for publication

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The Commission respectfully acknowledges and celebrates the Traditional Owners of the lands throughout Victoria and pays its respects to their Elders, children and young people of past, current and future generations.

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Overview

The Commission for Children and Young People (the Commission) is an independent statutory body that promotes improvement in policies and practices for the safety and wellbeing of children and young people in Victoria.

The Commission is led by Liana Buchanan, Principal Commissioner, and Meena Singh, the Commissioner for Aboriginal Children and Young People. At the Commission we:

- provide independent scrutiny and oversight of services for children and young people, particularly those in the out-of-home care, child protection and youth justice systems
- advocate for best practice policy, program and service responses to meet the needs of children and young people
- support and regulate organisations that work with children and young people to prevent abuse and ensure these organisations have child-safe practices
- bring the experiences of children and young people to government and the community
- promote the rights, safety and wellbeing of children and young people.

The Commission's functions and powers are set out in the Commission for Children and Young People Act 2012 and the *Child Wellbeing and Safety Act 2005* (the Act).

The Commission welcomes the review of the Reportable Conduct Scheme (the Scheme). The review provides a good opportunity to examine the improvements to child safety generated in the first five years' operation of the Scheme and to consider opportunities to drive further improvements. Furthermore, a number of Australian jurisdictions are currently working towards implementing mandatory schemes. Given this, the review will also play an important role in positioning Victoria to operate as part of a national system of reportable conduct schemes as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

Overall, it is our clear view that the Scheme already plays a critical role in ensuring appropriate responses to child abuse in institutional settings, and in preventing future abuse. Our submission flags some issues that it will be important for the Government to address to support the Scheme and the Commission to be as effective as possible.

This submission

This submission provides an overview of the Commission's administration of the Scheme, our insights from the first five years of the Scheme's operation and highlights some opportunities for improvement.

The Commission makes 49 recommendations set out in Attachment 1.

Key issues in this submission include recommendations for:

- increased funding for the Commission to administer the Scheme
- changes to which organisations and which workers and volunteers are captured by the Scheme
- improvements to strengthen the Commission's ability to share information and alterations to the Scheme to assist the Commission to operate more effectively with other child safety regulators and interstate bodies
- changes in the information that heads of organisations are required to provide to the Commission

- alterations to the systems that heads of organisations need to have in place to support their compliance with the Scheme
- amended powers for the Commission to strengthen its ability to administer the Scheme.

The Victorian Government will receive a range of submissions and consider a broad range of issues as part of this review. The Commission suggests that the following principles should guide consideration of the issues raised in this review:

- safety for children and young people should be prioritised wherever possible
- while there may be differences in the characteristics of the various sectors, the operation of the Scheme should support consistent safety outcomes for children and young people across all sectors
- supporting appropriate information sharing between organisations enhances child safety
- as much as possible, a harmonised approach between jurisdictions is important, however this should not reduce protections for Victorian children.

An introduction to the Scheme

In 2013, the Victorian Parliament's Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations (known as the Betrayal of Trust Inquiry) report exposed evidence of at least several thousand child victims who had been criminally abused in non-government organisations in Victoria.[1] These findings were reinforced in the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) final report, which found there have been tens of thousands of children sexually abused in many Australian institutions, with the extent of the problem difficult to quantify.[2] Both reports found unacceptably high levels of child abuse in organisations had been facilitated by:

- organisations not having in place the policies, systems and focus necessary to prevent abuse
- organisations failing to respond to allegations of abuse, whether to protect organisational reputation, deliberately conceal wrongdoing or due to poor systems and processes.

The Betrayal of Trust report recommended the introduction of mandatory minimum standards for ensuring a child-safe environment for organisations that work with children, as well as independent scrutiny and monitoring of how organisations respond to child abuse allegations. In response, the Victorian Government legislated to establish the Child Safe Standards (the Standards) and the Scheme.

The Standards commenced on 1 January 2016, with the Commission assuming responsibility for their administration on 1 January 2017. On 1 July 2017, the Scheme commenced.

[1] Victorian Parliament, Family and Community Development Committee, *Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations* (2013), Volume 1, p xxix
[2] Commonwealth of Australia, the Royal Commission, Report: Preface and executive summary (2017), p 41

Who is required to comply with the Scheme

The Scheme started on 1 July 2017 with approximately 12,000[3] organisations[4] brought into scope over four phases:

- **Phase 1**[5] **from 1 July 2017:** including registered schools, senior secondary courses and qualifications, operators of student exchange programs, providers of residential services for children with disability, in-patient mental health service providers, in-patient drug and alcohol treatment services, providers of housing and homelessness services that provide overnight beds, child protection services, out-of-home care services and Victorian government departments (estimated **3000–3500** organisations).[6]
- **Phase 2**[7] **from 1 January 2018**: including religious bodies, residential boarding schools, overnight camps, hospitals, public health services and disability services (estimated **4000** organisations).[8]
- **Phase 3**[9] **from 1 January 2019**: early childhood education providers and a small number of Victorian statutory entities including arts centres, libraries, museums, gardens and zoos (estimated **5000** organisations).[10]
- **Phase 4**[11] **from 1 May 2020**: youth organisations including the Girl Guides and the Scouts (estimated **10** organisations).

The Scheme does not apply to an organisation that does not exercise care, supervision or authority over children, whether as part of its primary functions or otherwise.[12] Some organisations may exercise care, supervision or authority over children on an ad hoc or changing basis. This means some organisations may transition in and out of having to comply with the Scheme. This has implications for child safety, particularly where an historical allegation arises and the organisation has fallen outside the scope of the Scheme.

All organisation types required to comply with the Scheme are also required to comply with the Standards. However, the exemption provisions differ, meaning that there is currently potential for an organisation to be required to comply with one regulatory regime but be exempt from the other. On 1 January 2023, an amendment to the Standards will commence such that an organisation required to comply with the Scheme will also have to comply with the Standards.[13]

The Commission may exempt the head of an organisation, or class of organisations, from notifying the Commission about a reportable allegation (both the initial notification within 3 days and the update within 30 days; or just the 30 day update (s 16I)) in respect of a class or kind of conduct. No exemptions have been made by the Commission.

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[3] As estimated by the Commission.
[4] This submission uses the term 'organisation' to refer to entities required to comply with Scheme under the Act.
[5] Organisations listed in Schedule 3 of the Act.
[6] This included approximately 2,286 registered schools.
[7] Organisations listed in Schedule 4 of the Act and public health services pursuant to Schedule 2 of the Child Wellbeing and Safety Regulations 2017.
[8] This included approximately 3000 religious bodies.
[9] Organisations listed in Schedule 5 of the Act.
[10] This included approximately 4500 early childhood education providers.
[11] Pursuant to Schedule 2 of the Child Wellbeing and Safety Regulations 2017.
[12] Section 16C of the Act.
[13] Section 11 of *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021.*

Regulations can be made to exempt an organisation or part of an organisation, or a class of organisations or part of a class of organisations from the Scheme. No exemptions have been prescribed.

What does the Scheme require?

Heads of organisations must notify the Commission within three days of becoming aware of reportable allegations against their employees. Failure to notify the Commission of a reportable allegation is a criminal offence. Between 1 July 2017 and 20 June 2022, the Commission received 4,774 notifications of reportable allegations from organisations. These notifications contained 10,832 allegations.[14]

Reportable allegations are any information that leads a person to form a reasonable belief that an employee has committed either reportable conduct or misconduct that may involve reportable conduct, whether or not the conduct or misconduct is alleged to have occurred within the course of the person's employment.

Reportable conduct consists of:

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

Table 1. Reportable allegations from mandatory notifications received 2017–22

Conduct category	No.	Prop. (%)
Physical violence	4,465	41
Sexual misconduct	2,116	20
Behaviour that causes significant emotional or psychological harm	2,051	19
Significant neglect	1,445	13
Sexual offences	755	7
Total	10,832	100

The head of the organisation is obligated to investigate the reportable allegation as soon as practicable after becoming aware of a reportable allegation.[15]

As soon as practicable, and within 30 days of becoming aware of a reportable allegation, the head of the organisation must notify the Commission of detailed information about the reportable allegation, as well as whether or not the organisation proposes to take any disciplinary or other action in relation to the employee and the reasons why it intends to take, or not to take, that action. The head of the organisation must also provide the Commission

[14] Each mandatory notification can contain multiple reportable allegations and relate to multiple alleged victims.
[15] This obligation arises regardless of whether a notification has been made to the Commission under s 16M of the Act.

with any written submissions that the employee wished to have considered in determining disciplinary or other action taken by the organisation. Failure to notify the Commission of these matters is a criminal offence.

As soon as practicable after the investigation has concluded, the head of the organisation must provide the Commission with the findings of the investigation and reasons for those findings as well as details of and reasons for disciplinary or other action the organisation proposes to take in relation to the employee. If no action is proposed to be taken, the organisation must provide reasons to the Commission for this decision.[16] There are no specified sanctions for failing to investigate or failing to notify the Commission of the findings of an investigation.

Table 2. Findings per allegation 2017–22[17]

Finding type	No.	Prop. (%)
Substantiated	2,346	29
Unsubstantiated – insufficient evidence	2,356	29
Unsubstantiated – lack of evidence of weight	1,824	22
Unfounded	722	9
Conduct outside Scheme	913	11
Total	8,161	100

As part of performing its function of supporting and providing advice to organisations and overseeing the investigation of reportable allegations, the Commission examines findings received from heads of organisations together with reasons for findings and evidence. The Commission considers whether it appears that an appropriate investigation has occurred, the findings appear sound and based on evidence and whether there are any improvements recommended for the organisation.

Where the Commission has concerns that the investigation may not have been appropriate or the findings not supported by the evidence, the Commission may engage with the organisation and ask it to consider certain matters, for example where alternate findings may be open. The Commission cannot direct organisations on what action to take, and so asks for information and offers advice. After this, the Commission will typically close its oversight of an investigation and will provide the organisation with feedback from its oversight to support the organisation to continuously improve its Reportable Conduct Scheme systems.

What systems does an organisation need to have in place?

Under section 16K(1) of the Act, the head of the organisation must have certain systems in place to:

- prevent reportable conduct

[16] This obligation arises regardless of whether a notification has been made to the Commission under s 16M of the Act.
[17] By year of finalisation by the Commission.

- enable a person to notify the head of the organisation about a reportable allegation
- enable a person to notify the Commission about reportable allegations involving the head of the organisation
- investigate and report on reportable allegations.

From 1 January 2023, all organisations that have to comply with the Scheme will also have to comply with the Standards.[18] There is some overlap between requirements under s 16K and those imposed under the Standards. However, minimum requirements for organisations under the Standards do not prescribe the level of detail required for compliance with s 16K.

The Commission has limited compliance and enforcement powers with respect to s 16K. The Commission typically requests information and documents related to s 16K obligations when we have concerns about systems.

The role of the Commission

The Commission is responsible for administering, overseeing and monitoring the Scheme.[19]

The Act provides the Commission with a set of objectives and functions with respect to the Scheme.[20] The Commission is also obligated to pursue the fundamental principles of the Scheme in s 16B and liaise with regulators in accordance with s 16E of the Act.

Key aspects of the Commission's role as set out in the Act are:

- supporting and providing advice to organisations to assist them to identify reportable conduct and to report and investigate reportable allegations
- overseeing the investigation of reportable allegations
- investigating reportable allegations in certain circumstances and making recommendations
- investigating whether reportable allegations have been inappropriately handled or responded to by an organisation and making recommendations
- monitoring the compliance of organisations with the Scheme
- receiving disclosures about reportable allegation from members of the public and others
- exchanging information (including the findings of investigations into reportable allegations and the reasons for those findings) with Victoria Police, regulators, organisations and the Secretary to the Department of Justice and Community Safety.

Further, in terms of other regulators, the Act provides that the Commission has a role to:

- educate and provide advice to regulators to promote compliance by organisations with the Scheme
- investigate whether reportable allegations have been inappropriately handled or responded to by a regulator
- liaise with regulators to avoid unnecessary duplication in the oversight of the investigation of reportable allegations and to share information and provide advice and guidance about the protection of children.

[18] Amendments from the *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021* will provide that an organisation required to comply with the Scheme must also comply with the Standards.
[19] Section 16D of the Act.
[20] Sections 16F and 16G of the Act.

Another aspect of the Commission's role is reporting to the Minister for Child Protection and to Parliament on trends in the reporting and investigation of reportable allegations and the results of those investigations. This is chiefly delivered through the Commission's Annual Report where detailed data on the Scheme is provided to the Minister for tabling in Parliament. The report, including detailed data, is subsequently published on the Commission's website.

Section 16B of the Act provides, as the first principle underpinning the Scheme, that the protection of children is the paramount consideration in the context of child abuse or employee misconduct involving a child. Given the importance placed upon this by the Act, it guides the Commission's approach to performing its statutory role.

The Act does not provide the Commission with the following in respect of the Scheme:

- the ability to give directions to the head of an organisation about the conduct of their investigation into reportable allegations or their findings following an investigation
- a role to act as a point of appeal for subjects of allegation, alleged victims or parents and carers
- the ability to substitute findings where the Commission believes the head of the organisation has reached the incorrect finding on the evidence.

The Commission is subject to confidentiality obligations in respect of protected information we have gathered under the Scheme as contained in s 55 of the *Commission for Children and Young People Act 2012*. We have only limited ability to share information with persons about reportable conduct allegations, investigations and findings. The importance of this confidentiality is highlighted by it being a criminal offence to disclose information acquired by the Commission under the Scheme unless authorised under these provisions.

The Scheme provides the Commission with the ability to share certain information with Victoria Police, regulators, organisations, the Secretary to the Department of Justice and Community Safety, alleged victims and their parents and carers. The Commission can also share information under the Child Information Sharing Scheme and Family Violence Information Sharing Scheme.

Own motion investigations

In limited circumstances, the Commission itself may conduct own motion investigations into allegations of child abuse or child-related misconduct where it is in the public interest, or an organisation is unwilling or unable to investigate. The Commission can also investigate the handling of an allegation by an organisation where the organisation in question did not do so appropriately.

In 2021–22, the Commission completed three own motion investigations and commenced four new own motion investigations. As at 30 June 2022, there were ten own motion investigations open. One of these investigations concerns the inappropriate handling of, or response to, a reportable allegation, while the remaining nine involve investigations into reportable allegations. It is anticipated that the Commission will continue to increase the number of own motion investigations within the next 12 months and beyond. Circumstances where the Commission has decided to conduct an own motion investigation include:

- where the subject of allegation is the head of the organisation, and the organisation cannot investigate and appropriately manage the conflict of interest
- serious grooming allegations and allegations involving the failure to respond to sexual abuse allegations that are beyond the investigatory capacity of the organisation who

would otherwise be required to investigate, whether because of the historical nature of the allegations or for other reasons.

Role of Victoria Police

Organisations and the Commission must notify Victoria Police of reportable allegations that may involve criminal conduct.[21] There is no sanction under the Act for not notifying Victoria Police.[22] Between 1 July 2017 and 30 June 2021, 55 per cent of notifications of reportable allegations to the Commission were reported to Victoria Police by either the organisation or the Commission due to possible criminal conduct.

On becoming aware that Victoria Police is investigating a reportable allegation, an investigation by an organisation[23] must not commence or continue until Victoria Police advises that the police investigation has been completed or agrees that the investigation may proceed. In practice, when a disclosure is made to Victoria Police, organisations are advised by the Commission not to commence a reportable conduct investigation until given clearance by Victoria Police.

If asked by the Commission, Victoria Police must advise whether Victoria Police is investigating and share the result of the investigation.

In the first two years of the Scheme, Victoria Police placed an embedded sworn officer in the Commission to assist with some of the working arrangement outlined above. As a result of the Scheme, the Commission routinely shares with, and requires considerable information from, Victoria Police. The embedded officer role assisted Victoria Police to efficiently manage the many hundreds of pieces of information shared and requested annually by the Commission. Efficient information flows between the Commission and Victoria Police were established with the assistance of the embedded officer. The embedded officer, by working closely with the Commission team, also assisted the Commission to gain a better appreciation of which allegations were potentially criminal and should be referred to Victoria Police.

The embedded officer was a significant support to the work of the Commission, assisting when complex cases arose (for example, historical allegations of child sexual abuse) and problem solving when individual Victoria Police members were unfamiliar with the Scheme, the Commission or the benefits of sharing information with the Commission. The embedded officer also facilitated the provision of child abuse intelligence from the Commission to Victoria Police. Sharing of information by the Commission as facilitated by the embedded officer assisted in a range of active criminal investigations. Further, the embedded officer supported Victoria Police to share reportable conduct allegations with the Commission that may not have otherwise come to light.

Over time the embedded officer role has ceased, with the information sharing functions now performed by a dedicated unit of unsworn staff within Victoria Police that supports information sharing and communication. Individual notifications of potential criminal conduct are sent by this Victoria Police unit to relevant members, and this unit also supports the

[21] Regulators and independent investigators must also notify Victoria Police about reportable allegations that may involve criminal conduct.
[22] There may be other criminal offences that apply to not notifying Victoria Police. This includes the requirement that any adult who forms a reasonable belief that a sexual offence has been committed by an adult against a child under 16 must disclose that information to Victoria Police under s 327(2) *Crimes Act 1958*.
[23] Or the Commission, a regulator or independent investigator.

coordination of responses. Victoria Police has built an IT system to support the Commission to exchange information with Victoria Police and manage reportable conduct matters.

The role of other regulators

Under the Scheme, the head of an organisation can permit a regulator to conduct an investigation into a reportable allegation that it would otherwise need to conduct.[24] The Commission can also request an employee regulator investigate a reportable allegation.[25]

The Commission regularly shares information with other regulators to support them in their regulatory roles supporting child safety. The Commission also regularly receives information from other regulators relevant to the Commission's role, including 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.

The Scheme enables the sharing of information about allegations, findings and other information to assist organisations to take action to support children's safety. Information sharing is one of the critical benefits of the Scheme and a core function of the Commission. Key information sharing activities in relation to regulators are set out below:

Victorian Institute of Teaching

On becoming aware that a registered teacher is the subject of a reportable allegation, the Commission must notify the Victorian Institute of Teaching (VIT) pursuant to the *Education Training and Reform Act 2006*. Between 1 July 2017 and 30 June 2022, the Commission advised VIT of 1,023 notifications relating to 968 unique registered teachers.

The Commission must also refer any findings of substantiated reportable conduct to VIT at the completion of an investigation. In practice, the Commission referred all findings from completed reportable conduct investigations to VIT between 1 July 2017 and 30 June 2022. Given the Commission must disclose all reportable allegations to VIT, we consider it fair to subjects of allegation that VIT is notified of all findings. Over this period, the Commission shared findings with VIT in relation to 732 finalised notifications.

