PARLIAMENTARY COMMISSIONER AMENDMENT (REPORTABLE CONDUCT) BILL 2021

Second Reading

Resumed from 24 November 2021.

MR D.A.E. SCAIFE (Cockburn) [5.40 pm]: It is a great pleasure to rise and speak to the Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2021. This is yet another bill in the government's agenda aimed at protecting children and particularly responding to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. I congratulate the Minister for Child Protection for bringing this bill to the house. Over the last couple of weeks, the opposition has levelled some incredibly uncharitable attacks against the Minister for Child Protection. The absurdity of those attacks and the slights against the minister, who I know personally to be one of the most decent and hardworking ministers in this government, are shown to be the farce that they are by the fact that this minister has consistently brought legislation into this chamber over the past 12 months that acts on the recommendations of the royal commission and ensures that Western Australia is keeping pace, and indeed setting the pace, on child protection in this country.

I think that the royal commission is one of the great unsung achievements of the Gillard Labor government. It was Hon Julia Gillard who announced the royal commission which was long overdue and which took over five years to complete its work. Five years after that five-year body of work was distilled into the final report, we are in 2022 still making the reforms that are needed to keep children safe and making sure that our institutions, whether religious institutions, government institutions or educational providers, are doing the right thing by children.

As I said, this bill is part of the government's efforts to improve our child protection framework. It builds on the work of the government in introducing the Children and Community Services Amendment Bill 2021. The bill will do that by establishing a reportable conduct scheme in Western Australia. I believe that WA will be the fourth jurisdiction in Australia to establish a reportable conduct scheme, so it is welcome and it is responding to one of the key recommendations of the royal commission.

Today, I want to speak to three features of the bill that highlight why this bill is so important and how it is responding to a complex issue. It is responding to it in a nuanced way and making sure that we not only keep children safe—that is the paramount concern of this legislation—but also strengthen our institutions to make sure that children's interests are put first. This is not just about using a big stick to get compliance in the community; this is about educating and empowering institutions to do the right thing and to have safeguards in place so that if institutions get it wrong, there is not only a fail safe, but also an avenue for people to report allegations of child abuse that ensures that organisations are held accountable for any failures in their systems. The three features I would like to talk about today are, firstly, how this bill will establish a system of independent oversight of reportable conduct in Western Australia; secondly, the supporting role that the WA Ombudsman will have under this legislation to ensure that organisations continuously improve their complaints handling processes for reportable conduct; and, thirdly, how this bill will ensure that when internal processes fail, people with allegations of reportable conduct have recourse to the parliamentary commissioner, otherwise known as the WA Ombudsman.

Although the need for independent oversight in any reportable conduct regime was one of the key findings of the Royal Commission into Institutional Responses to Child Sexual Abuse, that finding for a need for independent oversight dates all the way back to the 1997 Royal Commission into the New South Wales Police Service, otherwise known as the Wood royal commission. It was 20 years before the final report was handed down by the Royal Commission into Institutional Responses to Child Sexual Abuse that the Wood royal commission, which was chaired by Justice James Wood, made the following finding in relation to the way in which institutions investigated complaints of child abuse made against their own staff or volunteers. Justice James Wood found —

> History has shown that there are problems in leaving internal investigations to the employing agency. They suffer from conflicting staff loyalties, they discourage internal informants, they run into problems of institutional bias and self-protection, and they are not perceived as open, transparent or impartial. For this reason, the Commission considers it desirable in any new system to make provision for independent investigation of this kind of allegation.

The kind of allegation that the Wood royal commission is referring to is an allegation of child abuse. There was a finding in 1997 saying that independent oversight is required when these types of complaints of reportable conduct are made. No doubt society has come a long way in its response to child abuse, particularly child sexual abuse. Huge leaps forward have been made thanks to the tireless advocacy of survivors of child abuse, and their families, supporters, and also those leaders in our community who have really shone a light on this scourge that is endemic in some of our institutions.

Unfortunately, history in this country, and indeed in countries all around world, is littered with failures of self-regulation in this space. For example, the repeated failures of the Catholic Church on allegations of child sexual abuse by

members of the clergy spring to my mind. It is well documented that the church ran repeated internal investigations, but I use the term investigations in an extremely broad way, because some of those processes were plainly aimed not at investigating the allegations, but at sweeping them under the carpet. We have seen many victims of child sexual abuse who were, for example, made to sign deeds of settlement that had onerous provisions on confidentiality and non-disclosure, and they were paid paltry sums of compensation, sometimes as little as a couple of thousand dollars for the harm that they suffered, in return for those promises.

