



Department of
the Premier and Cabinet

Independent Oversight System

Survey

Produced and published by

The Department of the Premier and Cabinet

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The Department of the Premier and Cabinet will publish a consultation summary report of the independent oversight consultation. All survey responses will be treated as public, and parts may be published unless you indicate your response or part of it is confidential. All requests for confidentiality will be respected and dealt with in accordance with any applicable laws, including the *Freedom of Information Act 1992* (WA).

Accessibility

The Independent Oversight System survey can be provided in an accessible format and hard copy on request. If you have any issues accessing the survey, or wish to arrange for your submission to be taken verbally, please contact us at:

independentoversight@dpc.wa.gov.au.

Acknowledgement of Country

The Government of Western Australia acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures; and to Elders both past, present and emerging.

Introduction

The Department of the Premier and Cabinet is leading the work to develop a system of independent oversight that improves child safety in organisations.

What are we seeking your views on?

Children and young people regularly come into contact with organisations and engage in activities outside their home.

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) highlighted the numerous times and ways children and young people reported abuse experienced outside the home and were not believed or no action was taken.

The Royal Commission recommended more independent scrutiny or oversight of organisations engaged in child-related work to avoid the problems of the past, prevent abuse occurring in the future, and respond swiftly to allegations when they occur. Other reports have also recommended changes to the State's oversight system.

The Department of the Premier and Cabinet (DPC) is leading the work to develop a system of independent oversight that improves child safe cultures and practices in organisations.

As child safety is a whole of community responsibility, we want to hear your views about particular elements of the system and how they will work to inform our advice to Government.

Once complete

Please return this survey by email to independentoversight@dpc.wa.gov.au.

Why strengthen independent oversight of organisations engaged in child-related work?

Child wellbeing is an important indicator of a healthy and resilient community. Ensuring that children and young people are kept safe from harm in their interactions with organisations is a priority for everyone in the community. The Royal Commission recommended that organisations engaged in child-related work be overseen by an independent body to improve their child safe systems and practices and handling of child abuse complaints.

In broad terms, independent oversight refers to a person or body that examines the actions and decisions of others at arms-length using functions such as monitoring, review, investigation, and reports findings and recommendations to improve systems and processes. Independent oversight improves transparency and accountability so the community has confidence in the integrity of our government and non-government organisations and institutions.

Independent oversight of child-related work is inconsistent across jurisdictions and sectors. In WA, individuals engaged in child-related work require a Working with Children Check card but this is only one aspect of child safety.

The Royal Commission recommended strengthening oversight in the following four areas:

- organisations to report certain types of misconduct by their employees involving children (known as reportable conduct) to an independent oversight body
- organisations engaged in child related work to comply with child safe standards (known as the National Principles for Child Safe Organisations) and their compliance be monitored by an independent oversight body
- out-of-home care providers be accredited by an independent oversight body as meeting particular standards which would include the National Principles, and their compliance with those standards be monitored by that body; and
- youth detention environments to comply with the National Principles and their compliance be monitored by an independent oversight body.

Other reports have also examined the State's oversight mechanisms and recommended changes.

Other states and territories have also been strengthening their oversight systems in response to the Royal Commission, which recommended a nationally consistent approach. One of the purposes of this consultation is to examine what other jurisdictions have done and tailor best practice for WA.

Survey

Tell us about yourself or your organisation

1. What best describes your interest in the development of the independent oversight system? (mandatory field*)

Select one option only

An organisation engaged in child-related work

A parent or carer

A peak body or association

An employee or volunteer

A regulator

Other, please specify below

2. What is your postcode? (Organisations, please specify the postcode of your main office) (mandatory field*)

3.

If you are an organisation, what best describes the type of organisation that you work in? (mandatory field*)

Select all that apply

Accommodation and residential services

Sporting club or association

Religious institution

Coaching or tuition services for children

Childcare or minding services

Commercial service provider (eg entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions)

Child protection and out-of-home care services

Disability services

Transport services for children, including school crossing services

Education services

Local government

Health services

State government

Justice and detention services

Other, please specify below

4.

Where are your services predominately delivered?

Select all that apply

Kimberley

South West

Pilbara

Great Southern

Gascoyne

Goldfields-Esperance

Mid West

Perth Metropolitan

Wheatbelt

Indian Ocean Territories of
Christmas Island and Cocos
(Keeling) Islands

Peel

What should an independent oversight system look like?

The independent oversight mechanisms for organisations engaged in child-related work need to work together as a cohesive, integrated system to achieve better outcomes for children through a mix of prevention, monitoring and compliance activities.