Working with Children Check Victoria

If a finding is made[26] that an employee of an organisation has committed reportable conduct, the Commission must notify the Secretary to the Department of Justice and Community Safety (DJCS) for the purposes of a Working with Children Check (WWCC), although this is subject to certain exceptions. Between 1 July 2017 and 30 June 2022, 986 unique individuals found to have committed reportable conduct were referred to DJCS in relation to 2,312 substantiated allegations of reportable conduct. Over the same period, the Commission has exercised its discretion to not refer a substantiated finding to DJCS in relation to 32 allegations relating to 24 subjects of allegation. Due to limitations in DJCS' ability to share information, as discussed below, we do not have information about the outcome of these referrals.

[24] Section 16N(1)(a) of the Act.
[25] Section 16V(1) of the Act.
[26] By the Commission, the head of an organisation or a regulator.

Other regulators

The Commission currently shares:

- details of reportable allegations and findings in specific matters with the Quality Assessment and Regulation Division (QARD) in the Department of Education and Training (DET) in relation to employees of early childhood education and care providers.
- details of reportable allegations and findings in specific matters in relation to registered medical professionals with Australian Health Practitioner Regulation Agency (AHPRA) in relation to specific matters
- details of reportable allegations and findings in relation to disability workers with the Victorian Disability Worker Commission (VDWC) where the Commission is concerned about risks to children or when requested by the VDWC
- details of reportable allegations and findings in relation to employees in registered schools with the Victorian Registration and Qualifications Authority (VRQA) where the Commission is concerned about risks to children or when requested by the VRQA
- details of reportable allegations and findings in relation to employees in out-of-home care services with the Human Services Regulator in the Department of Families, Fairness and Housing (DFFH) where the Commission is concerned about risks to children or when requested by the DFFH.

Our experience so far

The benefits of the Scheme

Since the start of the Scheme in July 2017, the Commission has observed clear benefits for children and young people's safety including:

- increased reporting of allegations of child abuse and child-related misconduct to authorities including Victoria Police, the Victorian Institute of Teaching and the Commission
- improved responses to allegations of abuse with a lift in the standard of investigations in many organisations, particularly those with high volumes of notifications to the Commission
- poor responses by organisations to sexual misconduct and grooming allegations that we see are starting to improve through focused oversight by, and guidance from the Commission
- WWCC Victoria being provided with more information about proven child abuse or misconduct with children than they received prior to the Scheme, that can be considered when deciding whether a person should be permitted to continue to work with children.

Increased identification of harmful conduct

A key achievement of the Scheme is the improvements organisations have made to their systems for identifying and reporting child abuse and child-related misconduct.

The obligations imposed under the Scheme have resulted in organisations improving their internal reporting systems and gaining a deeper understanding of different forms of child abuse. The Scheme contains a broad conception of conduct that is harmful to children, as set out in the five types of reportable conduct. This has meant that organisations have had to look beyond a focus on sexual offences and other more recognised abuse types to learn about, and respond to, other harmful conduct such as physical violence in the presence of children and psychological and emotional harm.

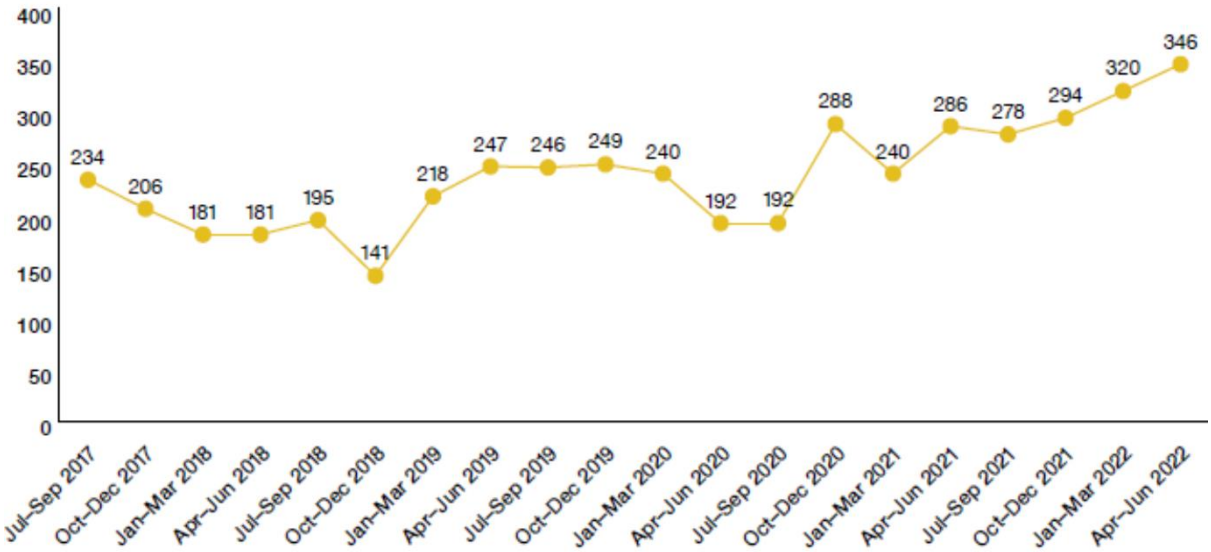
Mandatory notifications of reportable allegations have steadily increased in number since the start of the Scheme in July 2017. We believe this increase in the identification of reportable allegations is partly attributable to growing awareness of organisations' obligations under the Scheme, but that the growth also reflects:

- an increased understanding in organisations of what is harmful to children, and improved skills among staff and volunteers in identifying harmful conduct and knowing what to do in response
- increasing confidence of victim-survivors and their parents and carers to report concerns about what constitutes acceptable and unacceptable behaviour with children, meaning departures from acceptable behaviour are easier to identify and address.

From 1 July 2021 to 30 June 2022, the Commission received 1,238 notifications of reportable allegations, a 23 per cent increase on the number of notifications received in 2020–21. This was a record number of notifications, despite children's contact with organisations being significantly impacted by the COVID–19 pandemic. There has been a 54 per cent increase in mandatory notifications since start of the Scheme.

The Commission believes there is likely under-reporting occurring in a number of sectors. Concerns have been flagged by the Commission about religious bodies as well as the disability and health sectors in this regard. We think notification numbers therefore represent an underestimate of current allegations that ought to be notified to the Commission.

Figure 1. Mandatory notifications per quarter since the start of the Scheme



Between 1 July 2017 to 30 June 2022, the four sectors contributing the most notifications of alleged child abuse or child-related misconduct were:

- 1,735 from out-of-home care providers (36 per cent)
- 1,218 from education providers including schools (26 per cent)
- 992 from early childhood education providers (21 per cent)
- 297 from religious bodies (6 per cent).

Improved responses to allegations

Whilst some organisation types subject to the Scheme, such as registered schools, were already conducting some investigations prior to the commencement of the Scheme, the Royal Commission demonstrated that many others did not consistently, or ever, investigate allegations of child abuse. On this basis, we are confident that the Scheme has increased the number of investigations into alleged child abuse and child-related misconduct in Victoria.

Over time, we have also seen increased understanding amongst organisations of the importance of managing risks to children and young people whilst an investigation is underway, and ways to achieve this.

The Commission has also observed that having an obligation to investigate drives ownership and responsibility within an organisation. This encourages organisations to 'own' or take responsibility for their child safety systems, such as their screening and supervision methods, and the behaviour of their workers and volunteers.

The Commission receives information on actions taken by organisations following an investigation under the Scheme. From this, we also know that adults are routinely being held to account by organisations for their behaviour as a result of investigations under the Scheme. This ranges from being provided with additional training by their organisation about what conduct is, and is not, appropriate with children and young people to more serious outcomes such as termination of employment.

This acts to reinforce key aspects of creating a safe environment for children and young people required under the Standards. Minimum requirement 6.4 requires that an organisation has ongoing supervision and people management is focused on child safety and wellbeing.

Improving investigations into child abuse and harm

The Commission's oversight of investigations has given us first-hand knowledge of how well-equipped organisations are to investigate allegations of child abuse or child-related misconduct. Through our oversight of investigations, we have observed significant variability in capacity and have seen many organisations, including larger, relatively sophisticated organisations, with very poor practice or no understanding of how to approach an investigation.

Importantly, we have observed significant improvements in the approach taken by many organisations, particularly those required to make a higher number of notifications to the Commission.

Notifications of alleged child abuse and child-related misconduct must occur within three business days of the head of the organisation learning of a reportable allegation. This means that, from the start of the investigative process to the outcome of the investigation, the Commission is aware of the allegation and is able to independently scrutinise, support and guide the organisation's investigation into that allegation. This helps to ensure investigations are conducted properly with involvement by alleged victims, subjects of allegations and other relevant witnesses.

The Commission is also able to provide guidance and advice where an organisation needs support with an investigation. There can be particular challenges in making sure that investigations are conducted appropriately in organisations that are small or might have limited resources. The Commission is able to identify organisations with these challenges and where an organisation clearly needs more support with an investigation, we will offer guidance throughout an investigation including discussions with a Commission case manager at challenging points in the process.

The Commission provides feedback to organisations on an ongoing basis as each case is overseen, and this builds year upon year. The Commission gives feedback at the end of an investigation about what could be improved for the organisation's next investigation, building capacity to perform good future investigations. Our feedback raises any deficiencies in the investigation. Common concerns include that the investigator or head of organisation has not:

- interviewed all relevant witnesses, or adopted good interview practice
- sufficiently probed relevant issues or examined all allegations
- properly applied thresholds for conduct
- appropriately weighted evidence including how children's evidence has been considered
- made findings that appear to be supported by the evidence gathered. The Commission may also advise that different findings are open to make on the evidence.

On occasion, organisations choose to alter their findings after considering the Commission's feedback and guidance.

Over the past five years of the Scheme's operation, the Commission has been careful to avoid assumptions about a particular organisation's capacity to perform investigations, and to instead form our view about organisations in each sector individually. We find that there is enormous variability in the quality of investigations within sectors, as well as between sectors, and have seen initially poor responses even by organisations with a long history of being regulated prior to the commencement of the Scheme.

Our work with organisations has focused strongly on building capacity; we have produced a range of published guidance, provided feedback on individual cases and offered advice or guidance when requested by organisations. As a result, we have observed many organisations lift the standard of their investigations.

Sexual misconduct and grooming

Organisations have also improved their understanding of grooming and other kinds of sexual misconduct and what to look for since the commencement of the Scheme.

The education sector has contributed the majority of allegations of sexual misconduct in the first five years of the Scheme (69 per cent). Sexual misconduct is the most common allegation type for the whole education sector, accounting for 38 per cent of allegations for 1 July 2017 to 30 June 2022. Allegation numbers for sexual misconduct in the education sector have been significantly higher over the last three years than the first year of the Scheme.[27] While we cannot be certain what has caused this rise, it appears an increased focus on sexual misconduct in Victorian schools has resulted in part from many survivors sharing their experiences in the media and other public forums, particularly since 2020. The increase in sexual misconduct allegations may well reflect a growing willingness among children and young people to speak out and for organisations to listen and act. Further, there may be increased awareness by children, parents and workers of what inappropriate behaviour by adults looks like in organisations, grooming and how to report concerns.

The Commission has had a focus on the oversight under the Scheme of investigations involving alleged sexual misconduct including grooming and other child sexual abuse. We

[27] Sexual misconduct allegations notified to the Commission (calculated as at 30 June 2022) were: 219 in 2017-18, 161 in 2018-19, 336 in 2019-20, 422 in 2020-21 and 306 in 2021-22.

know that grooming can be challenging to detect, and also that some organisations can struggle making findings that properly reflect the evidence gathered.

Informed by our oversight, we observe that:

- Some organisations can be unduly focused on whether they have evidence that the reason for the misconduct was for potential or actual sexual arousal or gratification, and disregard that the alleged victim or a reasonable person may have considered that the misconduct was sexual.
- Some organisations do not substantiate sexual misconduct that otherwise meets the threshold for a substantiated finding on the basis that they perceive the subject of allegation was 'only being overly affectionate', that they are 'a tactile person', or they exercised poor judgment.
- Some organisations find it proven that the subject of allegation has engaged in a pattern of behaviours that was overly personal and intimate but are reluctant to characterise the pattern of behaviour as 'grooming' or 'sexual misconduct'.
- We have also observed that there can be a reluctance in some cases of alleged sexual misconduct for organisations to make a substantiated finding where the evidence would otherwise support this due to concerns about the impact on the subject of allegation.

We have focused on providing guidance and detailed feedback to organisations handling sexual misconduct allegations and have seen the substantiation rate for sexual misconduct allegations increase in each of the last four years, from 21 per cent in 2018–19 to 31 per cent in 2021–22.

Increase in harmful conduct referred to WWCC Victoria

Under the Scheme, a broader range of conduct is referred to WWCC Victoria, so that an individual's capacity to keep working with children can be reconsidered and potentially withdrawn. For example, as a result of the Scheme, a person found to have engaged in sexual misconduct against a child can now be referred to have their WWCC reassessed even where no criminal offence has been made out.

Between 1 July 2017 and 30 June 2022, 986 people found to have committed reportable conduct were referred to have their WWCC clearance re-assessed.

Due to restrictions in the ability for WWCC Victoria to share information with the Commission, as outlined later in this submission, we do not know the number of people who have had their WWCC refused or revoked as a result of substantiated reportable conduct. However, any number represents an increase in the protections available prior to the Scheme.

Keeping children safe by sharing relevant information

The Scheme has increased the information available to organisations, Victoria Police and regulators involved in child safety to inform their understanding of risks to children, support them to make decisions about taking action to protect children and decide whether certain workers or volunteers should be restricted from working with children.

The Commission, as the body administering the Scheme, plays an active role in ensuring that relevant information is shared with appropriate parties so that it can be acted on accordingly.

The Scheme enables the Commission to connect, and bring relevant agencies together, so that critical information is shared. Some specific examples of the benefits of information sharing under the Scheme are:

- A number of potentially criminal cases are only notified to Victoria Police because of the Scheme. Under the Act, head of organisations are legally obligated to notify Victoria Police, and the Commission plays a key role in ensuring Victoria Police are informed about conduct that may be criminal in nature involving children. Of the 1,238 notifications of reportable allegations made to the Commission in 2021–22, 55 per cent were reported to Victoria Police by either the organisation or the Commission due to possible criminal conduct. For the period 1 July 2021 to 30 June 2022, the Commission referred 230 notifications (19 per cent) that had not previously been reported to police.
- The Commission also receives information from Victoria Police and other child safety regulators that assists us to identify matters that should have been reported to the Commission but were not, sometimes involving a breach by the head of an organisation of their obligations under the Scheme. Further, the Commission receives some support from these organisations where information may be needed for an investigation under the Scheme.
- The Victorian Institute of Teaching (VIT) and other child safety regulators receive a steady stream of information from the Commission that helps them better understand the risks posed by organisations and individuals within their regulatory remit. The Commission advised VIT of 1,023 notifications of reportable allegations in the first five years of the Scheme. We understand a significant proportion of these may not have otherwise been referred to VIT.

Working with other regulators

In complex matters that cross the jurisdiction of multiple regulators, the Commission often calls together relevant child safety regulators so that we are able to share information and coordinate respective efforts as a case is emerging. That way, each regulator is also clear about the actions of others. The regulators will also often share outcomes at the end of an investigation. Sharing in this way assists against matters ‘falling through the cracks’.

Interaction with the Child Safe Standards

We see the advantages on a daily basis of administering both the Standards and the Scheme. We are able to take a holistic approach, focusing on supporting organisations to develop the culture, policies and systems to prevent child abuse through the Standards, while providing oversight to ensure individual allegations of child abuse are properly reported and investigated through the Scheme.

Our work in relation to the Scheme frequently alerts us to organisations and sectors that need to focus further effort on the Standards, allowing us a broader preventive mandate with those organisations or to refer concerns to our co-regulators under the Standards. Similarly, the understanding of an organisation or sector that we have developed through Standards education and compliance activity, can inform our approach to overseeing and guiding a particular organisation when it makes a notification under the Scheme.

Public notifications

The Commission is able to receive public notifications involving potential allegations from members of the community. We may receive public notifications for a number of reasons. For example, a reporter may be dissatisfied with an organisation’s handling of their child abuse concerns and they may not trust that the organisation has reported it to the Commission themselves. In other cases, we receive public notifications in circumstances where the

relationship between the reporter and the organisation has broken down, and the reporter no longer feels that the organisation is listening to them.

This function ensures that victims of child abuse, and their parents or carers, have an alternate avenue for raising their concerns. It also helps to ensure that where organisations do not comply with their duty to notify the Commission, the information can be provided via an alternate means.

Since the start of the Scheme there has also been a 204 per cent increase in the number of public notifications received. This number has increased steadily from 76 in 2017–18 to 231 in 2021–22. It is likely this figure will grow further over time as more parents and other community members learn of the Scheme and the Commission's role.

Trend analysis and data available as a result of the Scheme

The Commission's collection, analysis and publication of data arising from the Scheme, for the first time, gives us and the community visibility of the prevalence and nature of child sexual abuse, sexual misconduct against children and other harmful conduct to children in Victorian organisations.

There is considerable value in this data, which is in part demonstrated by the nature of the insights and information the Commission is able to share with others.

The Commission, via its annual report, publishes data about the operation of the Scheme, including analysis of notifications, trends and patterns. This reporting:

- provides an overview of reportable conduct across all regulated sectors
- provides useful intelligence for regulators
- assists organisations to understand how to target their prevention efforts
- provides transparency about the Commission's work in administering the Scheme.

Building knowledge and capacity in organisations

A key benefit of the Scheme is the unique role the Commission can play as a body dedicated to building the knowledge and capacity of organisations to prevent child abuse and child related misconduct. While there are a number of child safety regulators in Victoria and other bodies nationally who all make an important contribution in this regard, the Commission's role under the Scheme enables a unique focus on supporting Victorian organisations' ability to respond to, and investigate, reportable allegations. Supporting organisations to comply with the Scheme is embedded as a critical aspect of our regulatory approach.[28]

Over the past five years, the Commission has focused significant effort on capacity-building, education and support for organisations. The Commission has improved the practice of a high number of organisations during this time through the provision of information sessions, forums, training, written guidance, webinars and advice offered by Commission staff.

We have a dedicated email and enquiry line for organisations and individuals needing information or guidance to comply with the Scheme, with translation and interpreting services available.

While we still see variability in the quality of investigations, we believe our activities have resulted in an overall improvement.

[28] https://ccyp.vic.gov.au/about-us/our-regulatory-approach/.

Guidance and resources

The Commission has released a significant amount of guidance to support investigations including written guidelines, detailed information sheets on various aspects of investigations under the Scheme, templates, videos and webinars. The Commission routinely issues new guidance material to support organisations to comply.

