



Australian Capital Territory

Reportable Conduct and Information Sharing Legislation Amendment Act 2016

A2016-39

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Australian Capital Territory

Reportable Conduct and Information Sharing Legislation Amendment Act 2016

A2016-39

An Act to amend legislation about reporting conduct and information sharing,
and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as
follows:

j2015-804

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Reportable Conduct and Information Sharing Legislation Amendment Act 2016*.

2 Commencement

- (1) The following provisions commence on the day after this Act's notification day:
- sections 3 and 4;
 - sections 12 to 14;
 - section 16.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) The remaining provisions commence on a day fixed by the Minister by written notice.

Note A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (3) If the remaining provisions have not commenced within 12 months beginning on this Act's notification day, they automatically commence on the first day after that period.

- (4) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the following legislation:

- [Children and Young People Act 2008](#)
- [Ombudsman Act 1989](#)
- [Working with Vulnerable People \(Background Checking\) Act 2011](#).

Part 2 Children and Young People Act 2008

4 New sections 856A and 856B

insert

856A Director-general—giving information to commissioner for fair trading

- (1) The director-general may give the commissioner for fair trading protected information if satisfied on reasonable grounds that the information is relevant to the exercise of the commissioner's functions under the [Working with Vulnerable People \(Background Checking\) Act 2011](#).
- (2) This section does not limit the information that the director-general may otherwise give to the commissioner under this Act or any other territory law.

856B Responsible person—giving information to commissioner for fair trading

- (1) A responsible person for an approved care and protection organisation may give the commissioner for fair trading protected information if satisfied on reasonable grounds that the information is relevant to the exercise of the commissioner's functions under the [Working with Vulnerable People \(Background Checking\) Act 2011](#).
- (2) This section does not limit the information that the person may otherwise give to the commissioner under this Act or any other territory law.

5 New division 25.3.3

insert

Division 25.3.3 Designated entities sharing reportable conduct information

863A Definitions—div 25.3.3

- (1) In this division:

designated entity—

- (a) see the *Ombudsman Act 1989*, dictionary; and
(b) includes the ombudsman.

reportable conduct information means any information, including protected information, that is relevant to the protection of a child or young person or a class of child or young person against reportable conduct.

- (2) In this section:

reportable conduct—see the *Ombudsman Act 1989*, dictionary.

863B Designated entity may request reportable conduct information

- (1) A designated entity (the *requesting entity*) may ask another designated entity, in writing, to give the requesting entity reportable conduct information in relation to a child, young person or class of child or young person.

- (2) However, a requesting entity must not ask another designated entity for information under this section unless satisfied on reasonable grounds that the information is relevant for the requesting entity to—
- (a) do any of the following for the safety, welfare or wellbeing of a child, young person or class of child or young person:
 - (i) make a decision or an assessment;
 - (ii) plan, begin, or conduct an investigation;
 - (iii) provide any other service in accordance with the entity's functions; or
 - (b) deal with a risk to a child, young person or class of child or young person that might arise in the course of the requesting entity's operation as a designated entity, including as an employer.

863C Designated entity may provide reportable conduct information

- (1) If a designated entity (a *requested entity*) is asked under section 863B (1) to provide reportable conduct information, and is satisfied on reasonable grounds that the information is relevant for the entity making the request (the *requesting entity*) to do or deal with something mentioned in section 863B (2), the requested entity must provide the information.
- (2) However, a requested entity may refuse to provide reportable conduct information if satisfied on reasonable grounds that providing the information would—
- (a) prejudice an investigation of a contravention or possible contravention of a law in force in the territory; or
 - (b) prejudice a coronial inquest or inquiry; or
 - (c) contravene legal professional or client legal privilege; or

- (d) enable the existence or identity of a confidential source of information for the enforcement or administration of a territory law to be revealed; or
 - (e) endanger a person's life or physical safety; or
 - (f) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a territory law; or
 - (g) prejudice a proceeding in relation to a care and protection order; or
 - (h) not be in the public interest.
- (3) If a requested entity refuses to provide reportable conduct information to a requesting entity, the requested entity must tell the requesting entity, in writing, that the entity refuses to provide the information and the reason for the refusal.

863D Restriction on use of information given under this division

Reportable conduct information given under this division to a designated entity must not be used or given for a purpose that is not associated with the safety, welfare or wellbeing of a child, young person or class of child or young person to whom the information relates, except in accordance with a territory law.

863E Protection from liability for providing reportable conduct information

A person who honestly and without recklessness provides reportable conduct information under this division to a designated entity—

- (a) does not commit a breach of—
 - (i) confidence; or
 - (ii) professional etiquette or ethics; or
 - (iii) a rule of professional conduct; and

(b) is not liable for any civil, criminal or other disciplinary action only because of providing the information.