History has taught us—it is a lesson hard learnt—that self-regulation in this space is not sufficient. We need to make sure that we have independent oversight. However, it is also important to bear in mind that we cannot treat this matter solely as a responsibility of government, because child welfare and child protection is a shared community responsibility. We cannot just say it is in the hands of government and it is being taken care of. We need everybody in our community—early childhood educators, people who work as disability carers and members of the clergy—to step up and see child protection as being their responsibility in their workplace or school. This bill is very important because the reportable conduct scheme will get the balance right and will make sure that we strengthen the responses of our institutions and organisations to allegations of child abuse and reportable conduct and, at the same time, have fail safes and independent oversight. In the case of this bill, the independent oversight will be provided by the WA Ombudsman.

I want to go to some evidence that was made in a submission to the royal commission by the Commissioner for Children and Young People in Victoria. The commissioner in their evidence explained why independent oversight of employee-related child abuse allegations is necessary. The report quoted the commissioner's evidence —

> Allegations of sexual abuse are very challenging to investigate given their nature and the heightened sensitivity for all those involved. There is a need for specialist expertise in understanding not only child development and the nature of sexual abuse, both the behaviour of offenders and the impacts on the victim, but also forensic investigation techniques. The handling of allegations … therefore requires a range of skills and careful assurance that the voice of the child is privileged over the interests of the organisation and its staff. For this reason, independent oversight of the process is very important to prevent conflict of interest occurring when a … departmental agency is put in the position of investigating itself.

That is why the Ombudsman really will be the most appropriate officer to be in charge of providing that oversight under this reportable conduct scheme. The Commissioner for Children and Young People in Victoria points to the need for specialist expertise, and indeed we are very fortunate here in Western Australia to have an Ombudsman who already has existing functions and experience in relation to child welfare. For example, the Ombudsman has a child death review function. It is an absolutely tragic field of work for the Ombudsman, but an essential piece of work, and it means that the Ombudsman is already well versed in looking at the pathologies of child abuse and child fatalities. The Ombudsman also has a function to inquire into family and domestic violence–related fatalities. We know that child abuse is often a form of family and domestic violence; it does not have to be, but often perpetrators of child abuse are family members. The Ombudsman has already built capacities in dealing with the types of complicated issues that are often thrown up in child abuse cases.

Another reason that the Ombudsman is the appropriate agency is that the oversight needs to be independent, as I said. The Ombudsman is not a government agency or department. The Ombudsman is an officer of Parliament, of this place, and is independent from the government of the day. The Ombudsman is best placed to run the sort of frank and fearless investigation into, for example, a government department. We have, unfortunately, seen that over history, government departments have failed children who have been in their care.

The second feature that I want to point to is the Ombudsman's role under this bill in supporting the continuous improvement of institutions in how they handle reportable complaints of conduct. Proposed section 19M states, in part —

> (1) The Commissioner has the following functions in relation to the reportable conduct scheme —
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> (b) to educate and provide advice to relevant entities in order to assist them to identify and prevent reportable conduct and to notify and investigate reportable allegations and reportable convictions;
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> (c) to support relevant entities to make continuous improvement in the identification and prevention of reportable conduct and the reporting, notification and investigation of reportable allegations and reportable convictions;

What I think is critical about those provisions is that it is not about being reactive. It is about equipping organisations to prevent child abuse and reportable conduct in the first place. It is not simply about having mandatory reporting requirements, which are important but are not sufficient on their own. It is not simply about equipping the Ombudsman

to handle complaints of reportable conduct. It is about ensuring that the Ombudsman has an important educative role to strengthen our institutions to not only respond to allegations of reportable conduct, but also prevent reportable conduct.

I said earlier how complex investigations into reportable conduct can be. No doubt the royal commission showed a need to do better investigations and have a better complaints-handling processes. The royal commission really showed that a lot of our organisations, whether government departments or religious institutions, were not equipped to deal with reportable conduct. I want to read into *Hansard* an excerpt from the royal commission's final report. The royal commissioners found —