Information sheets are available on all aspects of the Scheme, including responsibilities of the head of an organisation, types of conduct that are reportable, reporting to the Commission, historical allegations, investigation findings, own motion investigations, and the Scheme's relationship to the Standards. Translated information sheets are also available.

Over 10,000 copies of the foundational document *Guidance for Organisations Investigating a Reportable Conduct Allegation* have been accessed online or distributed in hard copy.

Information sessions

The Commission has provided on average 15 information sessions on the Scheme per year at no cost to participants, helping to inform and educate thousands of professionals and volunteers. Attendance has reflected the range of sectors subject to the Scheme.

Some information sessions were delivered to attendees grouped by sector, including overnight camps, out-of-home care, museums and religious or faith-based organisations. Sessions have been hosted in Melbourne as well as in regional centres like Morwell, Mildura, Bairnsdale, Ballarat and Hamilton.

The Commission suspended face-to-face information sessions in March 2020 and redesigned its approach to commence webinars for both the Standards and the Scheme in May 2020. Webinars and recorded videos will continue to be offered by the Commission with some future re-introduction of face-to-face sessions to best support Melbourne and regionally based organisations and the diversity of learning needs.

Demand for webinars on the Scheme continues to increase. With staff turnover in the organisations the Commission regulates, as well as a dynamic market in services to children meaning that new organisations are constantly coming into scope for compliance with the Scheme, they are likely to remain a valuable feature of the Commission's education toolkit.

The Commission has also delivered dedicated webinars on specific topics, for example conduct types, and on occasion presents to staff and volunteers in key sectors as well as executives and boards, to build awareness of compliance obligations.

A full-day reportable conduct investigations forum aimed at investigators and those commissioning investigations has also featured as part of the Commission's capacity building approach. This focuses on topics such as conducting fair investigations, reportable conduct definitions and thresholds, planning investigations and making findings.

Interviewing children guidance

A key issue identified early in our administration of the Scheme was a concerning lack of involvement by some organisations of alleged victims and child witnesses.

Myths persist around involving children in investigations including that their evidence is less reliable than adults. Some organisations simply do not know how to approach involving children and are worried about doing the wrong thing. The Commission holds the view that 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. There is a common fear amongst organisations of re-traumatising a child victim-survivor by interviewing them. In some matters that risk is real.

In response, we partnered with Professor Martine Powell from the Griffith University Centre for Investigative Interviewing and Dr Jenny Dwyer, a mental health social worker and child and family therapist, who has specialised in working with trauma, to develop video and written resources on interviewing children. These specialist resources support organisations to include children and young people in reportable conduct investigations and include:

- a guide for including children and young people in reportable conduct investigations
- child interview videos including a mock interview with a child (viewed over 9,000 times) and a video with commentary explaining the method used in the previous video
- an animated video providing an introduction to interviewing children and young people, as well as addressing some common myths (viewed over 18,000 times).

Resources to support organisations during COVID-19

The pandemic saw many organisations shift their services and activities online in response to social distancing requirements. Organisations that previously engaged with children and young people in person established new methods to engage with them online, through video conferences, online forums, social media or over the phone.

The Commission developed guidance to support organisations manage particular risks to child safety generated through greater online and phone-based services, as well as guidance on interviewing children for reportable conduct investigations during the pandemic.

Engaging with sectors

The Commission engages with sectors to understand the child abuse risks specific to them and their individual capacity building needs, to better target our efforts to raise awareness of the obligations of the Scheme and support sectors to comply. Examples of targeted approaches include the early childhood education and care sector and the religious/faith-based sector.

Early childhood education and care

Since 1 January 2019 the Scheme has applied to this sector, which comprises between 4,000 and 5,000 organisations. To support their inclusion the Commission delivered an extensive awareness raising campaign engaging in person with an estimated 1,100 individuals, writing to over 4,000 services and delivering 30 dedicated information sessions to approximately 600 participants.

The Commission worked with co-regulators, including the Quality Assessment and Regulation Division of the Department of Education and Training, to design and disseminate guidance.

Additionally, the Commission presented at numerous early childhood education and care sector conferences, met with peak bodies and large approved providers and published guidance material developed specifically for the early years sector. Dedicated e-modules and posters for the sector are available on the Commission's website.

Religious organisations

The Commission has had strong engagement with religious and faith-based organisations.

The Commission has delivered tailored information sessions and webinars in collaboration with peak bodies including the Victorian Council of Churches, Faith Communities Council of Victoria, Islamic Council of Victoria, Board of Imams Victoria, Jewish Community Council of Victoria and the Rabbinical Council of Victoria. The Commission has also delivered information to the Victorian Interfaith Networks Conference.

In 2018–19 the Commission launched *A guide for faith communities on the Reportable Conduct Scheme*, which was developed together with the Faith Communities Council of Victoria and the Victorian Council of Churches. The guide has been widely distributed through the faith communities' network and was translated into fifteen community languages to increase its reach across the diverse faith-based sector.

In March 2020 the Commission hosted a Summit of Faith Leaders against Child Abuse, in which 50 leaders heard directly from a panel of survivors. The Summit generated important discussion on child safety and culminated in a joint statement committing to continued reform and improvement across faith communities.

Working with co-regulators

The Commission also educates and provides advice to co-regulators to promote compliance by organisations with the Scheme through leadership and public engagement around child abuse and the Scheme.

The Commission plays a role in leading and facilitating regular meetings between child safety regulators.

The Commission routinely collaborates with co-regulators. At the start of the Scheme, the Commission partnered with the New South Wales Ombudsman to deliver sessions on the Scheme and workplace investigations targeted at religious organisations and early years providers to assist them to understand what the then new Scheme would mean for them.

In 2018–19 the Commission collaborated with the then Department of Health and Human Services to develop guidance material for community service providers on undertaking joint Client Incident Management System (CIMS) and Reportable Conduct Scheme investigations.

More recently the Commission and the Office of the Children's Guardian in NSW together with the Australian Centre for Child Protection at the University of South Australia produced an Empowerment and Participation guide for organisations working with children and young people to support organisations to better empower children and to assist them to feel comfortable to speak up and raise concerns.

This year, the Commission contributed to a project led by the Victorian Institute of Teaching (VIT) to develop an online Conduct Reporting Guide, which assists community members, teachers, schools, and early childhood education providers to understand what conduct must or can be reported and to whom.

Key issues

Appropriate resourcing to administer the Scheme

Base funding provided to the Commission to administer the Scheme has not changed since 2018. Annual mandatory notifications to the Commission increased by 23 per cent between 2020–21 and 2021–22, have increased by 54 per cent since 2017–18, and are projected to continue increasing in coming years.

Given the large increase in mandatory notifications, the Commission is currently under-resourced to administer the Scheme, which creates a risk of delayed responses to serious safety risks to children in over 12,000 organisations across Victoria.

The Commission is implementing further risk-based initiatives to target its limited resources. However, if no additional funding is received, the Commission will be forced to further reduce its oversight of organisations' responses to alleged child abuse and child-related misconduct in a way that places children at risk.

Without additional funding, the unsustainable workload for the Commission from increasing notifications presents the following risks:

- delays will occur in notifications to police about potential criminal conduct or to Child Protection regarding concerns about a child who may require protection from harm, abuse or neglect
- limitations on the Commission's capacity to intervene in a timely and effective way to ensure organisations manage risks to children and to ensure allegations of child abuse or child-related misconduct are fully and thoroughly investigated
- the Commission cannot finalise cases in a timely way, resulting in delayed referrals to other child safety regulators, such as Working with Children Check Victoria (WWCC Victoria). This increases the risk that people known to pose a risk to children will continue to be able to work with children for an extended period
- children will be abused, or continue to be abused, by a person who would have otherwise been prevented from working with children as a result of the Scheme and the Commission's actions
- Commission staff are exposed to unacceptable risks to health and safety due to workload stress.

Recommendation 1

That administration of the Scheme be made sustainable through additional immediate funding provision to the Commission to manage risk to children.

Employee definition - former employees

The Scheme captures certain allegations where an employee has left an organisation that is subject to the Scheme. Our interpretation is that the Scheme only applies to those employees who have been employed or engaged by an organisation covered by the Scheme, while the Scheme covered that organisation.

The Act is clear that a reportable allegation about the conduct of an employee who has been employed or engaged by an organisation covered by the Scheme will need to be notified to the Commission and investigated regardless of when the alleged conduct occurred (s 48 of the Act captures historical conduct).

Further, the Commission's view is that the Act provides that the conduct of **employees who have subsequently left an organisation** (former employees) is also captured by the Scheme.

In other words, the head of an organisation must notify the Commission and investigate reportable allegations concerning conduct allegedly committed by employees even if:

- an employee resigns or is dismissed, or otherwise stops their engagement with an organisation, or

- is no longer employed by the organisation covered by the Scheme at the time an allegation is made.

Whilst the Commission is clear that the Act provides for this, in our view it would be beneficial to have this made clearer in the legislation.

In addition, the Commission considers that the Act should set some limitations around how long a former employee's conduct should be captured for. Setting a clear time limit for allegations to be in scope after an employee ceases to be engaged by any organisation subject to the Scheme would be beneficial to the effective administration of the Scheme and also assist heads of organisations to be clear about what they must notify to the Commission and investigate. Imposing an obligation on an organisation to investigate an allegation where an employee has not been employed by any organisation subject to the Scheme for many years is onerous and can be extremely challenging for the organisation or the Commission.

Further consideration is required as to what time limit should be set. A period of five years may be an appropriate starting point for this consideration.

There may be some merit in still requiring heads of organisation to notify the Commission about these allegations of former employees, as an organisation may not know that a former employee has started working elsewhere with children.

Recommendation 2

That the Scheme's application to former employees be clarified by amendments to the Act to articulate:

- that reportable conduct allegations in relation to former employees are captured by the Scheme and must be notified to the Commission and investigated
- the length of time after a former employee has ceased to be engaged or employed by any organisation subject to the Scheme that an organisation is obligated to investigate reportable allegations
- what should occur if the former employee is subsequently employed by an organisation captured by the Scheme.

Employment relationships and the Scheme

Employee/employer relationships are changing and the Commission commonly encounters situations where organisations utilise non-traditional methods of engaging workers, such as under labour hire arrangements. Labour hire continues to feature in many sectors with direct contact with children. The Commission takes the view that the Scheme should cover people used by organisations to provide services for children regardless of their employment relationship.

However, the Act in its current form operates to exclude a significant cohort of workers from being covered by the Scheme due to the way they have been engaged by an organisation. For example, a teacher directly employed by a school will be captured by the Scheme, but a casual relief teacher sourced from a labour hire company will not. In practice this means that the conduct of some workers who may pose a risk to children will not be captured by the

Scheme and they may therefore potentially continue to work with children despite having engaged in harmful conduct towards children.[29]

The Commission is concerned that labour hire workers and certain sole proprietors engaged by an organisation subject to the Scheme to provide services for the benefit of children are not covered by the Scheme. Labour hire workers are used extensively in some sectors where children and young people are highly vulnerable, including in residential care, hospitals and schools. The Commission first advised government of this significant safety gap in a letter to the former Minister for Child Protection on 27 November 2017, and have reiterated our concerns a number of times since.

We are also of the view that the Scheme should also apply to secondees, trainees and apprentices as this cohort may also have direct access to children within organisations.

In addition, we have noted circumstances where the entire workforce of an organisation subject to the Scheme is technically employed by another company set up by the organisation, with the employing company being an organisation that is not subject to the Scheme. In these circumstances, whilst the initial organisation will be captured by the Scheme, the workforce responsible for engaging with children will not.[30]

Further attention is also required to ensure sole traders are appropriately captured in the Scheme.

Currently, where a sole trader employs other people they may come within scope of the Scheme (even though they are not a company). However, while the conduct of their employees will be captured under the Scheme, the conduct of the sole trader themselves will not as they do not fall within the definition of employee under the Act.

It is also challenging from a child safety perspective to maintain the current distinction under the Scheme that sees sole traders without employees not captured by the Scheme whereas small organisations (perhaps a sole trader with one employee) are captured by the Scheme. There are some sectors where sole traders are increasingly common, including the disability services sector. This creates another significant safety gap in respect of a large number of providers of services to vulnerable children.

New technology is also enabling sole traders to access work via apps operated by another organisation. In these instances the app provider may not be considered the employer of the sole trader under the Scheme and therefore has no responsibility under the Scheme to investigate reportable allegations.

The Commission considers that there may be sound policy reasons for broadening the scope of the Scheme to cover sole traders (including the cohort of sole traders who have no employees).

If the Scheme were to be extended more broadly to cover sole traders, a number of additional issues should be considered, including:

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[29] The Commission notes that the Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022 (Amendment Bill) contained some amendments to the definition of *employee* which go some way to capturing employees engaged by a third party. However, it did not pass this Parliament before it was prorogued.

[30] The Commission has identified a number of recent examples of this occurring with approved providers of an approved education and care service within the meaning of the Education and Care Services National Law (Victoria).

- an assessment to understand the number of individuals that would be incorporated into the Scheme
- how notification and investigation requirements in s 16M and s 16N would apply
- the requirements to have systems in place under s 16K
- how reportable allegations against sole traders with no employees could be appropriately investigated when the Scheme's usual approach is for the organisation subject to the Scheme (rather than the Commission) to conduct an investigation.

Any increase in the scope of employees covered by the Scheme will need to be accompanied by additional resources to support the Commission to manage the corresponding increase in notifications.

Recommendation 3

That the Scheme be expanded to capture individuals providing services for the benefit of children regardless of their employment relationship, including:

- 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.[31]

That further consideration be given to the viability of extending the Scheme to cover sole traders who do not employ others.

Definition of employee - extension of scope

The Commission has identified some additional opportunities to further the protections of the Scheme by including some specific categories of individuals currently not captured under the definition of employee in the Act.

Elected officials such as local councillors and Ministers

Elected officials such as local councillors and Ministers are not captured by the Scheme as they do not come within the definition of employee for the purposes of the Scheme. In practice, this means that:

- employees of a state government department including its Secretary will be captured by the Scheme, but the portfolio Ministers will not
- employees of a local council will be captured by the Scheme including the Chief Executive Officer, but local councillors will not.

Adult residents in the homes of children and young people in foster and kinship care arrangements

[31] Note that after this submission was lodged the Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Bill 2023 was introduced into Parliament which makes amendments to the definition of *employee* in the *Child Wellbeing and Safety Act 2005*.

Children in foster and kinship care can be vulnerable with many having experienced trauma including relating to the circumstances that led to them being placed in the care.

The Commission notes that under the current definition of employee, not all adult residents within a child or young person's home where they are living in a foster and kinship care arrangement may be covered by the Scheme. For example, an approved foster carer will be considered an employee under the Act, but another adult that moves into the home will not. In the Commission's view there is merit in considering an extension of coverage of the Scheme to incorporate other permanent residents within the home where a foster or kinship care arrangement is in place. The organisation with responsibility for notification and investigation of reportable conduct allegations with respect to the foster or kinship carer would also take on this responsibility.

Recommendation 4

That consideration be given to extending the Scheme's coverage to:

- elected officials such as local councillors and Ministers
- partners and other adult residents living in the homes of children and young people in foster and kinship care arrangements.

Definition of 'reportable allegation'- reasonable belief

The Act defines *reportable allegation* to mean any information that leads a person to form a reasonable belief that an employee has committed—

(a) reportable conduct; or

(b) misconduct that may involve reportable conduct**.**

In instances where a person informs a head of organisation of a reportable allegation where they have formed a reasonable belief, some heads of organisations can adopt the position that they themselves must form a reasonable belief (as opposed to the person notifying or raising the complaint). In our view, the use of 'a person' in the definition makes it clear that the reasonable belief can be formed by any person and that the head of organisation does not need to form their own reasonable belief to incur the obligation to notify. In these circumstances the head is required to submit a notification under s 16M(1)(a) unless they have a reasonable excuse not to as provided by the Act.

Given the issues that we have experienced with heads of organisations taking a contrary view, we consider that the Act could benefit from further clarification on this point.

Recommendation 5

That the definition of *reportable allegation* be amended to make it explicit that any person can form a reasonable belief and that the head of organisation need not agree with that belief in order for the definition of *reportable allegation* to be met.

Investigating conduct outside employment

Conduct is captured within the definition of a *reportable allegation* whether or not it is alleged to have occurred in the course of the person's employment**.**

In some circumstances it can be challenging for organisations to investigate conduct outside the workplace. Where these reportable allegations relate to family violence, an organisation's investigation may also raise safety risks for family members of the subject of allegation.

The Commission considers there are strong policy grounds to retain the current position that conduct outside of the workplace is in scope of the Scheme. A person's conduct with children outside the workplace is a pertinent consideration when assessing their suitability to work with children, and the Commission has seen many occasions where investigations have been successfully undertaken by organisations. This can involve obtaining information and documents from Child Protection, Victoria Police or other organisations with a connection to the alleged conduct.

However, some additional provisions for reportable allegations related to family violence should be considered. Amendments to the Act in respect of family violence-related allegations would assist organisations to manage challenges with these investigations and to identify and manage safety risks.

The Commission suggests a requirement be inserted into the Act for organisations to confer with the Commission before proceeding with an investigation relating to family violence. This would provide the Commission an opportunity to proactively support organisations with their investigation planning, including whether information can be obtained from Child Protection or Victoria Police and advice on how, or if, particular witnesses should be approached.

The Commission can also support safety planning to take place. While some organisations subject to the Scheme should be familiar with safety planning in relation to family violence matters, a high number will not be. Currently the Commission does what it can to identify and make contact with organisations when we first identify a family violence matter. However, it may not always be obvious on the information provided to the Commission under s 16M that a case involves family violence, or organisations may have already taken steps before the Commission reaches out, such as to advise the subject of allegation of the allegations. An obligation to confer with the Commission would ensure organisations involve the Commission at an early stage in these potentially high-risk cases.

In a small number of cases to date the Commission or the organisation have formed the view that an investigation in relation to family violence-related reportable allegations should not proceed due to safety concerns.

In these cases, the Commission has informed the organisation that it is open to them to advise the Commission that the organisation is unable to investigate. The Commission then considers under s 16O(2) whether it is appropriate for the Commission to investigate. In exercising our discretion whether to investigate, the Commission takes into consideration those safety concerns. There is an opportunity to amend the Act to specifically deal with such matters. Section 16N of the Act states that the head of an organisation must investigate, and there are no provisions dealing with situations where it would be unsafe to do so. An amendment could provide the Commission with a power to direct an organisation not to proceed with certain investigations involving family violence due to safety concerns for any person. It would also be useful to ensure the Commission's discretion to investigate under s 16O(2) was retained.

Recommendation 6

That the Scheme 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.

Definition of 'reportable conduct'

In the Commission's view, the behaviour captured under the definition of *reportable conduct* is broadly appropriate and includes conduct that presents genuine risks to children that should be subject to oversight under the Scheme. However, we have some suggestions for clarifying the thresholds within the definitions of:

- physical violence committed against, or in the presence of, a child
- sexual misconduct, committed against, with or in the presence of, a child.