863F Reportable conduct information may be given despite territory law to the contrary

Reportable conduct information may be given to a designated entity in accordance with this division despite any territory law to the contrary.

863G Coordination etc between designated entities

To ensure the safety, welfare or wellbeing of children and young people, designated entities must take reasonable steps to ensure cooperative, coordinated and efficient provision of reportable conduct information between designated entities.

6 Dictionary, new definitions

insert

designated entity, for division 25.3.3 (Designated entities sharing reportable conduct information)—see section 863A.

reportable conduct information, for division 25.3.3 (Designated entities sharing reportable conduct information)—see section 863A.

Part 3 Ombudsman Act 1989

7 New section 2B

insert

2B Offence against Act—application of Criminal Code etc

Other legislation applies in relation to an offence against this Act.

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to an offence against s 17P (Offence—false allegation) (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

8 Functions—investigating complaints under Act New section 5 (5A)

insert

- (5A) Subsection (2) (n) has effect subject to division 2.2A (Reportable conduct).

9 New division 2.2A

insert

Division 2.2A Reportable conduct

17D Definitions—div 2.2A

- (1) In this division:

designated entity means any of the following:

- (a) an administrative unit that deals with the safety, welfare or wellbeing of a particular child or class of children;
- (b) a health service provider;
- (c) a government school or a non-government school;
- (d) a provider of an education and care service;
- (e) a childcare service;
- (f) an approved kinship and foster care organisation;
- (g) an approved residential care organisation;
- (h) any other entity prescribed by regulation.

employee, of a designated entity—

- (a) means a person who is—
 - (i) engaged to provide services to the entity under a contract of employment to which the entity and the person are parties; or
 - (ii) engaged by the entity to provide services to children other than under a contract mentioned in subparagraph (i); and

Examples—subpar (ii)

- volunteer
- out-of-home carer

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (b) for an entity that, in accordance with the *Children and Young People Act 2008*, authorises an out-of-home carer to exercise daily care responsibility or long-term care responsibility for a child—includes an adult who stays for at least 21 days at premises provided by the authorised out-of-home carer for the child to live.

head, of a designated entity, means—

- (a) for an administrative unit—the director-general of the administrative unit; or
- (b) for any other designated entity—
 - (i) if a regulation prescribes the head of the entity—the prescribed head of the entity; or
 - (ii) in any other case—the chief executive officer, however described, of the entity.

investigation, of a matter, means any inquiry or examination into the matter.

investigation information means information—

- (a) obtained as a result of an investigation into a reportable allegation or reportable conviction conducted by the ombudsman or a designated entity; and
- (b) about any of the following:
 - (i) the progress, conduct or findings of the investigation;
 - (ii) action taken as a result of the findings.

out-of-home carer—see the [Children and Young People Act 2008](#), dictionary.

reportable allegation means an express assertion that reportable conduct has happened.

reportable conviction, in relation to a person, means a conviction or finding of guilt—

- (a) for an offence, under a territory law or a State or Commonwealth law, involving reportable conduct; and
- (b) entered against the person before or after the commencement of the *Reportable Conduct and Information Sharing Legislation Amendment Act 2016*, section 3.

(2) In this section:

approved kinship and foster care organisation—see the *Children and Young People Act 2008*, dictionary.

approved residential care organisation—see the *Children and Young People Act 2008*, dictionary.

childcare service—see the *Children and Young People Act 2008*, dictionary.

education and care service—see the *Education and Care Service National Law (ACT)*.

government school—see the *Education Act 2004*, dictionary.

health service provider—see the *Health Practitioner Regulation National Law (ACT)*, section 5.

non-government school—see the *Education Act 2004*, dictionary.

17E Meaning of reportable conduct—div 2.2A

(1) In this division:

reportable conduct means conduct—

- (a) engaged in by an employee of a designated entity, whether or not in the course of employment with the entity; and
- (b) that results in any of the following, regardless of a child's consent:
 - (i) ill treatment or neglect of the child;
 - (ii) exposing or subjecting the child to—
 - (A) behaviour, or a circumstance, that psychologically harms the child; or

(B) misconduct of a sexual nature that does not form part of an offence mentioned in subparagraph (iii);

Example—subpar (ii) (B)

engaging in contact with a child as a preliminary step to obtaining the child's compliance in sexual activities

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

(iii) an offence against any of the following provisions of the [Crimes Act 1900](#) for which the child is either present or a victim at the time of the conduct:

(A) part 2 (Offences against the person);

(B) part 3 (Sexual offences);

(C) part 4 (Female genital mutilation);

(D) part 5 (Sexual servitude);

(iv) an offence against either of the following provisions of the [Education and Care Service National Law \(ACT\)](#):

(A) section 166 (Offence to use inappropriate discipline);

(B) section 167 (Offence relating to protection of children from harm and hazards).