The principles we are applying to the design of the system are:

- the interests of children and young people are a primary consideration within the system
- the system needs to make sense to children and young people, their family members, carers, or advocates acting on their behalf
- the system needs to be culturally aware and responsive
- the system supports a focus on building capability to meet requirements through prevention, education and practical tools
- the system supports a responsive and risk-based approach to monitoring and compliance
- integration with existing regulation to minimise regulatory burden on organisations
- the system supports coordination, collaboration and information sharing between oversight bodies to meet common child safe objectives
- roles and responsibilities of oversight bodies within the system are clear with minimal duplication, gaps and overlaps
- the functions of the oversight bodies within the system and within individual oversight bodies do not conflict or compete with each other (or if they do, can be managed, for example, through legislative based mechanisms).

5. Do you agree with these principles for the design of the independent oversight system?

Principle	Strongly agree	Agree	Disagree	Strongly disagree	Don't know
The interests of children and young people are a primary consideration within the system					
The system needs to make sense to children and young people, their family members, carers, or advocates acting on their behalf					
The system needs to be culturally aware and responsive					
The system supports a focus on building capability to meet requirements through prevention, education and practical tools					
The system supports a responsive and risk-based approach to monitoring and compliance					
Integration with existing regulation to minimise regulatory burden on organisations					
The system supports coordination, collaboration and information sharing between oversight bodies to meet common child safe objectives					
Roles and responsibilities of oversight bodies within the system are clear with minimal duplication, gaps and overlaps					
The functions of the oversight bodies within the system and within individual oversight bodies do not conflict or compete with each other (or if they do, can be managed, for example, through legislative based mechanisms)					

6. Are there other principles that should be applied?

Please provide your answer in the box below.

A set of principles to create child safe organisations

The Royal Commission recommended 10 child safe standards to improve child safe cultures and practices across all sectors providing services to children and young people. The standards have since been incorporated into the National Principles for Child Safe Organisations (National Principles) which were agreed by the Commonwealth, state and territory governments in February 2019.

The National Principles are:

1. Child safety and wellbeing is embedded in organisational leadership, governance and culture.
2. Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously.
3. Families and communities are informed and involved in promoting child safety and wellbeing.
4. Equity is upheld and diverse needs respected in policy and practice.
5. People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice.
6. Processes to respond to complaints and concerns are child focused.
7. Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.
8. Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.
9. Implementation of the national child safe principles is regularly reviewed and improved.
10. Policies and procedures document how the organisation is safe for children and young people.

The National Principles are not 'one size fits all' and allow flexibility in implementation by organisations according to their type, size and capacities and levels of engagement with children and young children.

For more information on the National Principles, please go to [the Australian Human Rights Commission](#) website.

The Royal Commission recommended that the National Principles be implemented by organisations engaged in child-related work, including schools, sporting groups, out-of-home care providers and in youth detention settings, and that their implementation be independently monitored and enforced.

Some organisations are in the process of implementing the National Principles, for example, some sporting organisations that are associated with national sporting bodies, through contracting arrangements with government, or have been using the guidelines and tools published by the [WA Commissioner for Children and Young People](#) to enhance their child safe strategies.

7.

Are you aware of the National Principles for Child Safe Organisations?

Select one option only

Yes

Somewhat aware

No

8.

Is your organisation already implementing the National Principles?

Select one option only

Yes, all of the National Principles

No

Yes, some of the National Principles

Unsure

9.

If no, what are the reasons for this?

Please provide your answer in the box below.

Which organisations must legally be safe for children?

The Royal Commission was of the view that all organisations should strive to be child safe, but recommended that organisations or institutions providing the following services to children and young people should be legally required to apply the National Principles for Child Safe Organisations (National Principles):

- accommodation and residential services for children, including overnight excursions or stays
- activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children
- childcare or minding services
- child protection services, including out-of-home care
- clubs and associations with a significant membership of, or involvement by, children
- coaching or tuition services for children
- commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions
- disability services for children
- education services for children
- health services for children
- justice and detention services for children, including immigration detention facilities
- transport services for children, including school crossing services.

These service categories broadly mirror the categories in the definition of child-related work in the *Working with Children (Criminal Record Checking) Act 2004* (WA). An estimated 25,000 organisations in WA may be required to comply with the National Principles.

The Joint Standing Committee for the Commissioner for Children and Young People of the WA Parliament, in its recent report *From Words to Action: Fulfilling the obligation to be child safe*, suggested that in WA the categories of organisations required to apply the National Principles should also include organisations that have indirect contact with children, such as shopping centres, public transport, restaurants, theatres, and stadiums, and medical centres that do not provide children's health services.