Physical violence

The term 'physical violence' is not further defined in the Act or qualified as are some other reportable conduct types, for example *significant* neglect and behaviour that causes *significant* emotional and psychological harm. It therefore captures a broad range of conduct from serious and significant physical violence to more minor conduct.

To assist organisations to identify conduct captured within the definition of physical violence, the Commission has issued a detailed information sheet. Here, the Commission has expressed the view that to be reportable conduct, physical contact made with a child must be capable of causing some type of injury or harm to the child. The Commission's interpretation of the current definition is that it is not necessary that injury or harm actually happened, and the injury or harm does not have to be serious or permanent. We state that conduct or behaviour that is not physical violence under the Scheme includes:

- where the contact is minor, trivial or negligible
- where the physical contact is a part of normal social interactions such as touching a child to gain their attention, to guide or to comfort a child
- actions involved in caring for a child having regard to their age, maturity, health or any other relevant characteristics.[32]

The definition of a *reportable allegation* creates an appropriately low bar for notifying the Commission of allegations and triggering an investigation. It captures matters where a person reasonably believes that reportable committed *has* been committed but also misconduct **that *may* involve reportable conduct**.

[32] Information Sheet 10: Physical Violence under the Reportable Conduct Scheme https://ccyp.vic.gov.au/assets/resources/RCSInfoSheetUpdates/Information-Sheet-10-Physical-violence-21.05.18.pdf.

The capture of a broad range of conduct under the term 'physical violence', together with the inclusion of misconduct that *may* involve reportable conduct, means that the Scheme captures conduct that presents lower-level risk to children.

As a matter of practice, and in line with the Standards, organisations should investigate and act on all forms of violence, however minor. This does not necessarily mean all allegations should be covered by the Scheme. The Commission suggests amendments to ensure the Scheme focuses on more serious cases.

This could be achieved in a range of ways and would require careful drafting to ensure conduct causing cumulative harm to children and young people due to repeated lower-level physical violence is not excluded from the Scheme. Options include introducing a qualifier as in *significant* neglect, or through introducing a definition that clarifies the exclusion of contact that is minor, trivial or negligible.

Recommendation 7

That conduct that is trivial or minor and presents a lower-level risk to children be excluded from coverage under the Scheme by amending the definition of 'physical violence'.

Sexual misconduct

The Act defines sexual misconduct to include behaviour, physical contact or speech or other communication of a sexual nature, inappropriate touching, grooming behaviour and voyeurism.

The Commission has issued guidance for organisations[33] including advice on the factors that organisations may consider when determining whether conduct is of a sexual nature. This is presented as an inclusive, not exclusive list. Factors include:

- the area of the body involved in the conduct
- whether at least one of the reasons for the conduct was for sexual arousal or gratification; **or**
- whether the conduct was overly personal or intimate.

Our guidance indicates that, if at least one of the reasons for the misconduct was for potential or actual sexual arousal or gratification, this can indicate that the misconduct was of a sexual nature. Such a finding should be made having regard not only to any reasons given by the worker or volunteer for their behaviour, but to all of the circumstances.

Our guidance also states that even if the misconduct does not involve a part of the body, and the reasons for the misconduct did not involve potential or actual sexual arousal or gratification, misconduct may still constitute sexual misconduct if it is 'overly personal or intimate'.

Organisations investigating allegations of misconduct that is overly personal or intimate are encouraged to consider whether the misconduct was so personal or intimate in nature that:

[33] Information Sheet 9: Sexual misconduct under the Reportable Conduct Scheme, https://ccyp.vic.gov.au/assets/resources/RCSInfoSheetUpdates/Information-Sheet-9-Sexual-misconduct-29.11.22.pdf.

- the alleged victim considered that the misconduct was sexual; or
- a reasonable person would regard the misconduct as sexual.

In our experience, organisations investigating sexual misconduct often focus unduly on the subject's of allegation intent or motivation, and whether the intent or motivation was for the sexual gratification or arousal of the subject of allegation. Combined with a poor understanding of grooming, this can lead an organisation to conclude that the alleged conduct was not sexual misconduct even where the investigation has found a pattern of inappropriate, overly personal conduct by the subject of allegation towards a child.

The Commission is in the process of further refining our guidance to better assist organisations' understanding of this point. However, an amendment to the definition of sexual misconduct may also assist, for example, to provide that overly personal and intimate conduct may constitute sexual misconduct even if there is no finding that the reasons for the conduct involved sexual arousal or gratification.

We have identified a further gap in relation to sexual misconduct that should be addressed. The Scheme does not capture scenarios where a subject of allegation has been engaging in sexual misconduct online or remotely with a person they believe to be a child but who is in fact an adult. Given the proliferation of online learning and social media we consider it is important that the Scheme cover adults who have engaged in sexual misconduct with a child online and who have intended this misconduct to be with a child.

Recommendation 8

That the Act be amended to clarify that overly personal and intimate conduct in relation to a child can constitute sexual misconduct even where there is no finding that the conduct was for sexual arousal or gratification.

Recommendation 9

That the definition of sexual misconduct be expanded to include circumstances where a person is engaging with a person they believe to be a child but is actually an adult.

Reduction in duplication with the investigative activities of other regulators

The Act currently recognises that there may be duplication between the Scheme and the activities of other regulators. Section 16E(a) requires the Commission to liaise with regulators to avoid unnecessary duplication in the oversight of the investigation of reportable allegations.
There is provision for the Commission to request that a regulator of an employee investigate a reportable allegation (s 16V(1)) and powers for the Commission to monitor a regulator's investigation (s 16W). Regulators of employees[34] for the purposes of the Scheme are:

- the Suitability Panel
- the Australian Health Practitioner Regulation Agency
- a National Health Practitioner Board
- the Victorian Institute of Teaching.

[34] Section 3(1) of the Act.

The head of an organisation can also permit a regulator to investigate a reportable allegation under s 16N(1)(a). No distinction is made between a regulator in relation to an organisation or regulator in relation to an employee. The Act provides for a broader group of regulators[35] who can investigate under s 16N(1)(a) (on request by a head of organisation) than under s 16V(1) (on request by the Commission).

The Act clearly envisages that regulators will play a role in investigating some reportable allegations, however in practice this has rarely occurred. The Commission is aware of a very small number of instances where a regulator has agreed to investigate under the Scheme on behalf of the head of the organisation.

The Commission has had some discussions with employee regulators about the potential for them to conduct investigations under the Scheme. Discussions have centred around individual cases where the employee regulator is already planning to investigate allegations as part of its own regulatory functions. In these discussions, employee regulators have raised concerns about:

- whether they, the regulator, has the necessary investigatory powers
- whether evidence gathered by the regulator using its own powers could also be used for the purpose of their investigation under the Scheme
- how the regulator is to reach two different decisions with different processes from the same investigation.

Employee regulators also have their own priorities in line with their specific regulatory mission and they are not funded to perform investigations under the Scheme. The Commission is therefore yet to make a formal request to an employee regulator to conduct an investigation under the Scheme.

Despite these issues, the Commission sees merit in regulators conducting investigations under the Scheme in particular circumstances. In particular, if a regulator is investigating a set of allegations and conducts the reportable conduct investigation in parallel, this can reduce the need for victims and other witnesses to be interviewed multiple times by multiple investigators.

The provisions in the Act relating to regulator investigations would, however, benefit from review and potential amendment to improve their workability. Changes could include requiring regulators to consider whether a joined investigation/single investigation for multiple purposes would reduce duplication and reduce the need for alleged victims to give evidence on multiple occasions.

We also note that there are some regulators with relevant roles in relation to employees that have not been prescribed as regulators. The Victorian Disability Worker Commission (VDWC), the Quality Assessment and Regulation Division (QARD) within the Department of Education and Training and the new Social Services Regulator all have some power to regulate employees in services for children and are not currently prescribed as employee regulators. We request that consideration be given to expanding the prescribed employee regulators.

While there are relevant differences between the role of employee regulators and the role of organisational regulators, there may be merit in expanding the regulators under s 16V(1) to include a regulator of an organisation, as well as a regulator of an employee.

[35] Section 3(1) of the Act.

Recommendation 10

That provisions in the Act relating to regulators be reviewed and amended to improve their workability. Changes to be considered include requiring regulators to consider joined investigations/single investigations for multiple purposes and thereby reduce the need for alleged victims to give evidence on multiple occasions.

That the Victorian Disability Worker Commission, the Quality Assessment and Regulation Division within the Department of Education and Training and the Social Services Regulator be prescribed as employee regulators for the Scheme

That consideration be given to whether any further regulators ought to also be prescribed.

Allegations relating to the head of organisation

The legal obligation to notify the Commission (s 16M) and respond (s 16N) to reportable allegations falls on the head of an organisation. Powers to share and receive information are vested in the head of the organisation (s 16ZC). Section 16K of the Act requires the head of an organisation to ensure the organisation has in place:

- a system for enabling any person, including an employee of the organisation, to notify the Commission of a reportable allegation involving the head of the organisation of which the person becomes aware; and
- a system for investigating and responding to a reportable allegation against an employee of the organisation.

The Act currently does not adequately address circumstances where a reportable allegation is raised about the head of organisation. When an allegation relates to the head of an organisation, conflicts of interest[36] will inevitably arise in respect of the role the legislation asks the head of organisation to perform.

In practice, where the Commission is overseeing the investigation into a reportable allegation concerning a head of organisation, we seek an alternate contact within the organisation to perform the role of a head of organisation under the Scheme. However, there is no explicit statutory provision requiring an organisation to have systems in place to nominate an alternate head.

Where the Commission directly receives information about a potential reportable allegation concerning the conduct of the head of an organisation, usually it will need to contact that organisation to alert them to the allegations so that risks can be managed, and an investigation take place. In these circumstances, we usually need to contact the head of the organisation themselves and ask if they have systems for dealing with allegations about the head and/or ask them to nominate an alternate contact for the Commission. This can have the effect of alerting the head of the organisation about an allegation which has the potential to impact an investigation.

Where an employee becomes aware of a reportable allegation concerning the head of their organisation, they may feel intimidated reporting it to the head, or be concerned about the impact on child safety of doing so. They can notify the Commission directly of the allegation, and s 16K(1)(b) of the Act requires the head of the organisation to have a system for this. However, there is no direct obligation on that employee to notify the Commission.

[36] Whether actual, possible or perceived.

Requiring the head of an organisation to have internal systems in place to manage allegations about the head will provide clarity to the organisation, the Commission, alleged victims and their parents and carers about how these matters will be managed. Having provisions requiring the nomination of an alternate head, or otherwise a person responsible for performing the role of the head under the Act, where the head of the organisation is the subject of allegation will also support effective management of these allegations. Additional amendments to s 16M and s 16N may also then be required to reflect that, for allegations concerning a head of organisation, reporting and responding obligations would fall on the alternate individual nominated.

Recommendation 11

That the Act be amended to:

- require heads of organisations to have internal systems in place to manage allegations about the head
- require the nomination of an alternate head, or a person responsible for performing the role of the head under the Act, where the head of the organisation is the subject of an allegation.

Issues with identifying head of organisation

In relation to an organisation to which the Scheme applies, the Act provides that the head is:

a) if the organisation is a Department, the Secretary to the Department or the delegate of the Secretary
b) if the regulations prescribe a person or a class of persons as the head of an organisation, the prescribed person or a person belonging to the prescribed class of persons (no regulations have been made in this regard)
c) in any other case—
    i. the chief executive officer of the organisation (however described); or
    ii. if there is no chief executive officer, the principal officer of the organisation (however described); or
    iii. if there is no chief executive officer or principal officer, a person, or the holder of a position, in the organisation nominated by the organisation and approved by the Commission.[37]

There is no obligation for an organisation to have assessed who their head is, or to nominate a proposed head if there is no chief executive officer or principal officer. There is no requirement for the head to advise the Commission of their identity, nor are there provisions dealing with the situation where a reportable allegation arises and there is no nominated head.

In practice the Commission has found that in some organisations it can be difficult to ascertain who is the head. The issue can arise where there is no chief executive officer or obvious or sole principal officer. Further, where there is no chief executive officer or principal officer, and no person has been nominated by an organisation, the organisation effectively has no head. This is problematic in that many of the key duties under the Scheme apply to heads of organisations (eg: s 16K, s 16M, s 16N). Further, without clarity regarding the head of organisation it is not possible for the Commission to easily engage with an organisation

[37] "Head" in relation to an organisation to which the scheme applies is defined in s 3 of the Act.

when we are made aware of a reportable allegation. the Commission's information sharing powers, for example, are focused on sharing with the head of the organisation.[38]

The Commission is of the view that amendments to the Act are required to enable a head of organisation to be clearly identified.

There should be an explicit obligation for organisations to identify the head of the organisation as part of their systems under s 16K of the Act. This would in effect mean these details must be contained in internal policies and procedures. It is not proposed that heads would also be required to notify the Commission of these details unless asked.

It also proposed that the Commission be provided with powers to:

- seek and obtain relevant information regarding the organisation for the purposes of identifying a head of organisation
- designate a head of the organisation for the purposes of the Scheme in circumstances where the definition in s 3 does not apply and the organisation has not nominated a head.

Recommendation 12

That the Act be amended to:

- require organisations to clearly identify the identity of the head of the organisation as part of systems required under s 16K of the Act and for this information to be provided to the Commission on request
- provide the Commission with powers to obtain relevant information regarding the organisation for the purposes of identifying a head of organisation
- provide the Commission with powers to designate a head of an organisation for the purposes of the Scheme. This should be limited to circumstances where the definition in s 3 does not apply and the entity has not nominated a head.

Investigation timeframes

The Act explicitly requires a head of organisation to undertake certain activities within specified timeframes. A head of organisation must notify the Commission of a reportable allegation within three business days (s 16M(1)(a)) and provide further information pertaining to the reportable allegation within 30 calendar days (s 16M(1)(b)).

The Act also requires a head of organisation to, as soon as practicable, after becoming aware of a reportable allegation, investigate the reportable allegation (s 16N(1)(a)). However, the Act is silent regarding the timeframe within which a head of organisation must complete an investigation.

We note that s 16B(1)(e) contains a fundamental principle that employees subject to reportable allegations are entitled to natural justice. Arguably this would include conducting an investigation in a timely manner. However, there is no further guidance on this matter within the Act.

The Act also provides the Commission with the objective to ensure that reportable allegations are properly investigated (s 16F(b)). Again, it is arguable that ensuring an

[38] Section 16ZC of the Act.

investigation is conducted in a timely manner would fall under this objective. However, in this instance the onus is only on the Commission.

We are cognisant that there are multiple factors that influence how long an investigation may take, including where an investigation under the Scheme is placed on hold while a criminal investigation by Victoria Police investigation is undertaken. Given this, we do not believe an explicit timeframe in terms of days or months should be specified.

However, in our view, the Act would benefit from a provision requiring heads of organisations to complete an investigation as soon as is practicable. This would align with the requirement at s 16N(1) to start an investigation as soon as is practicable. It would also provide the Commission with additional support in fulfilling its s 16F(b) objective to ensure that reportable allegations are properly investigated.

Recommendation 13

That the Act be amended to require the head of an organisation to complete an investigation into a reportable allegation as soon as is practicable.

Information provided to the Commission under s 16M

Section 16M of the Act requires a head of organisation to provide the Commission with certain information at two points:

- within 3 business days after becoming aware of a reportable allegation (s 16M(1)(a))
- as soon as practicable and within calendar 30 days after becoming aware of a reportable allegation (s 16M(1)(b)).

The Commission also uses its powers under s 16N(2) to request further information from heads of organisations.

The Commission has identified some potential improvements to s 16M(1) that would reduce regulatory burden for heads of organisations, better support to Commission to perform its role and improve efficiency.

Further information should be provided with the 3 day notification with this information only requiring an update as part of the 30 day notification if changes have occurred.

3 day notification

The Commission considers that s 16M(1)(a) should be expanded to include the following two additional pieces of information:

Risk management

In its online webform, the Commission currently asks heads of organisation to advise the Commission of the steps or actions taken to mitigate risks of harm to children. If this information is not provided upon lodgement of a mandatory notification, the Commission follows up to ensure this information is received. This assists the Commission to perform a critical role of checking that measures have been put in place for the safety of the alleged victim as well as other children and young people whilst an investigation is under way, and assessing whether the organisation may benefit from further advice from the Commission.

The Commission has power under s 16N(2) of the Act to request this information. Given its importance to child safety, ho.ever, the Commission considers that a requirement to advise

the Commission of risk management measures taken should be included in the Act. This would raise its level of importance in the eyes of organisations.

Subject of allegation employment status and disciplinary action

It is helpful for the Commission to understand information about the employment or engagement status of the subject of allegation at the time a mandatory notification is lodged with the Commission. This includes information such as whether the subject of allegation has been stood down, placed on alternate duties, suspended or terminated. This assists us to understand how risks to children are being managed as well as identifying potential risks to natural justice as well as whether additional advice and guidance may assist an organisation.

Recommendation 14

That s 16M(1)(a) be broadened to require a head of organisation to provide the Commission with information about:

- action taken, or proposed to be taken, to mitigate risks of harm to children
- the employment or engagement status of the subject of allegation and any disciplinary or other action taken, proposed to be taken, against the subject of allegation.

30 day notification

The Commission is of the view that the 30 day notification is not operating optimally as a key point for the head of the organisation to provide a meaningful update in relation to the organisation's investigation.

Changing what heads of organisations are being asked to advise the Commission will assist both heads of organisation and the Commission.

We consider that s 16M(1)(b) should require the Commission to be advised of:

- any changes made, or proposed to be made, to actions to mitigate risks to children since the 3 day notification
- any changes to the employment status of the subject of allegation or any further disciplinary or other action taken, or proposed to be taken, against the subject of allegation since the 3 day notification. This could be included as a clarification to s 16M(1)(b)(ii).

These amendments would align with the proposal for s 16M(1)(a) above and enable the Commission to monitor any changes in risk mitigation and employee status between the 3 day notification and 30 day update. If there are no changes since the 3 day notification, no update on these matters would be required.

The Commission also considers that if the above amendments were implemented, s 16M(1)(b)(iii) would not be required and could be removed. This provision requests that certain written submissions made to the head of entity regarding action taken in relation to the subject of allegation be provided to the Commission. In our view this information is not required in every case; requiring heads of organisations to provide this can cause unnecessary regulatory burden. Such information is best considered once findings have been submitted. In the event that this information is required at the 30 day notification stage, s 16N(2) enables the Commission to request it from the head of organisation in individual cases.