(2) However, **reportable conduct** does not include conduct—

(a) that is reasonable discipline, management or care of a child taking into account the characteristics of the child, and any relevant code of conduct or professional standard that at the time applied to the discipline, management or care of the child; or

(b) if the conduct is investigated and recorded as part of workplace procedure—that is trivial or negligible; or

(c) prescribed by regulation.

Examples—s (2)

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

(3) In this section:

characteristics, of a child, includes the age, health and developmental stage of the child.

conduct means an act or an omission to do an act.

17F Ombudsman must monitor designated entity

- (1) The ombudsman must monitor the practices and procedures of a designated entity for—
 - (a) the prevention of reportable conduct involving an employee of the entity; and
 - (b) dealing with reportable allegations or reportable convictions involving an employee of the entity.
- (2) The ombudsman may, by written notice, require the head of a designated entity to provide information about the entity's practices and procedures for the purpose of assisting the ombudsman to carry out a function under this section.
- (3) In this section:

procedures includes policies.

17G Designated entity must report to ombudsman

- (1) The head of a designated entity must provide a written report to the ombudsman about—
 - (a) any reportable allegation or any reportable conviction involving an employee of the entity; and

- (b) whether or not the entity proposes to take any action against the employee based on the allegation or conviction, and the entity's reasons for taking or not taking action; and
 - (c) any written submissions made by the employee to the head of the entity about the allegation or conviction that the employee asked the entity to take into account when deciding any action against the employee.
- (2) A report under subsection (1) must be given to the ombudsman within 30 days after the day the head of the entity becomes aware of the allegation or conviction, or another period allowed by the ombudsman.
- (3) The ombudsman may declare that subsection (1) does not apply in relation to any of the following (an *exempt matter*):
 - (a) a reportable allegation or reportable conviction of a particular kind;
 - (b) a particular entity;
 - (c) a particular employee.
- (4) The head of an entity is not required to provide a written report to the ombudsman under subsection (1) if the report would deal only with an exempt matter.

17H Disclosure of Information to and by ombudsman

- (1) The head, or an employee, of a designated entity may disclose any information to the ombudsman that the head or employee believes on reasonable grounds reveals—
 - (a) reportable conduct involving an employee of the entity; or
 - (b) a reportable conviction against an employee of the entity.

- (2) If the ombudsman receives information disclosed under subsection (1), the ombudsman may, if the ombudsman is satisfied on reasonable grounds that the information is relevant to the safety, health or wellbeing of a child or class of child, disclose the information to any of the following:
- (a) the chief police officer;
 - (b) a law enforcement agency;
 - (c) the human rights commission;
 - (d) the director-general responsible for the *Children and Young People Act 2008*, other than that Act, chapter 20;
 - (e) the director-general responsible for the *Education and Care Service National Law (ACT)*;
 - (f) the chief executive officer of the ACT Teacher Quality Institute.
- (3) In this section:
- ACT Teacher Quality Institute* means the institute established under the *ACT Teacher Quality Institute Act 2010*, section 10.
- law enforcement agency*—
- (a) see the *Spent Convictions Act 2000*, dictionary; and
 - (b) includes an entity prescribed by regulation.

171 Ombudsman may monitor investigation

- (1) The ombudsman may monitor an investigation carried out by a designated entity into a reportable allegation or reportable conviction involving an employee of the entity if satisfied on reasonable grounds that monitoring the investigation is in the public interest.

- (2) For the purpose of monitoring an entity's investigation under this section, the ombudsman or an officer of the ombudsman may—
- (a) attend any interview conducted by or on behalf of a designated entity in its investigation; and
 - (b) confer with any person carrying out the investigation about the nature, conduct or progress of the investigation; and
 - (c) request information relating to the investigation by written notice given to the head of the entity.

Note It is an offence to obstruct a territory public official (see [Criminal Code](#), s 361).