The Victorian legislation does not extend to organisations that have indirect contact with children, and a recent *review of Victoria's child safe standards* highlighted the need to balance the risk of harm with regulatory burden on organisations.

10. Should any other organisations in WA be required to comply with the National Principles?

Please provide your answer in the box below.

11. Should any organisations be excluded from complying with the National Principles?

Please provide your answer in the box below.

How should legal compliance with the National Principles be implemented?

The oversight body will work with organisations that need to comply with the National Principles for Child Safe Organisations (National Principles) either directly or with their sector regulators, peak bodies, funding agencies or sector leaders so they are capable of implementing the National Principles. The **WA Commissioner for Children and Young People** has developed tools to assist organisations to implement the National Principles and work is also underway in some sectors both nationally and at the state level to encourage implementation.

Given the work that has happened to date, we are interested in your views on whether compliance with the National Principles should apply to all types of organisations in scope at the same time, or whether it should be phased over a period of time.

In Victoria, legal compliance with the National Principles was phased over two years. Organisations that were funded or regulated by government were in the first phase, and organisations with limited or no funding or regulatory arrangements with government were in the second phase. The proposed reportable conduct scheme (summarised at the end of this survey) will be phased in over two years.

12. Should the legal requirement for organisations to comply with the National Principles occur at the same time or be a phased approach?

Select one option only

All at the same time

Don't know

A phased approach with different types of organisations commencing at different times (for example, organisations that exercise a high degree of responsibility for children and where there is a heightened risk of child abuse)

13. If you think implementation should be phased, which types of organisations should be in the first phase and why?

Please provide your answer in the box below.

14.

Is two years a reasonable timeframe for all organisations to legally comply with the National Principles?

Select one option only

Yes

No

Don't know

15.

If no, what do you think would be a reasonable timeframe and why?

Please provide your answer in the box below.

Supporting organisations to be child safe

To help organisations implement the National Principles for Child Safe Organisations (National Principles), the Joint Standing Committee for the Commissioner for Children and Young People in its recent report *From Words to Action: Fulfilling the obligation to be child safe* asked government to give serious consideration to professionalising the role of a child safeguarding manager so there are people skilled in child safe practices to assist organisations with developing a child safe workforce, and child safe strategies and processes.

The Joint Standing Committee suggested that child safeguarding managers could be made available in a variety of ways, such as being located within organisations, across sectors or professional bodies, positioned within government, or have designated positions established as part of the independent oversight capability building support function for the National Principles.

16.

Do you think organisations would benefit from having access to a child safeguarding manager?

Select one option only

Yes

No

Don't know

17.

How do you think organisations would prefer to access a child safeguarding manager?

Rank your preference from 1 (most prefer) to 4 (least prefer), or select 'Don't know' if unsure

Oversight body

Don't know

Sector regulator

Other, please specify below.

Peak body

Professional body

18. What skills and qualifications should a child safeguarding manager have?

Please provide your answer in the box below.

What powers should an independent oversight body have?

The oversight body will work with organisations to build their capability to implement the National Principles for Child Safe Organisations (National Principles), monitor their progress, identify where further support may be required, and take action in circumstances of non-compliance. This section seeks views on the scope of some particular functions the oversight body may require.

Working with sector regulators and leaders – co-regulation

Many organisations engaged in child-related work are already covered by a sector regulator, such as a school registration authority, or by a peak body. The independent oversight body could work with these other bodies so that organisations do not have to deal with multiple regulators. This could range from capability building activities to delegating compliance monitoring and enforcement functions if the sector regulator had sufficient powers.

An example of how a co-regulatory approach may work in practice is where an organisation is required to be registered or obtain a permit and meeting the National Principles is made a requirement of registration or holding the permit. The oversight body could delegate a function to the sector regulator to monitor that organisation's compliance with meeting the National Principles.

A co-regulatory approach would recognise that a single oversight body may not have the capacity to oversee the large number of organisations to be covered by the National Principles which, in WA, is estimated to be 25,000.

19.

Could a co-regulatory approach to monitoring and enforcing the National Principles work in your sector?

Select one option only

Yes

No

Don't know

20.

If yes, how would you see the co-regulatory model operating?

Please provide your answer in the box below.

21.

If no, why not?

Please provide your answer in the box below.

Ensuring child safe organisations - compliance monitoring and enforcement powers

The Royal Commission recommended that the oversight body takes a responsive, risk-based approach to monitoring and enforcement of the National Principles for Child Safe Organisations (National Principles). This would involve a range of persuasive strategies, such as capability building through education and advice escalating to more coercive strategies such as notices to comply and financial penalties. The oversight body's choice on which strategy it uses would be based on the level of risk to children and young people and how the organisation responds to the strategies.