> In *Case Study 41: Institutional responses to allegations of the sexual abuse of children with disability (Disability service providers)*, we heard about an institution that did not adequately help victims of child sexual abuse to voice their complaints. For example, CIK gave evidence about her daughter, CIJ, who requires high-level special needs assistance and attended a respite home run by FSG Australia (FSG). CIJ has low muscle tone, violent seizures and little capacity for speech. On one occasion, CIJ came home from respite care and brought her lips close to her mother's and moved her face back and forth in front of her mother's in a 'slow, sincere and considered manner'. CIK thought that someone had kissed CIJ on the mouth and asked CIJ if someone had kissed her. While CIJ made some responses to CIK's questions, CIK was not confident in her understanding of what CIJ was saying and found the entire situation overwhelming and confusing. On a second occasion, CIJ returned home from school incredibly distressed. While CIK was attempting to calm her daughter, CIJ lay back on the bed, raised her genitals, craned her head forward, stuck out her tongue and cried. CIK 'had no doubt' that her daughter was trying to tell her that somebody had introduced her to unwelcome oral sex.
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> CIK contacted FSG about what may have happened to her daughter. During a meeting with FSG, CIK believed that the staff present did not accept the possibility that CIJ had been sexually abused by a member of staff of FSG. FSG staff suggested that CIJ may have been repeating something she had seen on television or may have been sexually abused by another child at the respite home. In the process of FSG conducting their investigation of the incident, CIK felt disappointed that FSG had only considered the possibility of inappropriate behaviour by other children and not the possibility of such behaviour by staff.

[Member's time extended.]

Mr D.A.E. SCAIFE: I have read into *Hansard* that excerpt from the final report of the royal commission because it really underlines how complex these investigations are, particularly in relation to people with disabilities. People with disabilities can be some of our most vulnerable people in the community. They may be, as in the case of CIJ, nonverbal or have limits to their ability to communicate. In those circumstances, it is more important than ever to make sure that investigations into the possibility of reportable conduct are administered by people who are experts in developmental psychology, child behavioural matters and the way that people with disabilities may communicate or may express themselves, because without that level of expertise, situations like what it appears happened with CIJ can be quite easily swept under the carpet, and people can be disempowered in those circumstances. That is why I really think it is important that the Ombudsman has that educative function to make sure that organisations are doing investigations that are the highest quality possible and engage with expert advice.

Sitting suspended from 6.00 to 7.00 pm

Mr D.A.E. SCAIFE: Prior to the dinner break, I had just outlined a case study that had been included in the royal commission's final report involving a mother and daughter, in which the mother suspected that the daughter had been the victim of child sexual abuse. She had a disability and for that reason, CIJ, as she is known as a pseudonym, was unable to communicate clearly what may have happened to her. I was using that case study to highlight the fact that the processes that organisations use to investigate and handle complaints in relation to reportable conduct have to be quite sophisticated. They have to account for not only the sensitive nature of the allegations, but also the fact that the alleged victims may have disabilities. Obviously, that is particularly the case for disability service providers, which are one of the categories of people who will be subject to the reportable conduct scheme. They will be particularly likely to be dealing with people who may have difficulties reporting that they have been victims of child sexual abuse. It is important that the Ombudsman has that educative function whereby they assist organisations to make sure that their protocols are up to standard for dealing with the challenges of having a client base or a membership that has people with disabilities represented in it.

Obviously, another area of challenge in this respect that was highlighted in the royal commission's report is for multicultural communities and communities in which English is a second language. Those culturally and linguistically diverse communities have other types of barriers to reporting allegations of child sexual abuse. Those can be language related, including in Aboriginal and Torres Strait Islander communities where English is a second language. There is a need to make sure that there is an interpreter available to properly capture complaints, but also to make sure that that interpreter is a culturally appropriate person to be interpreting. That can be a particular challenge in small

remote communities. The number of speakers of that particular language or dialect may be limited, so making sure they get the right person, somebody who can be trusted with that information and that the complainant is comfortable with, is also very important. It is also particularly important in those remote communities. Because they are so small, the victims will often have to continue living in those communities. It is not a simple matter of telling those victims to just go and report it to the police or something like that, because it may be that the community is so small that they may not have confidence in whether their complaint will be treated confidentially, or whether it will find its way back to the perpetrator or family members of the perpetrator. Making sure we have a culturally sensitive approach in migrant communities, CALD communities, and Aboriginal and Torres Strait Islander communities is also important and highlights how important it is that the Ombudsman has that function of enabling organisations to have really robust processes.

