



## Mandatory Reporting of Child Sexual Abuse

### Frequently asked questions – November 2023

In Western Australia, the legislation covering mandatory reporting of child sexual abuse is the *Children and Community Services Act 2004*. Changes to the legislation have been passed by the West Australian Government to expand the categories of mandatory reporters to new reporter groups.

Frequently asked questions about what mandatory reporting is, how the law is changing, and when the changes come into effect are set out below. Please use the links below to find the information you are looking for.

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## Quick Reference

**If you believe a child is in immediate danger or in a life-threatening situation telephone the WA Police on 000.**

If you believe a child has been sexually abused and:

- you are a **mandatory reporter**, please telephone the Mandatory Reporting Service on 1800 708 704 or lodge a written report via the mandatory reporting website at [www.wa.gov.au/mandatoryreporting](http://www.wa.gov.au/mandatoryreporting) or
- If you are **not** a mandatory reporter, please visit Communities' [Child Protection webpage](#) for contact options.

### 1. What is mandatory reporting?

Section 124B of the *Children and Community Services Act 2004* requires certain persons in Western Australia to make a mandatory report if the person forms a belief on reasonable grounds in the course of their work on or after **commencement day** (whether paid or unpaid) as a 'specified person', that a child:

- has been the subject of sexual abuse that occurred on or after the **commencement day**; or
- is the subject of ongoing sexual abuse.

**Commencement day** means the day on which the person became a mandatory reporter under the law. Commencement day varies for different mandatory reporter groups.

**Sexual abuse**, in relation to a child, includes sexual behaviour in circumstances where –

- (a) the child is the subject of bribery, coercion, a threat, exploitation or violence; or
- (b) the child has less power than another person involved in the behaviour; or
- (c) there is a significant disparity in the development function or maturity of the child and another person involved in the behaviour – s.124A *Children and Community Services Act 2004*.

### 2. What is changing?

New child protection laws were passed by the Western Australian Parliament on 14 October 2021. When they come into operation, the new laws will introduce additional mandatory reporter groups to implement two of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Recommendation 7.3 was to expand the group of persons who are mandatory reporters (see question 3 below). Recommendation 7.4 was that the duty to make a report should also apply on the basis of information disclosed to a minister of religion during a religious confession.

The new laws also implement recommendations of a statutory review of the *Children and Community Services Act 2004* conducted in 2017. For further information on the *Children and Community Services Amendment Act 2021* and to access a frequently asked questions factsheet regarding the rest of the amendments, please refer to the WA.gov.au website [Children and Community Services Act 2004 \(www.wa.gov.au\)](http://www.wa.gov.au)

### 3. Who is a mandatory reporter?

Currently under section 124B of the *Children and Community Services Act 2004* the following people are mandatory reporters:

- assessors who visit residential care and secure care services.
- boarding supervisors
- departmental officers of the Department of Communities
- doctors
- midwives
- ministers of religion
- nurses
- out-of-home care workers
- police officers
- teachers.

When the relevant amendments to the *Children and Community Services Act 2004* commence operation, the following additional persons will become mandatory reporters:

- psychologists
- early childhood workers
- youth justice workers
- school counsellors

### 4. When will the law change?

It is intended the new reporter groups commence as mandatory reporters in a staged way to enable the necessary training to occur beforehand.

**Table 1 Staged Implementation of mandatory reporter groups**

Mandatory Reporter Group	Proposed commencement
Minister of religion	1 November 2022
Assessor	1 November 2023
Departmental officer of the Department of Communities	
Out-of-home care worker	
School counsellor	1 May 2024

Psychologist	
Early childhood worker	1 November 2024
Youth justice worker	1 May 2025

## 5. How are the new reporter groups defined?

### Minister of religion

Minister of religion is defined to mean a person who is recognised in accordance with the practices of a faith or religion as a person who is authorised to conduct services or ceremonies in accordance with the tenets of the faith or religion, regardless of how the person's position or title is described (for example, a member of the clergy, priest, minister, imam, rabbi or pastor).

This includes people who are ordained and officially recognised as ministers of religion by members of the faith or religion. It is not intended to include brothers, sisters, nuns or others who might otherwise be considered 'lay' teachers or elders of churches and religious organisations if their role is not authorised to conduct services or ceremonies (as outlined above).

### Assessor

An assessor is someone who is appointed under section 125A of the *Children and Community Services Act 2004* by the Director General of the Department of Communities to assess the operation of the Kath French Secure Care Centre and residential facilities for children in care, and the wellbeing of children in those facilities.