The diagram on the next page (Figure 1) developed by the Office of the Children's Guardian NSW, which has been allocated the independent oversight role in that State, shows how the responsive, risk-based approach could be applied.

Monitoring strategies by the oversight body could include reviews, investigations and reports supported by information gathering powers, such as the power of entry to inspect premises and observe activities, and the power to compel the production of documents.

A question for consideration is whether the power of entry should be exercised with or without warning. In Victoria, section 29 of the *Child Wellbeing and Safety Act 2005* (VIC) requires the oversight body to provide seven day's notice of an inspection but allows for inspection without written notice in exceptional circumstances if the relevant entity consents to the inspection.

Other strategies could include embedding requirements in procurement processes, contract creation and contract management. The WA Department of Finance has included a clause in community services and commercial contract templates to encourage compliance with the National Principles.

Possible enforcement strategies could range from seeking a declaration from a court for non-compliance if an organisation does not produce requested documents or fails to rectify non-compliance, financial penalties, public naming of non-compliant organisations, deregistering an organisation, or suspending or terminating the funding of an organisation.

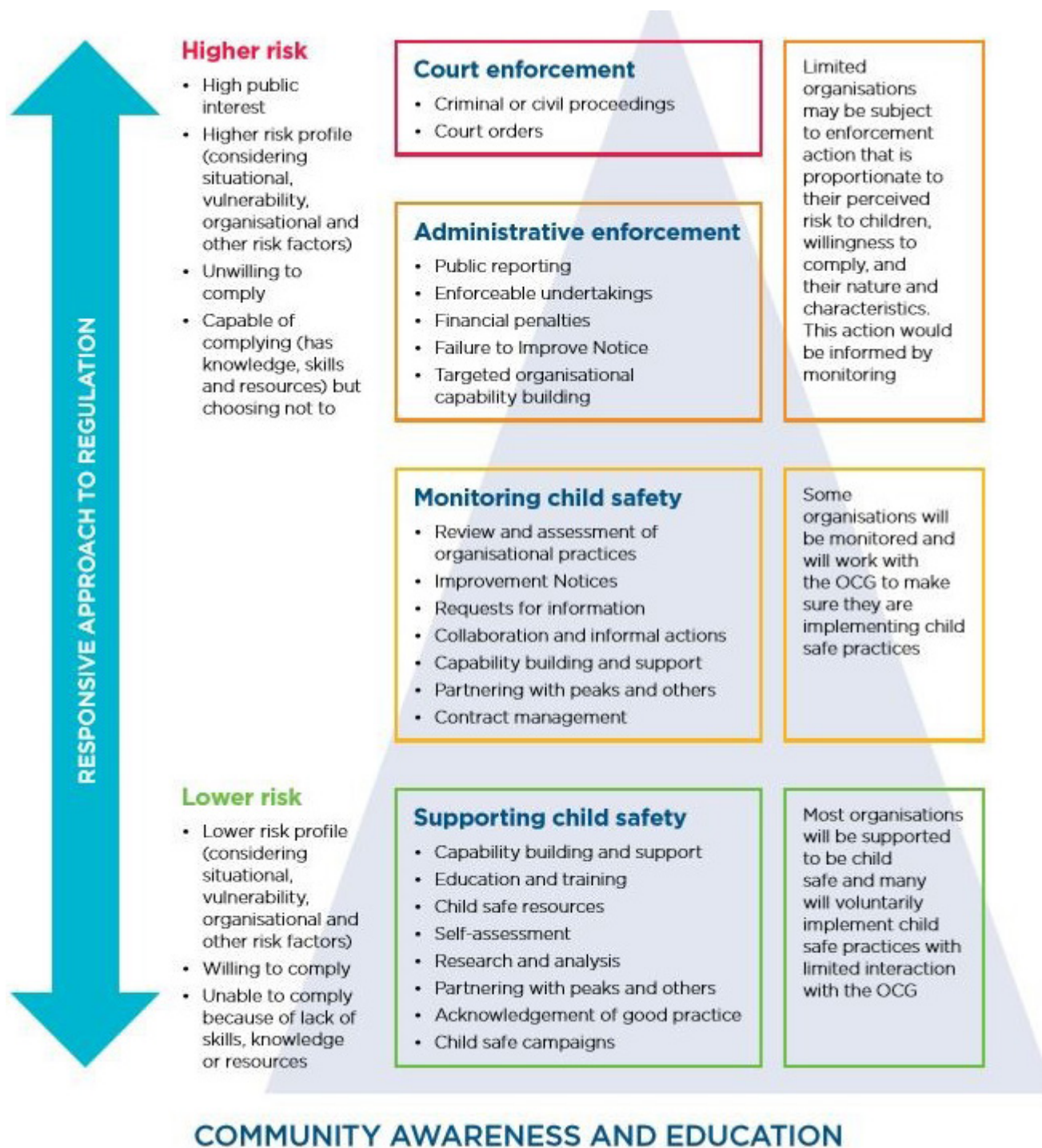


Figure 1: Reproduced with permission from the Office of the Children’s Guardian NSW (OCG).