17J Designated entity must report outcome of investigation

- (1) The head of a designated entity must, as soon as practicable after the end of an investigation by the entity into a reportable allegation or reportable conviction, provide the ombudsman with—
- (a) a written report about—
 - (i) the results of the investigation; and
 - (ii) any action taken, or proposed to be taken, in relation to the reportable allegation or reportable conviction; and
 - (b) copies of all—
 - (i) statements taken in the course of the investigation; and
 - (ii) documents mentioned in the report; and
 - (c) any other information that the head of the entity considers relevant to the report.
- (2) After receiving the report and other information, the ombudsman may by written notice given to the head of the entity request any additional information specified in the notice that the ombudsman considers relevant to determine whether—
- (a) the reportable allegation or reportable conviction was properly investigated; and

- (b) appropriate action was taken as a result of the investigation.

17K Ombudsman may conduct own investigation

- (1) The ombudsman may, on the ombudsman's own initiative or in response to a complaint, conduct an investigation into—
 - (a) any reportable allegation or reportable conviction involving an employee of a designated entity; or
 - (b) the response of the designated entity to the reportable allegation or reportable conviction.
- (2) If the ombudsman decides to conduct an investigation under this section, the ombudsman must give the head of the designated entity written notice stating—
 - (a) that the ombudsman intends carrying out an investigation under this section; and
 - (b) particulars of the investigation; and
 - (c) whether the ombudsman requires the entity not to commence, or to suspend, an investigation by the entity into a matter the ombudsman has decided to investigate.
- (3) As soon as practicable after the ombudsman's investigation has ended, the ombudsman—
 - (a) must—
 - (i) give the head of the entity written notice that the investigation has ended; and
 - (ii) prepare a report setting out the ombudsman's findings; and
 - (b) may make recommendations to any person or body; and
 - (c) if an investigation by the entity was suspended by the ombudsman— may require the head of the entity to continue the investigation.

- (4) An entity must, as far as practicable, comply with a requirement of the ombudsman under this section.

17L Investigation information may be disclosed to child, parent and carer

- (1) The ombudsman or the head of a designated entity may disclose investigation information to any of the following:
- (a) a child who is the subject of conduct that forms the basis of a reportable allegation or a reportable conviction into which an investigation was conducted by the ombudsman or the designated entity;
 - (b) a parent of the child;
 - (c) if the child has been placed with an out-of-home carer—the child’s out-of-home carer.
- (2) In this section:

parent, of a child, means a person who has parental responsibility for the child.

parental responsibility—see the *Children and Young People Act 2008*, dictionary.

17M Ombudsman may give information to commissioner for fair trading

The ombudsman may disclose the following information to the commissioner for fair trading if satisfied on reasonable grounds that the information is relevant to the exercise of the commissioner’s functions under the *Working with Vulnerable People (Background Checking) Act 2011*:

- (a) information about an employee of a designated entity;
- (b) information about an exemption under section 17G;

- (c) information about reports of investigations into reportable allegations or reportable convictions carried out by the ombudsman or a designated entity.

17N Human rights commission may give information to ombudsman

- (1) A member of the human rights commission may disclose information to the ombudsman if satisfied on reasonable grounds that the information is relevant to the exercise of the ombudsman's functions under this division.
- (2) This section does not limit the information that the member may otherwise disclose to the ombudsman under this Act or any other territory law.
- (3) In this section:

member, of the human rights commission, means a member of the commission under the [Human Rights Commission Act 2005](#), section 12.

17O Protection of disclosures made under this division

- (1) An authorisation to disclose information under this division—
 - (a) applies despite any territory law to the contrary; and
 - (b) does not limit the disclosure of investigation information that may be made under any other territory law.
- (2) A person disclosing information under this division is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in complying with this division; or
 - (b) in the reasonable belief that the disclosure complied with this division.

17P Offence—false allegation

A person commits an offence if—

- (a) the person makes an allegation against another person; and
- (b) the person intends to cause the other person to be investigated under this division for—
 - (i) having engaged in reportable conduct; or
 - (ii) being the subject of a reportable conviction; and
- (c) the person knows the allegation is false or misleading in a material particular.

Maximum penalty: 100 penalty units, imprisonment for 12 months or both.

10 Dictionary, note 2

insert

- administrative unit
- adult
- child
- human rights commission
- commissioner for fair trading

11 Dictionary, new definitions

insert

designated entity for division 2.2A (Reportable conduct)—see section 17D.

employee, of a designated entity, for division 2.2A (Reportable conduct)—see section 17D.

head, of a designated entity, for division 2.2A (Reportable conduct)—see section 17D.

investigation, of a matter, for division 2.2A (Reportable conduct)—see section 17D.

investigation information for division 2.2A (Reportable conduct)—see section 17D.

out-of-home carer, for division 2.2A (Reportable conduct)—see section 17D.

reportable allegation, for division 2.2A (Reportable conduct)—see section 17D.

reportable conduct, for division 2.2A (Reportable conduct)—see section 17E.

reportable conviction, in relation to a person, for division 2.2A (Reportable conduct)—see section 17D.