### Departmental officer

A departmental officer means an 'officer' (of the Department of Communities) -

- (i) who is a public service officer (as defined in the *Public Sector Management Act 1984*); or
- (ii) who holds an office or position prescribed, or of a class prescribed, for the purposes of this subparagraph; or
- (iii) whose duties include duties prescribed, or of a class prescribed, for the purposes of this subparagraph;

It does not include an officer who is employed or engaged as a student or volunteer or who is under 18 years of age.

This definition captures only officers of the Department of Communities, being the Department that assists the Minister in the administration of the *Children and Community Services Act 2004*. It does not include officers of other state government departments.

### **Out of home care worker**

An out of home care worker is an adult who holds an office or position with, or is otherwise employed or engaged by, an out-of-home care service provider and whose duties include:

- (i) the provision of social services to children who are the subject of a placement arrangement or to the carers of those children; or
- (ii) duties that may be prescribed in regulations.

The definition excludes adults who —

- (i) provide care, at their adult's usual place of residence for children who are the subject of a placement arrangement; or
- (ii) are employed or engaged as students or volunteers.

### **School counsellor**

A school counsellor is defined as an adult who is employed or engaged in a school (as defined in the *School Education Act 1999* section 4) to provide counselling or pastoral care to children who attend the school. It does not include adults employed or engaged as a student or volunteer.

### **Psychologist**

A psychologist is defined as a person who is registered under the *Health Practitioner Regulation National Law (WA) Act 2010* in the psychology profession (other than as a student).

### **Early childhood worker**

An early childhood worker is defined as any adult who is:

- (a) any of the following for the purposes of the *Education and Care Services National Law (WA) Act 2012* -
  - (i) an approved provider;
  - (ii) a person with management or control of an education and care service;
  - (iii) a nominated supervisor for an approved education and care service;
  - (iv) an educator;
  - (v) a family day care co-ordinator;
  - (vi) a family day care educator assistant; or
- (b) licensee as defined in the *Child Care Services Act 2007* section 3; or
- (c) a supervising officer as defined in the *Child Care Services Act 2007* section 5A(1); or

- (d) a member of staff of a child care service, as defined in the *Child Care Services Act 2007* section 4, whose duties include the provision of education and care to children.

### **Youth justice worker**

A youth justice worker is defined as:

- (a) an adult who is —
  - (i) a custodial officer, as defined in the *Young Offenders Act 1994* section 3, whose duties include the supervision or monitoring of children; or
  - (ii) a member of the council, as defined in the *Young Offenders Act 1994* section 17A, of an Aboriginal community and is involved in the supervision of a child under an agreement entered into by the council under section 17B of that Act; or
  - (iii) appointed as a monitor under the *Young Offenders Act 1994* section 17C(1); or
  - (iv) appointed as a Juvenile Justice Team Coordinator under the *Young Offenders Act 1994* section 36(1); or
  - (v) assigned as a supervising officer under the *Young Offenders Act 1994* sections 77, 108 or 139; or
  - (vi) employed or engaged in the department of the Public Service principally assisting in the administration of the *Children’s Court of Western Australia Act 1988* or the *Young Offenders Act 1994* and whose duties include duties prescribed, or of a class prescribed, for the purposes of this subparagraph; and
- (b) does not include an adult who is employed or engaged as a student or volunteer.

### **6. Does a minister of religion’s reporting obligation apply to religious confessions?**

Reporting obligations apply to religious confessions as recommended by the Royal Commission. Recommendation 7.4 was that persons in religious ministry should not be exempt: “from being required to report knowledge ...formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.”

A minister of religion will therefore not be excused from criminal responsibility for failing to make a mandatory report on the basis that –

- (a) the minister’s belief is based on information disclosed to the minister during a religious confession; or
- (b) disclosure of the minister’s belief or information on which the belief is based is otherwise contrary to the tenets of their faith or religion.

### **7. Will mandatory reporters have to report child sexual abuse concerns they had before the new laws come into effect?**

Mandatory reporting of child sexual abuse is intended to protect children from sexual abuse, rather than to address historical abuse which may have occurred when a person, now an adult, was a child.

The duty to make a report applies if the reporter forms the belief on or after commencement day (which is the day they became a mandatory reporter), and the belief relates to sexual abuse that occurred on or after the commencement day or is still occurring.

However, it is important to voluntarily notify the Department of Communities if you have concerns about the wellbeing of a child, even if you do not have to make a mandatory report. See question 16 for more information.

### **8. How and when do I make a mandatory report?**

A mandatory report must be made as soon as practicable after the reporter forms their belief regarding the sexual abuse of a child.