22. What powers should the independent oversight body have to enforce compliance?

Please provide your answer in the box below.

23. Should the oversight body be able to exercise the power to enter an organisation without warning?

Select one option only

Yes

No

Don't know

Please provide further comments if required

24. What sanctions and penalties should apply for non-compliance?

Please provide your answer in the box below.

Supporting children and young people to make a complaint of abuse

The Royal Commission recommended that an independent oversight body in each state and territory be responsible for monitoring and enforcing the National Principles for Child Safe Organisations (National Principles), and noted that governments could enhance the roles of existing children's commissioners or guardians for this purpose.

The Joint Standing Committee for the Commissioner for Children and Young People in its report *From Words to Action: Fulfilling the obligation to be child safe* suggested the Commissioner for Children and Young People would be suitable for this role in WA.

The Commissioner for Children and Young People has also released a **discussion paper** in support of his office being given the oversight role for the National Principles and for accrediting out-of-home care providers against particular standards, including the National Principles, and compliance monitoring against those standards.

In developing the oversight system, an important function to consider is support for children and young people who are trying to navigate the system and make complaints of abuse, particularly for children and young people who do not have a parent, family member or carer who can represent their interests.

The Joint Standing Committee's report particularly highlighted the need for children in care to have access to independent individual advocacy.

The Commissioner for Children and Young People has a role to advocate for children and young people at a system level, but does not have a function to provide advocacy for individual cases. The Advocate for Children in Care within the Department of Communities provides individual advocacy for children in care.

An individual advocacy function within the independent oversight system could include assisting children and young people navigate complaints processes and representing the interests of children and young people in formal complaints processes.

There is no best practice model in Australia for the combination of oversight functions with advocacy functions, but an important issue to consider is whether the function to advocate for individual children and young people and their current experiences while also being tasked with reviewing and overseeing compliance and responses creates a potential or perceived conflict of interest. We are interested in your views of the role and scope of an individual advocacy function within the independent oversight system.

25.

What should the scope of the individual advocacy function be within the independent oversight system?

Please provide your answer in the box below.

26.

What are the challenges and opportunities with having an individual advocacy function and a compliance monitoring and enforcement function being together or apart?

Please provide your answer in the box below.

27.

If the functions are together, how should the potential and perceived conflicts of interest be managed?

Please provide your answer in the box below.

28.

If the functions are apart, what would need to be put in place for information gathered as part of the advocacy role to inform the complaints monitoring function?

Please provide your answer in the box below.

A scheme to report employee misconduct involving children

The Royal Commission found that organisations need to improve their responses to child abuse and recommended that state and territory governments set up reportable conduct schemes which oblige heads of organisations to notify an independent body of allegations and convictions of child abuse involving their employees, volunteers and contractors.

Draft legislation to establish a reportable conduct scheme in WA has been developed in the form of a Green Bill for consultation. You can view the Green Bill at the [WA Ombudsman website](#).

The proposed scheme will apply to organisations that exercise a high degree of responsibility for children and where there is a heightened risk of child abuse. These organisations will need to report the following types of conduct to the Ombudsman WA:

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

The types of organisations to be covered by the scheme will include:

- accommodation and residential services
- religious institutions
- childcare services
- child protection and out-of-home care services
- disability services
- education services
- health services
- justice and detention services.

To assist organisations prepare for the new requirements, the scheme will be phased in over two years.

The proposed Bill will also make amendments to the *Working with Children (Criminal Record Checking) Act 2004* (WA) so that reportable conduct findings can cause an assessment or re-assessment of a person who has a Working with Children Check card.

If you are interested in making a submission on the Green Bill, please send your comments to the Ombudsman via email at reportableconduct@ombudsman.wa.gov.au by 31 January 2021.

For more information

For a copy of the Green Bill go to the [WA Ombudsman website](#).
For an Information Sheet about the proposed reportable conduct scheme go to the [WA Ombudsman website](#).

Other comments

29.

Are there any other comments you would like to make to inform the design of the independent oversight system?

Please provide your answer in the box below.

Thank you
for providing your feedback.



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