Recommendation 15

That s 16M(1)(b) be broadened to require a head of organisation to provide the Commission with information about:

- any changes made, or proposed to be made, to actions to mitigate risks to children since the 3 day notification
- any changes to the employment status of the subject of allegation or any further disciplinary or other action taken, or proposed to be taken, against the subject of allegation since the 3 day notification.

That s 16M(1)(b)(iii) be removed.

Scheme in multiple jurisdictions

New South Wales and the Australian Capital Territory currently have reportable conduct schemes. Legislation has passed for a scheme in Western Australia which is due to commence in 2023, and Tasmania is currently preparing legislation for a scheme.

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.

Where the NSW scheme appears to have power to exempt an organisation in such circumstances from conducting that investigation under its scheme where one is occurring in Victoria, the Act does not appear to permit the same to occur under the Victorian Scheme. Neither exemption by the Commission under s 16I of the Act nor exemption by regulation under s 16J permit an exemption for a single investigation as might be appropriate in the situation above.

As a result, the Commission lacks the power to reduce duplication in multi-jurisdictional matters.

Recommendation 16

That the Act be amended to empower the Commission to reduce duplication in relation to multi-jurisdictional matters under the Scheme. These would include empowering the Commission to:

- exempt an organisation from undertaking an investigation in the event that an investigation is occurring under an equivalent interstate scheme
- recognise a finding made under an equivalent interstate scheme as a finding for the purposes of the Victorian Scheme where the reportable allegation is also captured under the Victorian Scheme.

Investigation findings

The Act, at s 16N(3), requires a head of organisation to provide the following information to the Commission as soon as practicable after the conclusion of an investigation:

a) a copy of the findings of the investigation and the reasons for those findings; and
b) details of any disciplinary or other action that the organisation proposes to take in relation to the employee and the reasons for that action; and

c) if the organisation does not propose to take any disciplinary or other action in relation to the employee, the reasons why no action is to be taken.

The Commission also has a broad power under s 16N(2) to request in writing any information or documents relating to a reportable allegation which can be used the request information or documents beyond that specified in s 16N(3).

In practice, the Commission always asks heads of organisations to provide the evidence relied on to make a finding. This information is important for the Commission to be able to meet its s 16F(b) objective to ensure the reportable allegation has been properly investigated. Whilst this is arguably a requirement of s 16N(3)(a), in practice a number of organisations do not submit this evidence to the Commission with their findings. Given the important of this to the Commission being able to perform its functions, and that the Commission asks for it in every case, it would assist to provide clarity for heads of organisation for this to be explicitly included in s 16N(3). In our view, this would streamline the review process the Commission undertakes after receiving findings by reducing the incidences where the Commission needs to seek additional information from an organisation.

Other information required for the Commission to meet its s 16N(3) objective includes information about whether the alleged victim was included in the investigation and information about whether procedural fairness[39] was afforded to the subject of allegation. A clear requirement, included in s 16N(3), to provide this information would also streamline the review process, as well as clearly signalling the importance of ensuring investigations are procedurally fair and, where appropriate, involve the alleged victim.

Recommendation 17

That s 16N(3) of the Act be amended to explicitly include:

- evidence relied on by the head of entity when making the finding
- information pertaining to the involvement of the alleged victim in the investigation
- information pertaining to how procedural fairness was afforded to the subject of allegation.

Exemption provision

The Commission considers that there are issues with the drafting of the exemption provision in s 16C of the Act which states:

> *The reportable conduct scheme does not apply to an entity that does not exercise care, supervision or authority over children, whether as part of its primary functions or otherwise.*

In our view the current drafting of the provision and the use of the present tense within the definition causes unintended consequences. If an organisation is no longer delivering a service and therefore not exercising care supervision or authority in relation to children, then the organisation can technically fall out of scope for the Scheme.

This can result in organisations potentially and arguably cycling in and out of coverage of the Scheme especially if they decide to cease providing services for a period of time then re-start

[39] See Section 16B(1)(e) of the Act.

those services (as was experienced during and post COVID lockdowns), leading to confusion and uncertainty.

This can also lead to a lack of clarity regarding a head of organisation's duties pertaining to historical allegations of abuse that are discovered once an organisation has ceased delivering services to children and are therefore technically out of scope for the Scheme because they are not exercising care, supervision or authority.

From a policy perspective there is good reason for a head of organisation to be obliged to investigate a reportable allegation concerning an employee, even if that the organisation has ceased delivering services to children. Without a thorough investigation, a serious incidence of reportable conduct may remain unidentified, unreported and not investigated. This could result in a perpetrator of child abuse retaining their ability to work with children in other organisations.

The Commission considers clarity is required as to the length of time an organisation has stopped exercising care, supervision or authority over children before s 16C applies.

Recommendation 18

That the exemption provision in s 16C 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.

Disclosure protections

Section 16Y of the Act contains protections for those disclosing information to the Commission under Part 5A. However, we note that this protection applies only to disclosures made to the Commission.

There is currently no protection under the Act for those who disclose information to a head of organisation regarding potential reportable allegations.[40] Given that the Scheme is structured around heads of organisations receiving and acting on information pertaining to reportable allegations, this is an opportunity to consider extending a form of protections for those who report allegations within organisations. The lack of protections for those who disclose to heads of organisations may have a chilling effect and discourage the disclosure of relevant information pertaining to potential reportable allegations.

Recommendation 19

That consideration be given to extending disclosure protections to persons providing information to heads of organisations relating to reportable allegations.

Immunity provisions

We note that currently that Act does not provide the Principal Commissioner or Commission staff with the basic immunity contained in the Department of Treasury and Finance Immunity and Indemnity Policy.[41]

[40] There may be protections in some organisations for those who disclose contained in other legislation.
[41] https://vgls.sdp.sirsidynix.net.au/client/search/asset/1265874.

We note that s 32B of the *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021* contains an immunity provision for the Commission and sector regulators when administering the Standards.

We therefore request that the Department give consideration to including a similar provision that applies to the Commission when exercising powers under Part 5A of the Act.

Recommendation 20

That the Act be amended to include an immunity provision applying to the Commission when exercising powers under Part 5A of the Act.

Compliance and enforcement powers

Responses to alleged breaches of criminal offences under the Scheme

The Commission lacks appropriate investigation, compliance and enforcement powers to respond to potential breaches of criminal offence provisions in the Act (eg s 16M, s 16ZE and s 16ZF).

The Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022, contained a suite of powers supported by the Commission. We note however that these proposed powers only applied to the enforcement of s 16M. It is the Commission's view that the proposed powers should also apply to other offences, and in particular, s 16ZE and s 16ZF.

This would include power for the Commission to appoint authorised officers to perform certain functions and exercise certain powers such as:

- enter and inspect premises with and without warrant (including penalties for failing to provide assistance)
- search premises
- seize any document or thing
- apply for a warrant
- interview children
- issue infringement notice.[42]

The Commission should have powers to seek remedies such as the power to issue a notice to produce to the head of organisation or any other person that the Commission reasonably believes is not complying with, or has not complied with s 16ZE or s 16ZF, with sanctions for non-compliance; and notice to comply with these sections. The Commission should also have all the other powers, functions and remedies available under the Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022 in relation to these other offences.

Failure to provide these powers in respect of the other relevant offences under the Part 5A of the Act will result in significant issues for the Commission when attempting to investigate and enforce breaches of s 16ZE and s 16ZF and other offences.

The Commission considers that the current penalty for failure to comply with s 16M is wholly inadequate. This is illustrated when comparing the other penalties in Part 5A - s 16M

[42] This is not the full list, just illustrative.

(maximum penalty of 10 units - $1,849.20), s 16ZE (with a penalty of up 300 units - $55,476) and s 16ZF (with a penalty of up to 100 units - $18,492). The maximum penalty of 10 penalty units is also dramatically inconsistent with penalties in relation to the Standards in the *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021*.

The penalty for a breach of s 16M does not reflect the gravity of the offence, particularly considering some of the more serious examples of the type of conduct covered by the offence. Examples include where the evidence indicates that the head of an organisation has deliberately failed to report physical violence against a child to the Commission in order to avoid their obligations under the Act and protect the reputation of the subject of allegation. The Royal Commission unearthed very clear evidence of organisations acting to conceal abuse in order to protect organisational reputation.

Recommendation 21

That the Commission be provided a full suite of investigation, compliance and enforcement powers to take action in respect of alleged breaches of s 16M, s 16ZE and s 16 ZF of the Act.[43]

Recommendation 22

That the penalty for a breach of s 16M be increased.

Section 16K powers

We also consider that additional compliance and enforcement powers are required to respond to breaches of s 16K. This provision requires a head of organisation to have systems in place to prevent reportable conduct and properly respond to reportable allegations.

The Commission has very limited powers to enforce compliance with s 16K(1) and can only request information and make recommendations. After exercising these powers, if an organisation remains non-compliant with s 16K(1), there are no further actions available to the Commission under the Scheme. In practice, the Commission relies heavily on powers under the Standards to support its activities to require organisations to have appropriate systems in place under 16K(1).

From 1 January 2023 when the *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021* commences, the Commission will no longer have statutory powers to regulate the Standards for all organisations subject to the Scheme and will lose the ability to rely on Standards powers to support action on obligations under s 16K(1) for a high number of organisations.

Given the above, it is important that the Act is amended to provide the Commission with appropriate compliance and enforcement powers with respect to s 16K. It would be appropriate to align these powers with those to be available for the Standards from 1 January 2023. This will result in consistency across the two regulatory regimes and support the

[43] Note that after this submission was lodged the Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Bill 2023 was introduced into Parliament which makes amendments to the *Child Wellbeing and Safety Act 2005*.

Commission to take meaningful action if an organisation has insufficient systems to support it to properly prevent reportable conduct and respond if any reportable allegations arise.

Recommendation 23

That compliance and enforcement powers for s 16K be introduced that align with those available for sector regulators of the Standards in the *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021.*

Notice to produce issues

Framing of s 16ZG

Section 16ZG of the Act provides the Commission with the ability to issue a notice to produce to an 'entity' in circumstances where a written request from the Commission has not been complied with.

In some instances, the Act enables the Commission to request information in writing from an 'entity' (e.g. s16K(2)). However, in others the Act specifies that a written request must be made to the 'head of entity' (e.g. s16N(2)). We query whether as a result the Commission would be prevented from issuing a notice to produce pertaining to an information request to the head under s16N(2). The Commission would like to ensure the Act allows us to issue a notice to produce to the head of entity. This would be consistent with the notice to produce provisions in the Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022 which provides for the ability of the Commission to issue a notice to produce to the head of the entity.

Further, consideration should be given to deleting the requirement to first make a request in writing under s16ZG(1). Given the nature of the Commission's work, if presented with a serious child safety issue which necessitated progressing straight to a notice to produce to urgently seek information, the Commission is unable to do this. We would need to go through a process of issuing a written request first. The Commission should have discretion to make decisions as to whether it is appropriate issue a request in writing or issue a notice to produce.

Performance of functions

Further, consistent with s 16ZZI of the Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022, the Commission seeks to be empowered to issue a notice to produce to any other person the Commission reasonably believes possesses relevant documents or information that would assist the Commission perform its functions. This would include the head of entity.

Notice to produce to identify if an organisation is subject to the Scheme

It is not always clear whether an organisation comes within the categories of organisations within Schedules 3–5 of the Act and the Child Wellbeing and Safety Regulations 2017, or meets the exemption outlined at s 16C of the Act. We note that, under the Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022, the

Commission will be able to issue a notice to produce for the purposes of seeking information to ascertain whether a person or body is an entity that is subject to the Standards.[44]

We seek an equivalent power to issue a notice to produce for the purposes of ascertaining whether an organisation is captured by the Scheme.

Recommendation 24

That s 16ZG be amended to clarify that the Commission can issue a notice to produce:

- to any person (including the head of entity) or other body to assist it to perform its functions (which would include to determine if an entity is covered by the Scheme and the head of entity)
- without the need for a prior request for information.[45]

Extend statute of limitations for offences

The Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022 would, if passed, have extended the timeframe within which proceedings for offences pertaining to s 16M(4) of the Act may be initiated. The Bill would have extended the timeframe for commencement of proceedings from 12 months to three years from the commission of the offence. This amendment remains critical.

The Commission considers that, for consistency, the extended timeframe for commencement of proceedings should also apply to other relevant offences under Part 5A (for example, s 16ZE and s 16ZF.

In regards to s 16ZE, the prohibition on publishing information, we consider that 12 months to commence proceedings is insufficient. This provision is protective and plays a key role in ensuring that information that may identify alleged victims of child abuse cannot be published. There may be a lag between the prescribed information being published and this being discovered by the alleged victim or the Commission. As such we consider that the ability to commence proceedings up to three years after an alleged contravention of s 16ZE(1) or s 16ZE(2) is required.

In relation to s 16ZF, the penalty for providing false or misleading information, 12 months to commence proceedings is also insufficient. Sections 16M and 16ZF are potentially related in that if there is a failure to notify under s 16M it is possible that there may also have been provision of false and misleading information to the Commission contrary to s 16ZF particularly where there has been active concealment. If there has been active concealment, it is unlikely that the Commission will even find out about until well into the 12 month period, if not after the expiry of 12 months. Receiving information in a delayed manner reduces the time to investigate properly and to make a decision whether to prosecute or not. It would make sense to investigate the two offences together, and therefore for the limitation period for s 16ZF to be extended to three years consistent with s 16M(4).

[44] Section 25 of the *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021.*

[45] Note that after this submission was lodged the Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Bill 2023 was introduced into Parliament which makes amendments to the *Child Wellbeing and Safety Act 2005*.

Recommendation 25

That the time for commencing proceedings for s16ZE and s16F under Part 5A be extended to three years to align with the approach taken for s 16M(4) in the Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022.[46]

Self-publication by victim-survivors

The Act, at s 16ZE(1) and (2), contains prohibitions on publishing certain information, specifically information that would enable the identification of a notifier or of a child in relation to whom a reportable allegation was made or a finding of reportable conduct was made. We note that s 16ZE(3) states that these prohibitions do not apply to the publication of information permitted under any other Act.

It is also a crime under the *Judicial Proceedings Reports Act 1958* to publish any details likely to identify a victim-survivor of a sexual offence. This law is intended to protect victim-survivors' privacy and encourage reporting and prosecution of sexual offending.

Recent amendments to the *Judicial Proceedings Reports Act 1958* enable child and adult victim-survivors of a sexual offence (as defined in s 4 of the *Criminal Procedure Act 2009*) to self-publish, without seeking authority of the court provided doing so is not likely to identify other victim-survivors without their permission. This applies before, during or after criminal proceedings.[47] This law makes it easier for victim-survivors to speak out about their experiences and to have some control over when and how their story is told.

These provisions enable victim-survivors to self-publish, in accordance with s 16ZE(3), in relation to sexual offences where the conduct is both a sexual offence under s 4 of the *Criminal Procedure Act 2009* (as per *Judicial Proceedings Reports Act 1958*) and the Scheme (ie: clause 1 of Schedule 1 of the *Sentencing Act 1991*), but not sexual offences that do not fall within s 4 of the *Criminal Procedure Act 2009* (as per *Judicial Proceedings Reports Act 1958*) or other categories of reportable conduct.

The *Judicial Proceedings Reports Act 1958* also enables others to publish identifying information of a child victim-survivor with:

- permission from the child, and
- a supporting statement from an independent authorised person (initially prescribed to include a doctor or psychologist) indicating they are of the opinion that the child understands what it means to be identified as a child victim of a sexual offence, and the consequences of losing anonymity.

There is a framework within the *Judicial Proceedings Reports Act 1958* which sets out the process for publication of information in these circumstances.

In our view the self-publishing framework within the *Judicial Proceedings Reports Act 1958* should be extended to all categories of reportable conduct including sexual offences that do not fall within the current framework of that Act.

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[46] Note that after this submission was lodged the Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Bill 2023 was introduced into Parliament which makes amendments to the *Child Wellbeing and Safety Act 2005*.

[47] https://www.justice.vic.gov.au/victim-survivor-stories.

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.

Recommendation 26

That, consistent with the principles underpinning the *Judicial Proceedings Reports Act 1958*, s 16ZE should not apply to self-publication by alleged victims of reportable conduct and victims of substantiated reportable conduct. Others who publish identifying information with consent of the alleged victim or victim should also be exempt from the prohibitions in s 16ZE.

Class and kind exemptions

Section 16I of the Act provides that Commission may exempt the head of an organisation, or class of organisations, from notifying the Commission about reportable allegations (both the initial notification within 3 days and the update within 30 days; or just the 30 day update) in respect of a class or kind of conduct.

In our view this should be extended to enable the Commission to also exempt individual organisations, or classes of organisation, from:

- the duty to inform the Commission or the person or body conducting the investigation prescribed at s 16N(1)(b)
- the duty to provide the Commission with the information (including investigation findings) prescribed at s 16N(3).

The current formulation means that organisations exempted under s 16I will still need to submit findings with s 16I exemptions. While this may be appropriate in some cases, there may be situations where an organisation is deemed sufficiently competent that the Commission would not require the information outlined at s 16N(1)(b) and (3), or may only require it periodically. Giving the Commission discretion to also exempt organisations from this requirement, where appropriate, will result in regulatory burden reductions.

Organisations that are the subject of a s 16I exemption should remain subject to the obligation to conduct an investigation under s 16N(1)(a), and to submit any substantiated findings of reportable conduct to the Commission so that these can be referred to WWCC Victoria or other relevant regulators.

We propose that s 16N(2) be retained; this could enable the Commission to seek information if an exemption were granted, and an issue arises such that the information is required.

We note that the NSW Children's Guardian has a similar ability under s 31 of the *Children's Guardian Act 2019 (NSW).*

Recommendation 27

That the Act be amended to enable the Commission to issue class and kind exemptions from the information provision requirements under s 16N.

Information sharing issues

Section 55 of the *Commission for Children and Young People Act 2012* prohibits the Commission from sharing protected information to any other person, whether directly or indirectly, except to the extent necessary to perform functions of the Commission, or that the Commission is expressly authorised to do so. Failure to comply may constitute a criminal offence.

Key provisions that enable information sharing for the Commission under the Scheme are detailed in s 16ZB and s 16ZC of the Act. The Act stipulates that information about investigations can only be disclosed a limited group of people and bodies.

Subjects of allegation

Section 16B of the Act provides that employees who are the subject of reportable allegations are entitled to receive natural justice in investigations into their conduct. The Commission often receives contact from subjects of allegation and their representatives to raise concerns about natural justice. Whilst the Commission has a power to release certain information to children, parents and carers, there is no specific power to release information to subjects of allegation. On occasion it has been appropriate for the Commission to release very limited information to subjects of allegation in accordance with s 55 of the *Commission for Children and Young People Act 2012,* but the threshold for such decisions is high.