A mandatory report can be made in writing or orally. If an oral report is made, it must be followed by a written report as soon as practicable after making the oral report (ideally within 24 hours). Failure to submit a written report as soon as practicable after submitting an oral report is an offence that carries a maximum penalty of \$3,000.

### **9. What has to be included in a mandatory report?**

Under section 124C of the *Children and Community Services Act 2004*, a mandatory report must contain the following information:

- the reporter's name and contact details;
- the name of the child, or, if this cannot be obtained after reasonable inquiries, a description of the child; and
- the grounds on which the reporter believes that the child has been the subject of sexual abuse or is the subject of ongoing sexual abuse.

The following information must also be provided to the extent that it is known:

- the child's date of birth;
- where the child lives;
- the names of the child's parents or other appropriate persons (e.g. adult relative or person who the child usually lives with); and
- the name of the person alleged responsible, their contact details and their relationship to the child.

## 10. Who do I make a mandatory report to?

The Mandatory Reporting Service operates in the Department of Communities to receive and respond to mandatory reports of child sexual abuse. The best method for making a mandatory report is through the mandatory reporting website at [www.wa.gov.au/mandatoryreporting](http://www.wa.gov.au/mandatoryreporting)

Reports can be made 24 hours a day, seven days a week.

By contacting the Mandatory Reporting Service on 1800 708 704, you can:

- report immediate concerns for the safety of a child;
- discuss with a specialist in child protection any grounds on which you have formed a belief that a child has been or is currently being sexually abused; and
- seek advice on reporting procedures.

## 11. What if I am a mandatory reporter and don't make a mandatory report?

Failure to make a mandatory report is an offence with a maximum penalty of \$6,000.

A minister of religion is not excused from criminal responsibility for failing to make a report on the grounds that their belief is based on information disclosed during a religious confession.

If a person is charged with the offence of failing to make a mandatory report, there is a defence under section 124B(3) of the *Children and Community Services Act 2004* if the person can prove that he or she honestly and reasonably believed that a report had already been made to the Department of Communities or that the Department of Communities had already made inquiries or taken action in relation to the child's wellbeing.

## 12. What happens after I make a mandatory report?

After receiving a mandatory report, the Mandatory Reporting Service must send a copy of the report to the Western Australia Police. The Mandatory Reporting Service then conducts an initial assessment to decide on the next steps in relation to the child, including determining if any immediate action is required to protect the child's safety. This may include referring the matter to a child protection district office for further investigation. You may be contacted by WA Police and/or the Department of Communities for further information after submitting a mandatory report.

## 13. How will my identity be protected if I make a mandatory report?

Section 124F of the *Children and Community Services Act 2004* has strict provisions relating to the confidentiality of the identity of a mandatory reporter. Anyone who becomes aware of the identity of a mandatory reporter must not disclose identifying information to another person unless an exception under that section applies. The maximum penalty is a fine of \$24 000 and imprisonment for 2 years.



#### 14. How will I be protected from liability if I make a mandatory report?

Section 129(2) of the *Children and Community Services Act 2004* provides protection for mandatory reporters from liability. This section provides that mandatory reporters who make a report under section 124B(1) in good faith:

- Do not incur any civil or criminal liability; and
- Are not to be taken as having breached any duty of confidentiality; and
- Are taken to have not breached any professional conduct principles.

#### 15. What if I am a mandatory reporter of child sexual abuse but have concerns about the wellbeing of a child due to physical, emotional abuse or neglect?

If you are mandatory reporter of child sexual abuse but have concerns about the wellbeing of a child due to physical, or emotional abuse or neglect, including exposure to family and domestic violence, it is not mandatory under the *Children and Community Services Act 2004* for you to report your concerns. However, you can and should notify the Department of Communities to enable authorities to assess the circumstances and take action to protect the child and other children where necessary.

People who voluntarily notify Communities in good faith about concerns for a child are protected under the legislation and confidentiality provisions similar to mandatory reporters apply in the *Children and Community Services Act 2004*.

If you are concerned about a child's wellbeing, but are not making a mandatory report, please visit Communities' [Child Protection webpage](#) for contact options.

#### 16. What if I am not a mandatory reporter but want to report a concern in relation to a child?

As above, anyone can and should notify the Department of Communities if they have concerns about the wellbeing of a child. This enables authorities to assess the circumstances and take action to protect the child and other children where necessary.

Just like mandatory reporters, people who voluntarily notify Communities in good faith about concerns for a child are protected under the legislation and similar confidentiality provisions apply in the *Children and Community Services Act 2004*.

If you are concerned about a child's wellbeing, but are not making a mandatory report, please visit Communities' [Child Protection webpage](#) for contact options.