What I think is great about this bill is that the Ombudsman will have a function of continuous review and improvement. It is not just about setting things and forgetting them and thinking that they will be okay forever. All sorts of issues may crop up over time—for example, changes in technology that might be used to facilitate abuse. Making sure that organisations keep their policies and processes up to date is incredibly important. I certainly expect that the types of issues that I have raised today, although not written in the text of the bill itself, because it does not need to descend into that level of detail, are the types of issues that I am sure that the Ombudsman will give advice on and be able to give advice on. I am comforted that the Ombudsman will be able to do that because the Ombudsman, through its child death review function and its family and domestic violence fatalities function in the past has, I know, from reading previous reports from the Ombudsman, already encountered those issues that require cultural sensitivity and the type of nuance needed when dealing with those types of situations.

The final point of the bill that I want to reflect on is the fact that the Ombudsman will remain a body that complainants can go to as, essentially, a place of last resort if there is an unsatisfactory option available to them within their own organisation to complain about reportable conduct. As I outlined earlier, history is, unfortunately, littered with examples of reports to very senior people within organisations that have not led to adequate investigations or responses to allegations of child abuse. The bill deals with that scenario by providing for, essentially, the Ombudsman to be, as I said, a fail safe. The bill establishes that the first place that a report of reportable allegation or conduct should be made is to the head of that organisation. The head of the organisation needs to be nominated and approved as the head of the organisation for the purposes of the reportable conduct scheme. But the bill acknowledges that there might be situations in which reporting to the head of the organisation might not be appropriate. There are two examples of that. One example is when the complaint relates to the head of the organisation. Plainly, in that situation it would not be appropriate for the head of the organisation to manage the complaint so in that case, the complainant can go directly to the Ombudsman to make the complaint and ask the Ombudsman to investigate that. The second scenario is when the person has made a report to the head of the organisation and is not satisfied with the response that has been given by the head of the organisation. There will be a fail safe in place if and when those situations arise. The Ombudsman will have the power to receive a complaint and go straight into investigating it itself. As I said at the outset, the Ombudsman is an independent body: it is independent of the government of the day and independent of the organisation that the complainant may be associated with. I should also say on the issues I just discussed, if members look at the Ombudsman's website they will see that the Ombudsman goes to great effort to ensure that its services are accessible. A lot of effort goes into translating materials and encouraging young people to report complaints. The Ombudsman will become an officer that complainants can go straight to and be confident that their complaint will be taken seriously and treated sensitively.

There will also be, of course, the ability for a person to make a complaint to the Ombudsman about any other issues that affect the person in a personal capacity. For example, they could complain to the Ombudsman about the handling or investigation by the head of the organisation of a reportable allegation or reportable conviction. They could complain about a finding of reportable conduct in relation to an employee of the organisation. They could also complain about any action taken or not taken by the organisation. Quite a comprehensive framework will be open to those complainants.

In summary, this bill seeks to cover the field. It is modelled on, but not identical to, the New South Wales reportable conduct scheme, which has also been used to produce the reportable conduct schemes in the Australian Capital Territory and Victoria. As I said at the outset, we will be the fourth jurisdiction to deliver a reportable conduct scheme.

I am really proud to be part of a government that is doing that. It is a real credit to the Minister for Child Protection that at the same time as dealing with a department that has a case load that constantly requires attention and is under significant and complex demands, the minister is driving a reform agenda in this house that is delivering on the recommendations of the royal commission. This bill will ensure that we, in this place, essentially do our part in building on the work that we did last year on mandatory reporting.

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [7.11 pm]: I rise to make a contribution to the second reading of the Parliamentary Commissioner Amendment (Reportable Conduct) Bill. I echo the

sentiments of the member for Cockburn that once again, through the auspices of the Minister for Child Protection, the McGowan Labor government is bringing before this Parliament important legislation that is designed to protect vulnerable people. I think it is fair to say that a fundamental Labor principle is that we protect vulnerable people in our society.

This proposed reform builds on earlier reforms that the McGowan government has undertaken to deal with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. In November 2017, in the first term of the McGowan government, we introduced the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill, which raised the statute of limitations for victims of child sexual abuse in order to enable the bringing forward of claims of historical sexual abuse. In September 2018, we introduced the National Redress Scheme legislation, which enabled Western Australia to sign up to that scheme.

When regard is had to the recommendations of the royal commission, it is fair to say that this legislation is measured and proportionate, and will be implemented in a phased manner. It is important to locate this legislation in its historical context. In doing that, I want to go through the history of the royal commission. I am quoting from the royal commission website. It was 10 years ago, in fact, all the way back to November 2012, when former Prime Minister Julia Gillard announced the establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse, and that royal commission got underway in March 2013 with an amendment to the Royal Commissions Act.