In some matters, the relationship between a subject of allegation and the investigating organisation may have broken down, or the subject of organisation may have legitimate concerns they are not being provided correct information by the organisation. It is understandable that in such circumstances, subjects of allegation seek information from the Commission, including findings made by an organisation and whether allegations and findings have been referred to other regulators. The Commission considers we should be empowered to provide such information.

Some restrictions on what subjects of allegation should be able to receive from the Commission are necessary, however, and the Commission should not be compelled to release highly confidential information, evidence, reports or other documents about a reportable allegation. Further, as the body overseeing investigations, the Commission should not be routinely placed in between the relationship between the investigating organisation and the subject of allegation.

Recommendation 28

That the Commission be provided with a discretion to share limited information with subjects of allegation.

Interjurisdictional information sharing

The current information sharing provisions impede the Commission's ability to share information with law enforcement bodies in other jurisdictions. The Commission has no ability to share information with any police force other than Victoria Police.

Some of the impacts for the Commission has included being unable to:

- share information with the Australian Federal Police about concerns of an Australian organisation potentially being involved in child abuse outside of Australia. We had to ask whether Victoria Police would share this information on our behalf

- request the Australian Federal Police for information about a reportable allegation they investigated that occurred overseas, but information about the reportable allegation must be shared in order to request information. This resulted in the Commission being unable to request and obtain key evidence for the investigation under the Scheme
- request an interstate police force for evidence and information about an investigation into child abuse that was directly relevant to an own motion investigation by the Commission.

The Commission notes that bodies responsible for administering reportable conduct schemes in other jurisdictions[48] have the ability to share information relevant to child safety. Equipping the Commission with commensurate powers would further the child safety objectives of the Scheme and contribute towards harmonisation of reportable conduct schemes in Australia.

Consideration should also be given to expanding the Commission's ability to share information with other interstate child safety related bodies.

Current limits to the Commission's ability to share information for the purpose of Scheme are contrary to the Royal Commission's recommendation that all Australian 'governments should make nationally consistent legislative and administrative arrangements, *in each jurisdiction* (emphasis added), for a specified range of bodies…to share information related to the safety and wellbeing of children…These arrangements should be made to establish an information exchange scheme in and across Australian jurisdictions.'[49]

Recommendation 29

That the Commission be provided powers to share information with law enforcement bodies and child safety related bodies in all other Australian jurisdictions.

Legal Professional Privilege

Legal professionals are frequently engaged by heads of organisations to conduct investigations into reportable conduct allegations.

There have been several occasions where heads of organisations have sought to resist providing an investigation report to the Commission asserting it is covered by legal professional privilege. The Commission requires access to an investigation report in order to perform its statutory role of oversighting the investigation.

The ability of organisations to withhold from the Commission information and documentation related to reportable conduct investigations by referring to the principle of legal privilege, runs contrary to recommendations made by the Royal Commission. [50]

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[48] The *Children's Guardian Act 2019* (NSW) Section 59 permits the Children's Guardian in NSW to share information 'in relation to a matter relevant to the exercise of a law of any other State the Commonwealth or a Territory, or an undertaking that is or was being carried out jointly by NSW and any other State, the Commonwealth or a Territory.
The *Ombudsman's Act 1989 (*ACT) s 860 provides broad information sharing powers enabling the Ombudsman to share information with interstate police. They are also able to share with information with interstate agencies that provide services to, or are in contact with a child or young person.
[49] Recommendation 8.6.
[50] Commonwealth of Australia, the Royal Commission, 'Final Report – Volume 8, Recordkeeping and information sharing' p13.

We understand that organisations may be concerned that the privilege may be waived if they provide the information or documents to the Commission.

Heads of organisations should be required to prepare investigation documents including investigation reports and reasons for findings in a manner that can be provided to the Commission to ensure we are able to fulfill our statutory oversight role with respect the investigation under the Scheme.

Recommendation 30

That the Act be amended to clarify that heads of organisation must prepare documentation for investigations under the Scheme in a manner that enables these to be provided to the Commission to ensure we are able to fulfill our statutory oversight role.

Working with Children Check

The Commission is currently limited in its ability to share information with WWCC Victoria. In contrast to all other Victorian child safety regulators, there is no broad information sharing power for the Commission, with sections 16ZD and 16ZC(2)(d) of the Act significantly restricting what we can disclose to WWCC Victoria. To share information outside these provisions could amount to a criminal offence.

The Commission may be in possession of information prior to completion of an investigation that suggests an unacceptable risk to children. At present the Commission is unable to share this kind of information with WWCC Victoria.

Even if the Commission can share concerning information with WWCC Victoria, that unit may be limited by the WS Act in the extent to which they can take this information into account. This does not support child safety

The Victorian Ombudsman's report (September 2022) *Investigation into a former youth worker's unauthorised access to private information about children*[51] further elaborated on the limitations of the WS Act and the limited ability of WWCC Victoria to be able to act on concerning information from local and interstate authorities.

There is a clear need to make improvements to Victoria's WWCC system to better deal with people who pose risks to children. This includes agencies, including the Commission, being better able to share a broader range of information with WWCC Victoria and for that unit to be able to act on it, for example to act as a trigger for a re-assessment of an individual's existing WWCC clearance. The Commission communicated this view to the Attorney-General prior to the release of the Victorian Ombudsman report.

WWCC Victoria is also restricted, under the WS Act, in its ability to share information with the Commission. Nor is the Secretary of DJCS an information sharing entity under the Child Information Sharing Scheme for the purposes of administering the WS Act.

The Commission has observed numerous occasions where:

[51] https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-a-former-youth-workers-unauthorised-access-to-private-information-about-children/#full-report.

- WWCC Victoria has asked for information from the Commission that we considered to be relevant to the functions of WWCC Victoria, but were legislatively prevented from sharing it
- the Commission has wanted to proactively share information with WWCC Victoria but has been legislatively prevented from doing so
- the Commission has sought information from WWCC Victoria but has been advised WWCC Victoria is legislatively prevented from sharing.

WWCC Victoria has advised that legislative restrictions prevent WWCC Victoria from notifying the Commission of the outcome of WWCC assessments after we have referred a substantiated finding of reportable conduct, unless consent of the WWCC holder has been provided. In the Commission's 2019 review of the administration of the *Working with Children Act 2005*, the Commission recommended the Victorian Government amend laws to enable DJCS to share information with the Commission on the outcomes of these assessments. This recommendation has not been implemented.

Recommendation 31

That the Act be amended to allow for broad information sharing powers between the Commission and WWCC Victoria.

That the *Worker Screening Act 2020* be reviewed to ensure WWCC Victoria is empowered to act on a broader range of information for child safety purposes than under current law.

That the *Worker Screening Act 2020* be amended to permit WWCC Victoria to share information with the Commission, including information about the outcome of matters the Commission refers to WWCC Victoria.

Additional regulators and oversight bodies

The Act, at s 16ZC, currently enables prescribed information to be shared between prescribed parties. This includes the Commission, a relevant Minister, WWCC Victoria and the Chief Commissioner of Police.

Broader reciprocal information sharing provisions would enhance the effectiveness of the Commission to implement the Scheme and strengthen collaboration for the protection of children and young people.

Recommendation 32

That consideration be given to increasing the reciprocal information sharing provisions between the Commission and the:

- Victorian Ombudsman
- Victorian Inspectorate
- Office of Victorian Information Commission
- Independent Broad-based Anti-Corruption Commission
- Public Advocate
- Victorian Equal Opportunity and Human Rights Commission
- Social Services Regulator
- Wage Inspectorate Victoria.

Sharing Victoria Police and Child Protection information with organisations

The Commission is able to receive information from Child Protection and Victoria Police that may be relevant to a reportable conduct investigation being conducted by an organisation. In some cases, the Commission thinks it appropriate to share this information to assist an organisation in conducting their investigation.

The confidential information is often obtained by the Commission pursuant to the Child Information Sharing Scheme (CISS) under the Act.

Documents and information obtained from Child Protection and Victoria Police can contain highly sensitive information that would be inappropriate to share more broadly. However, it can be appropriate to share with the head of an organisation for the purposes of an investigation under the Scheme. This may include evidence provided by children and other family members, sensitive information about injuries and drug and alcohol use issues. The subject of allegation may not be aware that their child or family members have spoken to authorities.

The Commission shares documents with an organisation after consultation with Child Protection and Victoria Police. Documents are never shared by the Commission if Child Protection and Victoria Police have refused permission.

Given the sensitive nature of the information, the potential impact on both Victoria Police and Child Protection processes and the potential risks to individuals concerned (for example, partners and children in the case of family violence), the Commission currently enters into deeds of confidentiality with the investigator or head of organisation. A key aspect of this is that they are restricted in the use of the shared documents and information and are prohibited from further sharing them. This process can be time consuming, resource intensive and complex for both organisations and the Commission. This can also result in delays in pertinent information being provided to an organisation to assist with their investigation.

Currently, there are no dedicated provisions in the Act that support the Commission to share such documents and information in a way that recognises their particular sensitivity. The Act, for example, does not clearly articulate that such documents and information must be treated as confidential by the organisation and not distributed further without permission.

In our view the Act could benefit from a clear mechanism that will allow the Commission to share such information and require heads of organisations to treat this type of information confidentially or else be able to enter into undertakings of confidentiality with the Commission under the Act to achieve this purpose.

Recommendation 33

That the Act be amended to place a statutory requirement on organisations to maintain confidentiality of Child Protection and police information when shared by the Commission for child safety purposes.

Organisations required to comply with the Scheme

The Commission supports the reasoning behind the Royal Commission's recommendation that the Scheme apply to a narrower range of organisations than those covered by the Standards and the WWCC.[52]

The Royal Commission also recommended that state and territory governments periodically review the operation of the Scheme to determine whether they should cover additional institutions that have a high degree of responsibility for children and a heightened risk of child sexual abuse.[53]

Changes and issues that have emerged since the Royal Commission's final report should inform the Scheme's future design, including:

- increased understanding and public awareness of the risks of child abuse in certain settings
- more victim-survivors of abuse coming forward and increasing knowledge of issues of child abuse in institutions
- increasing exposure of failings in organisations' approach to child abuse as a result of the oversight of organisations such as the Commission for Children and Young People
- clear expectations from state, territory and Commonwealth governments in relation to the prevention of child abuse and the management of allegations, including the National Principles for Child Safe Organisations
- learnings from implementing the Standards and Scheme in Victoria, and their progressive implementation in other jurisdictions
- legislative frameworks that prioritise the safety of children and young people as the foremost consideration, including the Child Information Sharing Scheme in Victoria.

Having seen the benefits to child safety that occur when an organisation is subject to the Scheme, the Commission considers it is now appropriate to expand the types of organisations captured by the Scheme. The Scheme should still be limited to organisations with a high degree of responsibility for children and a heightened risk of abuse.

The more than 50,000 organisations already required to comply with the Standards are required to have systems and processes to manage responses to allegations of child abuse. Any financial burden resulting from these organisations' inclusion in the Scheme would therefore be limited.

Being covered by the Scheme does not just involve oversight by the Commission, but also enables an organisation to access increased level of advice and guidance concerning responses to child abuse allegations and investigations. With the increasingly significant amounts of compensation ordered in civil cases related to child abuse in institutions, organisations should also see the potential financial benefit from participating in a regulatory system that improves their ability to respond effectively to abuse allegations as well as the benefits in human terms.

Importantly, expanding the Scheme to include other high-risk organisations means that perpetrators of child abuse or harmful conduct against children in these organisations are

[52] Commonwealth of Australia, the Royal Commission, *Final Report: Volume 7, Improving institutional responding and reporting*, 2017, p285.
[53] Commonwealth Government of Australia, the Royal Commission*, Final Report – Recommendations*. 2017, p.20.

investigated thoroughly and referred to WWCC Victoria so their future exposure to children can be limited. Perpetrators of child abuse in, for example, sporting organisations can be found to have engaged in sexual misconduct but their capacity to hold a WWCC is not reassessed unless Victoria Police lay criminal charges or the individual is subject to a 'relevant disciplinary or regulatory finding' for the purpose of the *Worker Screening Act 2020*.[54]

Considering the Royal Commission's report and subsequent developments, the Commission recommends that the Government explore the merits of expanding the Scheme to further organisations in the following areas:

- sport
- local government
- child safety regulators
- emergency services and Victoria Police
- private prisons
- immigration detention facilities
- professional babysitting services
- coaching or tuition services
- non-registered schools
- transport services for children
- health services for children
- disability services.

Any expansion of the organisations covered by the Scheme must also include a commensurate increase in resources for the Commission to perform its functions under the Scheme including providing advice and guidance to organisations and performing oversight of investigations.

Sport

Sport is a significant part of children's lives in Victoria. VicSport estimates there are approximately 16,000 clubs and associations in Victoria delivering sport and recreation opportunities.[55] Over half of all sports participants in Victoria are aged between 4–14 years, according to VicHealth.[56]

The Royal Commission heard from many victims of sexual abuse in sporting contexts. The Royal Commission's final report pointed to some particular risk factors in sport including normalised violence and harassment, normalised sexual cultures, valuing adults over children and that some children have a high level of involvement in these organisations.[57]

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[54] The threshold is high for this, being:
(a) a determination by VCAT under s 77(4)(g) or (h), or s 77(5)(e) or (f) of the Health Professions Registration Act 2005 as in force immediately before its repeal; or
(b) a determination under s 196(2)(d) or (e) or 197(2)(b) of the Health Practitioner Regulation National Law by VCAT or another responsible tribunal within the meaning of that Law; or
(c) a finding of a prescribed kind made by or on behalf of, or referred to the Secretary by, a disciplinary or regulatory entity.

[55] https://vicsport.com.au/inclusion-and-diversity.
[56] VicHealth. *Sport Participation in Victoria, 2018 - Research Summary Part 1*. 2020, p1.
[57] Commonwealth of Australia, the Royal Commission*, Final Report: Volume 14, Sport, recreation, arts, culture, community and hobby groups.* 2017, pp100–109.

Recognising the child abuse risks in sporting contexts, organisations that provide sporting services specifically for children are currently required to comply with the Standards.[58] Sport and Recreation Victoria and VicSport provide significant support to sporting organisations in Victoria in respect of child safety.

Through its role enforcing the Standards, the Commission can attest that persons who pose risk to children are found in sporting organisations throughout Victoria. The Commission has encountered child safety concerns in a range of sport settings including lifesaving clubs, football clubs, tennis clubs, swimming clubs, gymnastics clubs, motor racing and motorcycle organisations and biathlon organisations. Concerns have covered conduct such as grooming, inappropriate touching, not having or being able to have a WWCC, sport officials having a history of sex offending, saying inappropriate things, physical abuse, psychological abuse, sexual abuse, supplying alcohol and embezzling money from child athletes. Conduct has occurred in the sport setting as well has outside of it, including going to children's homes, having children attend the home of the coach or sport contact, as well as on overnight camps and via social media engagement. Occasionally such abuse will garner media attention,[59] but that is usually when criminal sanctions are imposed.

Since the Royal Commission's final report was delivered, there has continued to be a significant focus on child abuse in sport with numerous athletes coming forward to share their story of abuse suffered. A recent survey gathering evidence on the experience of abuse in sport in Australia found 82 per cent of respondents had experienced psychological, physical or sexual violence as a child at some point during their participation.[60] International studies spanning a number of European countries have identified similarly concerning results and found that while abuse occurs across a range of organisational settings in which sport is provided for children, including within elite sport settings, the sport club is the most frequent location.[61] Insights from our role enforcing the Standards in this sector suggest a number of sporting organisations have also not yet fully implemented the Standards.

The creation of Sport Integrity Australia (SIA) - including the 'Safeguarding in Sport Continuous Improvement program' - a partnership with the National Office for Child Safety, is a positive development for the sector.[62] The recently announced National Integrity Framework and the Independent Complaints Handling Model to be administered by SIA will provide increased support for the sector.[63]

While the Commission welcomes these developments, such measures lack the additional protections offered by the Scheme including the reporting of substantiated allegations to

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[58] Item 12, Schedule 2 of the Act.
[59] See for example https://cranbournenews.starcommunity.com.au/news/2019-10-30/junior-footy-predator-jailed/ and https://www.heraldsun.com.au/leader/north-west/gymnastics-unlimited-coach-taylor-farrell-jailed-for-sex-with-12yearold-child/news-story/805e39d3d64c239cdb1667d48182e77c.
[60] Pankowiak, A., Woessner, M. N., Parent, S., Vertommen, T., Eime, R., Spaaij, R., Harvey, J., & Parker, A. G. (2022). Psychological, Physical, and Sexual Violence Against Children in Australian Community Sport: Frequency, Perpetrator, and Victim Characteristics. Journal of Interpersonal Violence, 0(0). https://doi.org/10.1177/08862605221114155.
[61] Hartill, Michael; Rulofs, Bettina; Lang, Melanie; Vertommen, Tine; Allroggen, Marc; Cirera, Eva; et al. (2021): CASES: General Report. The prevalence and characteristics of interpersonal violence against children (IVAC) inside and outside sport in six European countries. Edge Hill University. Report. https://doi.org/10.25416/edgehill.17086616.v1.
[62] Commonwealth of Australia. *Sport Integrity Australia Annual Report 2020–21.* 2021, p32.
[63] Commonwealth of Australia. *Sport Integrity Australia Annual Report 2021–22.* 2022, p15.

WWCC Victoria triggering an assessment of whether it is appropriate for a person to retain their WWCC. Furthermore, SIA does not have the force of law supporting its child safeguarding functions; it only covers a limited number of sporting organisations and is not mandatory. Sporting organisations can choose not to be covered by SIA.[64]

The Royal Commission stated that in future, reportable conduct schemes may cover a broader scope of sport and recreation institutions.[65]

The Commission recommends that the Government consider including sporting services for children in the Scheme, however acknowledges there are some challenges with this recommendation. The sector in Victoria spans national and state sporting associations, leagues and local associations to commercial ventures and individual local clubs. Many organisations rely on community, parent and volunteer effort to operate. The estimated number of sporting organisations is greater than the total number of organisations currently subject to the Scheme.

Given the size of the sector, consideration could be given to only capturing a subset of sporting organisations, or to a staged expansion into sport over a number of years. A first focus could be sporting schools (including for example dance, martial arts, gymnastics, cheerleading and swim schools) and organisations offering sport-related coaching or tuition services for children. Such organisations, many of which are run as for-profit ventures, may reasonably be expected to have the existing organisational infrastructure to support the ready adoption of the Scheme. Further, there can be greater involvement by adults individually with children in such settings.

Limiting coverage to national or state sports associations (or federations) is not recommended. Research demonstrates the prevalence of child abuse in sport at the local level.[66] Given the size of the sector, ensuring there are sufficient resources available to build capacity in sporting organisations and for the Commission as regulator would be imperative.[67]

With Victoria the host of the Commonwealth Games in 2026, the inclusion of sport in the Scheme would be an opportunity for the state to continue to demonstrate child safety leadership. It would also complement Commonwealth commitments under the *National Strategy to Prevent Child Sexual Abuse*.