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

12 Section 33

substitute

33 Commissioner may request information from an entity to conduct risk assessments

- (1) The commissioner may request information or advice from any entity the commissioner considers may be able to give information or advice that will assist the commissioner in conducting a risk assessment for a person.

Examples—entity

- 1 the chief police officer
- 2 an administrative unit
- 3 an employer for a regulated activity

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) An entity that receives a request from the commissioner must, as far as practicable, comply with the request.
- (3) An entity that gives the commissioner information or advice in response to a request under this section does not contravene any duty of confidentiality the entity has under a territory law or agreement, despite anything to the contrary in the law or agreement.
- (4) In this section:

information does not include information that, under the [Children and Young People Act 2008](#), section 857, must not be given to a person.

13 Section 53

substitute

53 Commissioner may request information from entities about registered people

- (1) The commissioner may request information or advice from any entity the commissioner considers may be able to give information or advice that is relevant to whether a registered person continues to pose no risk or an acceptable risk of harm to a vulnerable person.

Example

an updated criminal history report from the chief police officer

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) An entity that receives a request from the commissioner must, as far as practicable, comply with the request.
- (3) An entity that gives the commissioner information or advice in response to a request under this section does not contravene any duty of confidentiality the entity has under a territory law or agreement, despite anything to the contrary in the law or agreement.
- (4) In this section:

information does not include information that, under the [Children and Young People Act 2008](#), section 857, must not be given to a person.

14 New part 7A*insert***Part 7A Information sharing****63A Commissioner may give information to particular entities**

- (1) The commissioner may give protected information to—
- (a) any of the following if the commissioner is satisfied on reasonable grounds that the information is relevant to preventing harm, or a risk of harm, to a child or class of child:
 - (i) the director-general responsible for the *Education Act 2004*;
 - (ii) the director-general responsible for the *Education and Care Service National Law (ACT)*;
 - (iii) the director-general responsible for the *Health Act 1993*;
 - (iv) the director-general responsible for the *Children and Young People Act 2008*, other than chapter 20 of that Act;
 - (v) the chief executive officer of the ACT Teacher Quality Institute;
 - (vi) any other prescribed entity; or
 - (b) the chief police officer if the commissioner is satisfied on reasonable grounds that the information is relevant to an investigation into the commission of—
 - (i) an offence against any of the following provisions of the *Crimes Act 1900* for which a child is either present or a victim:
 - (A) part 2 (Offences against the person);
 - (B) part 3 (Sexual offences);
 - (C) part 4 (Female genital mutilation);

- (D) part 5 (Sexual servitude); or
- (ii) an offence against either of the following provisions of the *Education and Care Services National Law (ACT)*:
 - (A) section 166 (Offence to use inappropriate discipline);
 - (B) section 167 (Offence relating to protection of children from harm and hazards).
- (2) In this section:

protected information means information about a person that is given to, or obtained by, the commissioner or any other person who has exercised a function under this Act, because of the exercise of a function under this Act by the commissioner or other person.

Examples

- 1 information obtained by the commissioner in conducting a risk assessment
- 2 information given to the commissioner in conducting a risk assessment

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

63B Particular entities may give information to commissioner

- (1) An entity may give the commissioner any information (including personal health information, personal information or protected information) if satisfied on reasonable grounds that the information is relevant to preventing harm, or a risk of harm, to a child or class of child.
- (2) This section does not limit the information that the entity may give to the commissioner under any other territory law.
- (3) In this section:
 - entity*** means—
 - (a) a director general; or
 - (b) a member of the human rights commission; or

(c) the chief executive officer of the ACT Teacher Quality Institute.

member, of the human rights commission, means a member of the commission under the *Human Rights Commission Act 2005*, section 12.

personal health information—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

personal information—see the *Information Privacy Act 2014*, dictionary.

protected information—see the *Children and Young People Act 2008*, dictionary.

**15 Commissioner may give information to particular entities
New section 63A (1) (a) (iva)**

insert

(iva) the ombudsman; or

16 Dictionary, new definition of ACT Teacher Quality Institute

insert

ACT Teacher Quality Institute means the institute established under the *ACT Teacher Quality Institute Act 2010*, section 10.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 9 June 2016.

2 Notification

Notified under the [Legislation Act](#) on 17 August 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Reportable Conduct and Information Sharing Legislation Amendment Bill 2016, which was passed by the Legislative Assembly on 2 August 2016.

Clerk of the Legislative Assembly

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