One of the consequences of the then federal Labor government's establishment of this royal commission was that it was imperative that hearings be held in private. If members had listened to the contribution from the member for Cockburn, they would have heard the quite traumatic and distressing circumstances that were relayed to that royal commission. I remember that in one of the debates that we had previously when we dealt with the legislation that I referred to earlier—namely, the bill to lift the statute of limitations for victims of child sex abuse—the member for Belmont made an incredibly moving and heart-rending contribution based on some of the material that had been reported to the Royal Commission into Institutional Responses to Child Sexual Abuse.

In April 2013, the public hearings commenced. In June 2013, the first issues paper was released. In April 2014, the first case study report was released. In June 2014, the interim report was released. So much work had been undertaken in the early years of the royal commission that, in fact, the royal commission's time line had to be extended, and that was done in September 2014. In August 2015, the working with children checks report was released by the royal commission. I want to highlight that, because later in my contribution I will talk about the threshold for reporting conduct, and about how the working with children checks operate and the way in which this is aligned with those reporting requirements. I highlight that the working with children checks are a legacy of the previous Gallop Labor government in 2003 when it introduced the original legislation.

In September 2015, the redress and civil litigation interim report of the royal commission was released. That interim report provided the foundation for the first-term McGowan government to bring forward the two reforms that I was talking about—on the one hand, the amendments to the Civil Liability Act that allowed plaintiffs to commence legal proceedings to seek justice through common law claims, and, on the other hand, the legislation that was passed by the previous Parliament to make Western Australia a party to the National Redress Scheme. When I talked about those two bills at the time that they were introduced, I said that they struck a balance. On the one hand, those who wanted their day in court, or those who were able to demonstrate their case to the requisite standard of proof, would be able to use the avenue that was open to them by the removal of the statute of limitations through the amendments to the Civil Liability Act; and, on the other hand, those who were not able to do that would be able to use the avenue of the National Redress Scheme.

It was an oversight of mine in making those contributions not to talk about the victims of child sex abuse right now. The third piece of the puzzle is, in fact, the legislation that is now before the Parliament for debate. Those first two acts provide compensation for those who have already been wronged. This legislation will protect those who might be victims of child sex abuse in the present. I will come back to that shortly.

The *Criminal justice report* was released by the royal commission in 2017, and its *Final report* was released in December 2017. The recommendations in the *Final report* provide the basis for the legislation that has been brought before the Parliament by the minister.

I refer to the explanatory memorandum. It states that the bill —

> … seeks to establish a legislative reportable conduct scheme in Western Australia … In doing so, the Bill implements recommendations 7.9, 7.10, 7.11 and 7.12 of the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse … recommending that:
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> > State and territory governments should establish nationally consistent legislative schemes (reportable conduct schemes), based on the approach adopted in New South Wales, which oblige

> heads of institutions to notify an oversight body of any reportable obligation, conduct or conviction involving any of the institution's employees.

The member for Cockburn has already mentioned that when we implement this legislation, we will join New South Wales and the Australian Capital Territory as one of the jurisdictions in which this reportable conduct scheme exists.

One of the other things that the member to Cockburn mentioned is that this is not solely the preserve of government. He talked about shared responsibility. That prompted me to go back and look at the minister's second reading speech when she introduced the bill. It states —

> An estimated 4 000 government and non-government organisations in Western Australia will be covered by the reportable conduct scheme, including accommodation and residential services; religious institutions; childcare services; child protection and out-of-home care services; disability services; education services; health services; and justice and detention services.

The comprehensive list provided in the minister's second reading speech demonstrates that the member for Cockburn was correct when he said that this is a shared responsibility. It is not just the government or the public sector who are responsible for doing what they can to prevent child sex abuse from taking place.

In that regard, it is worth noting that this legislation will empower the parliamentary commissioner, or Western Australian Ombudsman. This is not a function of the WA government. This is an entity that is separate and distinct from the government of Western Australia. The way the process will work is that the Ombudsman will take on the oversight function. The Ombudsman will still be in a position to be able to provide a report to the Parliament and to the Premier in circumstances in which there is reportable conduct or when insufficient action has been taken by the entity doing the investigation into the reportable conduct. Therefore, there will still be an avenue for the government to take action, but the entity that has the oversight will be the Ombudsman, the parliamentary commissioner. I think that is really important.