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[64] It is up to sports to 'opt in' to this model, see Sports signed up to the National Integrity Framework | Sport Integrity Australia.

[65] Commonwealth of Australia, the Royal Commission, *Final Report: Volume 14, Sport, recreation, arts, culture, community and hobby groups.* 2017, p 24.

[66] See for example, Hartill, Michael; Rulofs, Bettina; Lang, Melanie; Vertommen, Tine; Allroggen, Marc; Cirera, Eva; et al. (2021): CASES: General Report. The prevalence and characteristics of interpersonal violence against children (IVAC) inside and outside sport in six European countries. Edge Hill University. Report. https://doi.org/10.25416/edgehill.17086616.v1.

[67] The Royal Commission did not limit the application of the Child Safe Standards in this sector but explored ways it could be supported at the grass roots level, including recommending scope for local governments to play a key role in assisting their local areas' institutions to comply, envisaging Child safety officers would have a particularly important role in the sport and recreation sector. See Commonwealth of Australia, the Royal Commission, *Final Report: Volume 14, Sport, recreation, arts, culture, community and hobby groups. 2017*, p21.

Recommendation 34

That the Scheme be expanded to include sporting services for children.

Local government

Councils are listed as a specific category of organisation required to comply with the Standards.[68] They are not listed as being within scope of the Scheme. Notwithstanding this, many councils are required to comply with the Scheme by virtue of the services they offer. For example, a council offering early childhood education services[69] will be required to comply with the Scheme. Things brings all employees of that council into the Scheme, not merely those involved in early childhood education services. Given this, most councils are currently covered by the Scheme.

However, with each individual council offering a different mix of services which also change over time, each council needs to conduct an individual assessment of whether it is within scope of the Scheme. Further, councils may transition in and out of having to comply with the Scheme over time as their service offering changes.

This contrasts with Victorian Government departments which are listed as a specific category of organisation required to comply with the Scheme.

Councils typically provide a range of specific programs, services and facilities for young people in their community. These may include youth centres, drop-in spaces, homework clubs, youth advisory groups and committees, learn to drive programs, neighbourhood community houses, counselling and referral services, and youth programs and festivals across the arts, education, leadership and skills training.[70]

Given the role of local government in Victoria, and that so many councils are already required to comply with the Scheme, the Commission recommends the inclusion of councils as a category of organisation subject to the Scheme.

Individual councils would be exempt if they do not exercise care, supervision or authority over children, whether as part of its primary functions or otherwise.[71] Or they could otherwise seek an exemption from the Minister for Child Protection or the Commission if appropriate.

Recommendation 35

That the Scheme be expanded to include councils.

Child Safety Regulators

Employees of child safety regulators typically have access to highly sensitive information about vulnerable children and their families. Further, they have statutory power in relation to children, and their organisation's role and purpose can engender trust with children and their families.

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[68] Item 27, Schedule 1 of the Act.
[69] As an approved provider within the meaning of the Education and Care Services National Law (Victoria).
[70] See Youth Services on viccouncils.asn.au, as accessed 11 November 2022.
[71] Section 16C of the Act.

While all Victorian government departments are subject to the Scheme, only a small number of organisations constituted by or under any Act and that has functions of a public nature are subject to the Scheme.[72] Accordingly, not all child safety regulators are subject to the Scheme.

The Commission recommends prescribing the following child safety regulators as subject to the Scheme:

- Wage Inspectorate Victoria (WIV). The child safety related functions of WIV were previously performed by the Department of Premier and Cabinet and relevant employees therefore used to be captured by the Scheme
- Victorian Registration and Qualifications Authority (VRQA). The Commission understands that VRQA's staff, including its Chief Executive Officer (CEO), may be largely employed by the Department of Education and Training and would therefore already be subject to the Scheme. However, the VRQA itself is a statutory entity and it is not clear that all VRQA employees are captured
- Victorian Institute of Teaching
- the new Social Services Regulator, which will assume child safety regulation responsibilities from the Department of Families, Fairness and Housing (DFFH) from 1 July 2024. Staff performing these functions in DFFH are already covered by the Scheme.

The Department of Health, the Working with Children Check Victoria in the Department of Justice and Community Safety, and the Quality Assurance and Regulation division of the Department of Education and Training are already in scope, being government departments.

Recommendation 36

That Scheme be expanded to child safety regulators, including Wage Inspectorate Victoria, Victorian Registration and Qualifications Authority, Victorian Institute of Teaching, and the new Social Services Regulator.

Emergency services and Victoria Police

Victoria's emergency service organisations and Victoria Police play a vital role in supporting children and young people. They respond when children and young people require help, often engaging with them in situations when they are highly vulnerable and may be without their parents or carers. All of these organisations have some form of authority over children. They also have a purpose and role in the community that means children and their families can place a high degree of trust in the staff and volunteers of these organisations.

Emergency services

Where an emergency service is provided by a Victorian Government department, staff and volunteer conduct will be covered by the Scheme. However, other key emergency service organisations are not subject to the Scheme. Many emergency service organisations must already comply with the Standards.[73]

[72] Item 5, Schedule 5 of the Act.

[73] Item 26, Schedule 1 of the Act.

Children can be involved in emergencies as volunteers with emergency service organisations, or as the client of an organisation needing support during an emergency. Many emergency service organisations have the power to enter people's homes and will assist children at times they are unaccompanied by their parents or carers. As uniformed officers, they hold positions of trust and authority in the community. They also routinely engage with children and young people to educate them in relation to their functions or safety, for example attending schools or scout halls, or to recruit them as volunteers.[74] There have been some well-publicised incidents related to child safety involving adults engaged by emergency service organisations.[75]

The Commission acknowledges that some emergency services organisations have large volunteer workforces. This is not inconsistent with coverage under the Scheme, with organisations such as religious bodies are similarly highly volunteer dependent already covered by the Scheme.

The Commission recommends that the Government identity relevant emergency service organisations to be brought into scope of the Scheme. Schedule 5, Item 5 of the Act provides for 'A prescribed applicable entity that is constituted by or under any Act and that has functions of a public nature' to be subject to the Scheme. The Commission recommends that the Victorian State Emergency Service, the Country Fire Authority, Fire Rescue Victoria and Ambulance Victoria be prescribed as in scope of the Scheme. Consideration should be given by the Government as to whether further organisations involved in responding to emergencies should be within scope of the Scheme including Australian Red Cross, Life Saving Victoria, St John Ambulance and the Australian Volunteer Coastguard.

Victoria Police

Victoria Police has a significant amount of authority over children and young people, a key role in supporting highly vulnerable children including through criminal investigations into child sexual and other abuse and responding to family violence matters. Victoria Police officers also have the legally sanctioned ability to use physical force and weapons on children and young people in limited circumstances.

Victoria Police, unlike other public sector agencies that have similar contact with children, is not covered by the Scheme.

Through its statutory functions in respect of vulnerable children, the Commission receives information from a range of sources about the conduct of members of Victoria Police.

The Commission oversights services in the out-of-home care system and youth justice centres and has had visibility of a number of allegations of serious police misconduct involving children and young people in Victoria.[76] As noted in our systemic inquiry, *Our youth,*

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[74] For example, the CFA has a Junior Volunteer Development Program that runs in over 160 brigades across Victoria introducing young people 11–15 years to the organisation and has recently trialled a program for 16–17-year-old members, called the CFA Cadet Pilot Project.

[75] https://www.heraldsun.com.au/leader/bass-coast/evan-walker-cfa-member-avoids-jail-for-vile-sex-abuse-collection/news-story/e93ac2017fed5a1283bf3f93683da1fa https://www.abc.net.au/news/2018-01-24/cfa-bullying-investigation-teen-targeted-repeatedly-at-eaglehawk/9355224.

[76] Section 60A of the *Commission for Children and Young People Act 2012* requires the Department of Justice and Community Safety (youth justice custodial settings) and the Department of Families Fairness and Housing

our way,[77] between December 2017 and June 2020, the Commission monitored 118 allegations of assault and mistreatment by police reported by children and young people at admission to youth justice custody.[78] Ninety-six per cent of these allegations involved physical assault or excessive use of force.

The Commission has also been advised by a small number of members of the public and concerned professionals about raising issues of alleged police misconduct towards vulnerable children in the community.

Although Victoria Police is subject to oversight by other bodies, in particular IBAC, this current oversight cannot result in substantiated allegations of reportable conduct or misconduct involving children by members of Victoria Police being taken into account by WWCC Victoria.

Serving Victoria Police members are not required to hold a WWCC check in respect of their duties. However, if they volunteer with children or if they leave Victoria Police and engage in work that involves children they may need one. In terms of safety for children and young people, it seems appropriate that substantiated misconduct by members of Victoria Police involving children and young people should be considered in terms of future work or current volunteering with children. This could be achieved by bringing Victoria Police within scope of the Scheme.

Recommendation 37

That the Scheme be expanded to apply to Victorian State Emergency Service, the Country Fire Authority, Fire Rescue Victoria, and Ambulance Victoria.

That consideration be given to whether Victoria Police and any additional organisations involved in responding to emergencies should be brought within scope of the Scheme.

Private prisons

The Commission has repeatedly expressed the position, both directly to government and in public, that children should not be accommodated in adult prisons. The position has been shared by other statutory bodies, such as the Victorian Ombudsman.[79] In the 2021–22 financial year a number of children have been sentenced or transferred to adult prisons in Victoria, including two 16-year-olds who were the youngest prisoners in adult prisons for almost 10 years. Some of these children have been placed in Victoria's private prisons.

(out of home care settings) to inform the Commission of all adverse incidents. In Youth Justice, this includes all incident reports relating to children and young people reporting allegations of assault by Victoria Police. These allegations usually relate to events immediately prior to their reception into youth justice custody. See the Commission for Children and Young People *Annual Report 2019–20*, page 53.

[77] Commission for Children and Young People. *Our youth, our way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*, 2021, page 435.

[78] The Commission's role is to ensure that Youth Justice has followed correct processes for submitting complaints to Victoria Police. The Commission's monitoring function does not include information about the outcomes of complaint investigations.

[79] In a 2013 investigation into the transfer of children into adult custody the then Victorian Ombudsman recommended that the Victorian Government repeal the legislative capacity to transfer children to adult custody as soon as secure accommodation was established at Malmsbury Youth Justice Centre. See: Victorian Ombudsman, 2013, *Investigation into children transferred from the youth justice system to the adult prison system*. Whilst secure accommodation was established at Malmsbury in 2015, the legislation has not been amended and children continue to be transferred to adult prisons using the provision.

Children placed in adult prison experience significant, and often prolonged, disadvantage compared to their peers in a youth justice facility. This year the Commission identified serious risks and issues associated with the placement of a child in adult custody. Many of these related to the fact that Corrections Victoria has no child-specific policies or procedures for operational practices that can have significant negative impact on a child, including related to searches, restraints, external escorts, medical consent, and outcomes arising from disciplinary procedures.

Public prisons are within scope of the Scheme, as they are part of DJCS and staffed by departmental employees.

In Victoria nearly 40 per cent of prisoners are in three privately run prisons. Private prisons are not listed in the Act as needing to comply with the Scheme. Children imprisoned there do not benefit from the Scheme's oversight and this is a concerning gap.

Placement options for children and younger prisoners in adult prisons are extremely limited, with only the 35-bed Penhyn Unit at the privately run Port Phillip Prison designated as a 'youth unit' across the entire system. Penhyn is typically the preferred option for prisoners under the age of 18 due to its youth focus. However as the unit is within a private prison, it is not subject to the Scheme.

The Commission recommends that as long as children can be accommodated in Victoria's three private prisons, these prisons should be covered by the Scheme.

Including both private and public prisons in the Scheme would be consistent with other sectors, for example Victorian hospitals are subject to the Scheme regardless of whether they are public or private.

Recommendation 38

That, until legislation is amended to prevent children from being accommodated in adult prisons, the Scheme be expanded to bring private prisons within scope of the Scheme.

Immigration detention facilities

In the past the Commission has inquired about the wellbeing of children held in Victorian immigration detention facilities and been supported by relevant Commonwealth agencies to monitor their health and wellbeing.

The Commission has been previously advised by the Commonwealth Government that the National Principles for Child Safe Organisations apply to all immigration programs, including onshore immigration detention.

The Royal Commission recommended that immigration detention facilities should also be covered by the Scheme, as children may be exposed to a high risk of sexual abuse there.[80] Closed or total institutions that have absolute authority over all aspects of a child's or their family's life, or that separate children from the broader community and their external peer and support networks, are considered by the Commission to pose a higher risk for all forms of child abuse.[81]

[80] Commonwealth of Australia, 'Contemporary detention environments | Royal Commission into Institutional Responses to Child Sexual Abuse (childabuseroyalcmmission.gov.au).
[81] Commonwealth of Australia, the Royal Commission, *Final Report Contemporary detention environments*, 2017, p.9.

As there is no Commonwealth Reportable Conduct Scheme, it is desirable that immigration detention facilities located in Victoria are brought within scope of the Scheme.

Recommendation 39

That consideration be given as to whether immigration detention facilities in Victoria can be brought within scope of the Scheme.

Professional babysitting services

Babysitters are usually left alone with children without the presence of parents or carers. This often occurs in the child's home. Children in this situation are highly vulnerable to abuse. Parents and carers can place a high degree of trust in professional babysitting services and may not screen potential babysitters themselves. An increasing range of apps and social media platforms is making it easier than ever to secure a babysitter.

Professional babysitting services are already required to comply with the Standards.[82] Given the nature of work undertaken by professional babysitters, the Commission recommends that professional babysitting services are also covered by the Scheme.

The Commission recognises that many babysitters are sole traders who do not employ others, so any expansion of the Scheme to include professional babysitters would not capture them.

Recommendation 40

That the Scheme be expanded to organisations providing professional babysitting services.

Coaching or tuition services

There are numerous organisations that provide coaching or tuition services to children and young people. This could be in the form of a maths tutor engaged by a parent or carer. Alternatively, some schools can connect parents and carers with coaches or tutors to extend the learning options available onsite during school hours and after school, for example a small school without a dedicated music department can allow children to learn an instrument through direct enrolment with the music school. Similar arrangements can be made in a range a disciplines including art, sport and languages other than English. Organisations that provide coaching or tuition services specifically for children are already required to comply with the Standards.

Since the Scheme commenced, the Commission has been made aware of alleged child abuse by individuals performing coaching or tuition services. Children are often left alone with coaches or tutors. Like registered teachers, they are in a position of influence and authority over children. The Commission is also aware that some registered teachers who have their registration suspended or cancelled may attempt to offer themselves as tutors.

[82] See item 17 of Schedule 2 Category 2 entities in the Act.

Parents and carers place a high degree of trust in coaches and tutors and may not sufficiently screen them. Given this, the Commission recommends that the Scheme should apply to this category of organisations.

The Commission recognises that many coaches and tutors are sole traders who do not employ others, so any expansion of the Scheme to include this cohort would not capture them.

Recommendation 41

That the Scheme be expanded to organisations providing coaching or tuition services specifically for children.

Non-registered schools

The Commission is aware of institutions that market themselves as education providers for vulnerable or disengaged children, but that are not regulated under the *Education and Training Reform Act 2006* (ETR Act). These institutions are not registered schools, yet represent themselves as schools and offer educational services. Some are not subject to oversight by the VRQA. The Commission understands that the VRQA therefore has no capacity to act in respect of these organisations. They are also not subject to the Scheme. They will likely be subject to the Standards.[83]

The Royal Commission highlighted the risks that can present in unregulated or closed institutions.[84] Provision of services to children in ways that are less structured or informal and unregulated can create opportunities for professional boundaries to become blurred. If the Scheme does not apply to these institutions, heads of such organisations are not obliged to notify the Commission of any allegations of reportable conduct against their employees or to investigate under the Scheme. The Commission also has no ability to oversee investigations or initiate an own motion investigation under the Scheme.

'Schools' of this nature carry no less risk to children and, if they cater specifically for vulnerable children, may carry increased risk. They should be covered by the Scheme, as are registered schools.

On this basis, the Commission recommends extending the Scheme to these organisations.

Recommendation 42

That the Scheme be expanded to include high-risk non-registered schools.

Exclusion of unregistered/unapproved organisations

The way a number of types of organisations are captured in the Schedules to the Act can unintentionally limit the organisations captured by the Scheme.

[83] See for example, Item 6, Schedule 2 of the Act.
[84] Commonwealth of Australia, the Royal Commission, *Final Report – Preface and Executive Summary*. 2017, p20.

This arises when an organisation is supposed to be registered or approved by a regulator but they are not, which means they are also out of scope for the Scheme. For example, if an organisation is operating illegally as an unapproved education and care service, it should not follow that they are also excluded from oversight of the Commission.

The Commission's oversight may be even more beneficial in such instances, as unregulated environments can increase child abuse risk. Furthermore, Parliament has clearly intended for these kinds of organisation to be in scope for the Scheme.

Examples of categories of organisations where this is an issue include:

- schools that are not registered as required under the *Education and Training Reform Act 2006*
- organisations that are not registered as required under Division 3 of Part 4.3 of the *Education and Training Reform Act 2006* in respect of an accredited senior secondary course, a registered senior secondary qualification, an accredited foundation secondary course or a registered foundation secondary qualification
- organisations that are not approved as required, under section 4.5.1 of the *Education and Training Reform Act 2006*, to provide a specified course to students from overseas.
- organisations that are not approved as required under section 4.5A.1 of the *Education and Training Reform Act 2006*, as suitable to operate a student exchange program
- providers that are not approved as required to provide education and care service within the meaning of the *Education and Care Services National Law (Victoria)*.
- providers that are not approved as required to provide children's service within the meaning of the *Children's Services Act 1996.*

Amendments would ensure organisation are not excluded from the Scheme due to operating illegally.

Recommendation 43

That the Scheme be expanded to include unregistered or unapproved organisations delivering services to children.

Transport services for children

Child abuse risks can be present when children are in transit, for example to or from a service. Children may be alone, without their parents and carers, and with an unknown adult driver.

The Commission has oversight of allegations in transport services for children only where individual transport employees are employed by an organisation that is otherwise subject to the Scheme, for example a school-employed bus driver. Other transport operators may be subject to the Scheme where they provide disability services.[85] Many, however, are not

[85] See, for example, Item 9, Schedule 4 of the Act.

subject to such arrangements. Over the life of the Scheme, we have seen a number of allegations in relation to transport providers, in particular bus drivers.

Publicly funded and commercial transport services specifically for children are listed as a category of organisation subject to the Standards but are out of scope for the Scheme.

Last year strengthened oversight arrangements were put in place across all jurisdictions when children are being transported under the care of an education and care service.[86] This highlights the importance of oversight of transport services for children due to the risks that can present in these settings.

We recommend that consideration be given to extending the Scheme to cover some transport services specifically for children. It may be appropriate to target higher-risk parts of the sector only, with school bus services appropriate to consider first.

Recommendation 44

That the Scheme be expanded to a greater range of organisations that provide transport services specifically for children, targeting higher risk settings such as school bus services.

Health services for children

The Royal Commission recognised health services for children should be covered by the Scheme (recommendation 7.12). It noted that:

> *Patients, and the parents of child patients, place such trust in medical practitioners that they permit those medical practitioners to view and touch intimate parts of the patient's anatomy. Patients permit these acts because of the close nature of the health practitioner – patient relationship and because they believe that a health practitioner is acting in pursuit of a higher purpose of assisting the patient with his or her illness or injury and not out of personal sexual gratification. Children often follow instructions from health care providers without question and the private one-on-one nature of therapy places children in a vulnerable position.*[87]

A broad range of organisations in the health sector are required to comply with the Standards. Hospitals and public health services are currently the only organisation types in scope for the Scheme, meaning many health services that children access are excluded.

Hospitals may present higher risks with children staying overnight often unaccompanied a parent or carer. Children may be sedated or unconscious and illness or injury may make them highly vulnerable. In the conduct of their roles, medical professionals may examine and touch intimate parts of a child's body. Children, parents and carers place a high degree of trust in medical professionals. Privacy requirements may provide cover for inappropriate

[86] The Education and Care National Amendment Regulations 2020 established new requirements for services to have in place policies and procedures for the safe transportation of children, including requirements for risk assessments and written authorisations. See: Infosheet-TransportRegulatoryProvision.pdf (acecqa.gov.au)
[87] Commonwealth of Australia, the Royal Commission, *Report of Case Study No. 27 - The response of health care service providers and regulators in New South Wales and Victoria to allegations of child sexual abuse*, p.4, 2016.

engagement with children and young people by health workers when they are alone with children away from their parents/carers. In health settings it is common to be alone with practitioners, as opposed to other settings where there are other participants or parents and carers present. There is a sound policy basis for the Scheme to apply to hospitals.

However, similar risks exist in many other health settings. For example, at day procedure centres, children may go under general anaesthetic. Intimate examinations and treatment of children without their parents or carers present are carried out regularly by a range of medical professionals engaged in other sorts of organisations. Health providers delivering services in youth justice facilities, secure care facilities and secure mental health facilities engage with particularly vulnerable young people. None of these organisations are subject to the Scheme.

Some young people can be compelled to engage in health services presenting additional risks. For example, young people may be compelled through sentencing options, such as a Youth Control Order,[88] to undergo treatment for drug or alcohol dependence or attend a counselling or treatment service. These services are not specified as subject to the Scheme, despite the vulnerability of this cohort of young people.

Public health services are subject to the Scheme, and the rationale for excluding other sorts of health services including those run by private providers or dedicated to children's health services is not clear.[89]

The Commission recommends expanded coverage of the health sector. Some aspects of the health sector are highly regulated (for example hospitals), and there are dedicated regulatory regimes for registered practitioners[90] and general health practitioners[91] as professional individuals. However, other regulatory approaches do not have a child safety focus and do not capture all of the conduct covered by the Scheme. In addition, few of these organisations, and the professionals who work within them, are subject to the Scheme and the expert oversight of the Commission in relation to child abuse investigations. Further, substantiated misconduct against children by these professionals may not impact their ability to retain a WWCC.

Recommendation 45

That the Scheme be expanded to a greater range of organisations in the health sector.

[88] https://www.judicialcollege.vic.edu.au/eManuals/CHCBB/index.htm#66982.htm.
[89] The Commission notes that privately run clinics which are not a public health service or a registered community health centre within the meaning of the *Health Services Act 1988* are also out of scope for the Standards.
[90] Registered practitioners are regulated by the Australian Health Practitioner Regulation Agency (AHPRA) under legislation enacted by all states and territories applying the National Law, as set out in the schedule to the *Health Practitioner Regulation National Law Act 2009.* They include chiropractors, dental practitioners, medical practitioners, medical radiation practitioners, midwives, nurses, occupational therapists, optometrists, osteopaths, paramedics, pharmacists, physiotherapists, podiatrists, psychologists, Aboriginal and Torres Strait Islander health practitioners and Chinese medicine practitioners.
[91] General health practitioners are those not requiring AHPRA registration. They include audiologists, naturopaths, dieticians, speech pathologists, homeopaths, counsellors, paramedics, massage therapists, doulas, alternative therapists and other providers of general health services.

Disability

There is one type of disability organisation that is required to comply with the Standards, but not in scope of the Scheme. Organisations receiving funding under a state contract to provide early therapeutic interventions for children with a disability, additional needs or developmental delay are not in scope for the Scheme.[92] The Commission understands these providers may traverse different sectors including health, education and human services.

Given the particular vulnerability of these children, it is not clear why these providers have been excluded from the Scheme.

Recommendation 46

That the Scheme be expanded to organisations receiving funding under a state contract to provide early therapeutic interventions for children with a disability, additional needs or developmental delay.

Own motion investigations

The Commission has powers to conduct own motion investigations under s16O of the Act. The Commission is able to conduct investigations into reportable allegations or the handling of, or response to, reportable allegations.

While the number of own motion investigations were low in the first years of the Scheme's operation, the number of investigations has increased in recent years. The Commission's ability to conduct an own motion investigation is a critical element of the Scheme. Given the increasing number of complex investigations, a number of amendments would improve the Commission's capacity to conduct rigorous and effective own motion investigations.

Notice to produce

The Act provides the Commission with the ability to gather and seek information from prescribed parties in certain circumstances in relation to Part 5A. The Commission may:

- visit an entity to inspect documents or conduct interview (s 16P)
- interview employees (s 16Q)
- interview a child (s 16R)
- interview the subject of allegation (s 16S)
- request limited information from police (s 16T)
- request limited information from *regulators* (s 16V).

Organisations are also required to provide the Commission with assistance in connection with the performance of its functions under Part 5A of the Act (s 16ZA).

In the Commission's view, an additional power to issue a notice to produce would be beneficial for the purposes of own motion investigations. It is important that the Commission have access to a broad range of information, from a number of parties, in order to be able to fulsomely investigate a matter.

Information that is relevant to allegations of reportable conduct may be held by a broad range of persons not currently contemplated in the Act. For example, an adult witness to alleged

[92] Item 7, Schedule 1 of the Act.

reportable conduct may not be an employee of the organisation, thereby limiting the ability of the Commission to engage and seek information from them.

As such the Commission seeks the ability to issue a notice to produce to 'any person' if, when conducting an own motion investigation, the Commission reasonably believes that the person is in possession of any document or information that is necessary to determine whether reportable conduct occurred.

The ability to issue a notice to produce to 'any person' would align with the that provided via cl.30 of the *Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022* (new s 16ZZI). This enables the Commission to issue a notice to produce to 'any person' for the purposes of seeking information pertaining to s 16M compliance.

We also note that this power would align with that provided in the revised Standards regime at s 25 of the *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021* (which amends s 30 of the Act) which also enables the Commission to issue a notice to produce to 'any person' for the purposes of identifying whether an organisation is subject to the Standards.

Recommendation 47

That the Commission be empowered to issue a notice to produce to any person when undertaking an own motion investigation.

Publishing information from an own motion investigation

The Act prescribes (s 16O(4)) that at the conclusion of an own motion investigation, and after consultation with any relevant regulator, the Commission:

a) must make findings, give reasons for the findings and make recommendations, if any, for action to be taken with respect to the matter investigated; and

b) must provide to the entity the findings, reasons and recommendations, if any, of the Commission, together with any necessary information relating to the recommendations; and

c) may provide to the regulator the recommendations of the Commission for action to be taken by the regulator.

The Commission supports the above provisions. However, there are many organisations for whom there is no other regulator listed in the Act.

Under, s 16O(3) the Commission may conduct an own motion investigation into an organisation's handling of, or response to, a reportable allegation. Such an investigation may make findings and recommendations about significant concerns about child safety systems and processes, and in some situations should be on the public record.

The ACT Ombudsman, who administers the reportable conduct scheme in that territory, has this power under Part 2, Division 2.3 of the *Ombudsman Act 1989* (ACT). The power is broad relating to the Ombudsman's functions. It states:

> (1) *Nothing in this Act precludes the ombudsman from disclosing information or making a statement to any person or to the public or a section of the public with respect to the performance of the functions of, or an investigation by, the ombudsman under this Act if, in the opinion of the ombudsman, it is in the interests of any agency*

or person, or is otherwise in the public interest, so to disclose that information or to make that statement.

There are some conditions outlined in s 34 of the *Ombudsman Act 1989* (ACT) dealing with procedural fairness and the disclosure of identifying personal information.

In our view, s 16O(4) should give the Commission a similar power to disclose information such as findings and recommendations arising from investigations under s 16O(3) with Parliament (through tabling the Commission's annual report) and more broadly with any person, agency or to the public or section of the public at any time the Commission considers appropriate.

The ability to disclose information, such as the findings and recommendations of an own motion investigation under s 16O(3) would be useful as an education tool to assist organisations in understanding best practice, or to warn the general public where the Commission has significant child safety concerns about an organisation following an investigation. It is not proposed that details of reportable allegations would be published. Rather, the focus would be on own motion investigations for the purposes of s 16O(3), which focus on the handling of the reportable allegation and subsequent investigation.

This approach broadly aligns with that taken under the revised Standards framework at s 30 of *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021* (which inserts new s 36I of the Act). This provision enables sector regulators (including the Commission) to, under certain circumstances, publish details of non-compliance.

Restrictions currently outlined at s 16ZE would apply, which prohibits publishing information that could lead to the identification of prescribed individuals.

Recommendation 48

That the Commission be provided with the ability to disclose information relating to investigations under s 16O(3) with Parliament in its annual report and more broadly outside Parliament when the Commission considers it appropriate to do so.

Review rights for parties

Own motion investigation decisions are subject to internal review (s 16ZI) and VCAT review (s 16ZJ). However these provisions only enable the employee of an organisation to seek review.

The Commission considers that further consideration should be given to enabling alleged victims to seek review under s 16ZI and s 16ZJ. This would provide a clear avenue for alleged victims to seek review in the event they are not satisfied with the finding or process of an own motion investigation.

Recommendation 49

That consideration be given to extending the ability to seek internal review and VCAT review to alleged victims in own motion investigations conducted by the Commission.

Appendix 1 - Table of recommendations

1.	That administration of the Scheme is made sustainable through additional immediate funding provision to the Commission to manage risk to children.
2.	That the Scheme's application to former employees is clarified by amendments to the Act to articulate: • that reportable conduct allegations in relation to former employees are captured by the Scheme and must be notified to the Commission and investigated • the length of time after a former employee has ceased to be engaged or employed by any organisation subject to the Scheme that an organisation is obligated to investigate reportable allegations • what should occur if the former employee is subsequently employed by an organisation captured by the Scheme.
3.	That the Scheme is expanded to capture individuals providing services for the benefit of children regardless of their employment relationship, including: • 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. That further consideration is given to the viability of extending to Scheme to cover sole traders who do not employ others.
4.	That consideration be given to extending the Scheme's coverage to: • elected officials such as local councillors and Ministers • partners and other adult residents living in the homes of children and young people in foster and kinship care arrangements.
5.	That the definition of *reportable allegation* be amended to make it explicit that any person can form a reasonable belief and that the head of organisation need not agree with that belief in order for the definition of *reportable allegation* to be met.
6.	That the Scheme 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.
7.	That conduct that is trivial or minor and presents a lower-level risk to children be excluded from coverage under the Scheme by amending the definition of 'physical violence'.
8.	That the Act be amended to clarify that overly personal and intimate conduct in relation to a child can constitute sexual misconduct even where there is no finding that the conduct was for sexual arousal or gratification.
9.	That the definition of sexual misconduct be expanded to include circumstances where a person is engaging with a person they believe to be a child but is actually an adult.
10.	That provisions in the Act relating to regulators be reviewed and amended to improve their workability. Changes to be considered include requiring regulators to consider joined investigations/single investigations for multiple purposes and thereby reduce the need for alleged victims to give evidence on multiple occasions. That the Victorian Disability Worker Commission, the Quality Assessment and Regulation Division within the Department of Education and Training and the Social Services Regulator be prescribed as employee regulators for the Scheme. That consideration be given to whether any further regulators ought to also be prescribed.
11.	That the Act be amended to: • require heads of organisations to have internal systems in place to manage allegations about the head • require the nomination of an alternate head, or a person responsible for performing the role of the head under the Act, where the head of the organisation is the subject of an allegation.
12.	That the Act be amended to: • require organisations to clearly identify the identity of the head of the organisation as part of systems required under s 16K of the Act and for this information to be provided to the Commission on request • provide the Commission with powers to obtain relevant information regarding the organisation for the purposes of identifying a head of organisation • provide the Commission with powers to designate a head of an organisation for the purposes of the Scheme. This should be limited to circumstances where the definition in s 3 does not apply and the entity has not nominated a head.

13.	That the Act be amended to require the head of an organisation to complete an investigation into a reportable allegation as soon as is practicable.
14.	That s 16M(1)(a) be broadened to require a head of organisation to provide the Commission with information about: • action taken, or proposed to be taken, to mitigate risks of harm to children • the employment or engagement status of the subject of allegation and any disciplinary or other action taken, proposed to be taken, against the subject of allegation.
15.	That s 16M(1)(b) be broadened to require a head of organisation to provide the Commission with information about: • any changes made, or proposed to be made, to actions to mitigate risks to children since the 3 day notification • any changes to the employment status of the subject of allegation or any further disciplinary or other action taken, or proposed to be taken, against the subject of allegation since the 3 day notification. That s 16M(1)(b)(iii) be removed.
16.	That the Act be amended to empower the Commission to reduce duplication in relation to multi-jurisdictional matters under the Scheme. These would include empowering the Commission to: • exempt an organisation from undertaking an investigation in the event that an investigation is occurring under an equivalent interstate scheme • recognise a finding made under an equivalent interstate scheme as a finding for the purposes of the Victorian Scheme where the reportable allegation is also captured under the Victorian Scheme.
17.	That s 16N(3) of the Act be amended to explicitly include: • evidence relied on by the head of entity when making the finding • information pertaining to the involvement of the alleged victim in the investigation • information pertaining to how procedural fairness was afforded to the subject of allegation.
18.	That the exemption provision in s 16C 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.
19.	That consideration be given to extending disclosure protections to persons providing information to heads of organisations relating to reportable allegations.

20.	That the Act be amended to include an immunity provision applying to the Commission when exercising powers under Part 5A of the Act.
21.	That the Commission be provided a full suite of investigation, compliance and enforcement powers to take action in respect of alleged breaches of s 16M, s 16ZE and s 16 ZF of the Act.
22.	That the penalty for a breach of s 16M be increased.
23.	That compliance and enforcement powers for s 16K be introduced that align with those available for sector regulators of the Standards in the *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021.*
24.	That s 16ZG be amended to clarify that the Commission can issue a notice to produce: • to any person (including the head of entity) or other body to assist it to perform its functions (which would include to determine if an entity is covered by the Scheme and the head of entity) • without the need for a prior request for information.
25.	That the time for commencing proceedings for s16ZE and s16F under Part 5A be extended to three years to align with the approach taken for s 16M(4) in the *Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022*
26.	That, consistent with the principles of the *Judicial Proceedings Reports Act 1958,* s 16ZE should not apply to self-publication by alleged victims of reportable conduct and victims of substantiated reportable conduct. Others who publish identifying information with consent of the alleged victim or victim should also be exempt from the prohibitions in s 16ZE*.*
27.	That the Act be amended to enable the Commission to issue class and kind exemptions from the information provision requirements under s 16N.
28.	That the Commission be provided with a discretion to share limited information with subjects of allegation.
29.	That the Commission be provided powers to share information with law enforcement bodies and child safety related bodies in all other Australian jurisdictions.

30.	That the Act clarify that heads of organisation must prepare documentation for investigations under the Scheme in a manner that can be provided to the Commission to ensure we are able to fulfill our statutory oversight role.
31.	That the Act be amended to allow for broad information sharing powers between the Commission and WWCC Victoria. That the *Worker Screening Act 2020* be reviewed to ensure WWCC Victoria is empowered to act on a broader range of information for child safety purposes than under current law. That the *Worker Screening Act 2020* be amended to permit WWCC Victoria to share information with the Commission, including information about the outcome of matters the Commission refers to WWCC Victoria.
32.	That consideration be given to increasing the reciprocal information sharing provisions between the Commission and the: • Victorian Ombudsman • Victorian Inspectorate • Office of Victorian Information Commission • Independent Broad-based Anti-Corruption Commission • Public Advocate • Victorian Equal Opportunity and Human Rights Commission • Social Services Regulator • Wage Inspectorate Victoria.
33.	That the Act be amended to place a statutory requirement on organisations to maintain confidentiality of Child Protection and police information when shared by the Commission for child safety purposes.
34.	That the Scheme be expanded to include sporting services for children.
35.	That the Scheme be expanded to include councils.
36.	That Scheme be expanded to child safety regulators, including Wage Inspectorate Victoria, Victorian Registration and Qualifications Authority, Victorian Institute of Teaching, and the new Social Services Regulator.
37.	That the Scheme be expanded to apply to the Victorian State Emergency Service, the Country Fire Authority, Fire Rescue Victoria, and Ambulance Victoria. That consideration be given to whether Victoria Police and any additional organisations involved in responding to emergencies should be brought within scope of the Scheme.

38.	That, until legislation is amended to prevent children from being accommodated in adult prisons, the Scheme be expanded to bring private prisons within scope of the Scheme.
39.	That consideration be given as to whether immigration detention facilities in Victoria can be brought within scope of the Scheme.
40.	That the Scheme be expanded to organisations providing professional babysitting services.
41.	That the Scheme be expanded to organisations providing coaching or tuition services specifically for children.
42.	That the Scheme be expanded to include high-risk non-registered schools.
43.	That the Scheme be expanded to include unregistered or unapproved organisations delivering services to children.
44.	That the Scheme be expanded to a greater range of organisations that provide transport services specifically for children, targeting higher risk settings such as school bus services.
45.	That the Scheme be expanded to a greater range of organisations in the health sector.
46.	That the Scheme be expanded to organisations receiving funding under a state contract to provide early therapeutic interventions for children with a disability, additional needs or developmental delay.
47.	That the Commission be empowered to issue a notice to produce to any person when undertaking an own motion investigation.
48.	That the Commission be provided with the ability to disclose information relating to investigations under s 16O(3) with Parliament in its annual report and more broadly outside Parliament when the Commission considers it appropriate to do so.
49.	That consideration be given to extending the ability to seek internal review and VCAT review to alleged victims in own motion investigations conducted by the Commission.