One thing the royal commission referred to was the provision of an environment in which people would be confident to bring their complaints forward. It is a great credit to the architects of the scheme that a lot of the way in which this scheme has been structured is cognisant of all those issues that were raised by the royal commission about the circumstances surrounding people being unable to bring their complaints of child sex abuse into the open. I want to go through in a bit more detail what some of those might look like.

The types of conduct that will need to be reported include sexual offences, sexual misconduct, physical assault and other prescribed offences. One great feature of this legislation, because it is quite new in the way it will operate, is that it is not all being rushed in at once. There will be mechanisms that will enable the Ombudsman to provide support, and then there will be a phased introduction of other reportable conduct such as significant neglect of a child and any behaviour that causes significant emotional or psychological harm to a child. As the understanding of how this legislation operates evolves over time, it can be expanded to capture those areas that are not there right at the outset. Some might say that behaviour that causes significant emotional or psychological harm to a child should be included up-front, but it is important that the way this legislation has been drafted and the scheme has been designed to operate is that there will be an opportunity for that to be phased in in the most sensitive and appropriate way.

A reportable allegation is any information that leads a person to form a belief on reasonable grounds that an employee of an organisation covered by the scheme has engaged in reportable conduct, regardless of whether the conduct is alleged to have occurred in the course of the employee's employment. The threshold is a belief on reasonable grounds. I want to emphasise this point, because it aligns the nature of reportable conduct under this scheme with other reportable conduct schemes, and also with other requirements under Western Australian legislation. There will be consistency in the education of and guidance for persons and organisations with multiple reporting requirements, consistency in information requirements for different reporting purposes under the WA legislation, and alignment with the definitions and reporting thresholds used in reportable conduct schemes in other states and territories to enable consistency for organisations that have a presence in multiple jurisdictions. That is one of the benefits of having a reflective scheme.

One thing we want to avoid as a community is people who report this conduct taking on, themselves, the roles, obligations and responsibilities of entities that are more appropriately placed to carry out investigations. An inquiry conducted under this scheme will not supplant or replace a criminal investigation undertaken by the Western Australia Police Force, for example. Different entities will be appropriately placed to do different types of investigations. This legislation will create a forum in which people who are concerned about reportable conduct can pursue that in a completely independent manner.

The royal commission found that confusion about reporting thresholds can act as a barrier to reporting child abuse. The scheme addresses these findings by aligning the threshold for reporting child abuse with the mandatory reporting legislation in WA. This will provide one single threshold for reporting child abuse and further ensure that educational guidance material can be consistent across both schemes. The recently passed amendments to the

Children and Community Services Act expanded the mandatory reporting groups to include early childhood workers, ministers of religion, out-of-home care workers, registered psychologists, school counsellors, youth justice workers and Department of Communities staff. For people who are mandatory reporters and have reporting requirements under the scheme, this alignment in reporting thresholds will minimise confusion and increase the likelihood that suspected child abuse will be reported appropriately and acted upon by the organisation and the Ombudsman.

I refer to the question of historical conduct. I am comforted by the fact that the McGowan government has already introduced legislation for the benefit of victims of historical child sex abuse. A very delicate balancing act needs to be struck in this case. Historical conduct is reportable conduct if the employee is still a current employee of the organisation, so the organisation still has some authority and control over the employee and still has the capacity to carry out that investigation. It does not have to be conduct that is occurring immediately. That was an important finding of the royal commission.

Now that I have let the cat out of the bag, I want to talk about the other ways in which the balance is being struck. One fundamental principle of the way the system works is the requirement for procedural fairness and natural justice for those about whom reports have been made. On the one hand, we have this consideration of current employees. On the other hand, employees will have full entitlement to the Australian law of procedural fairness or natural justice—namely, the right to be heard—and the Ombudsman must be impartial and not biased. Further strengthening these common law rights, the scheme will ensure that the Ombudsman and others involved in the scheme should work in collaboration to ensure that fair process is used in the investigation of reportable allegations and reportable convictions.

Employees who are the subject of reportable allegations are entitled to be afforded natural justice in investigations into their conduct. This is tricky, because this is a very emotive subject, but it is important that the integrity of the scheme is protected by having those checks and balances in place for those who are the subject of reportable conduct. Before any adverse finding is made—this is a fundamental principle of natural justice under Australian law—the head of the organisation must inform the employee that they are the subject of an investigation and of the reportable allegation made or the reportable conviction being investigated and give them the opportunity to make submissions. After considering any submission made by the employee, they must inform the employee of any proposed adverse finding and give them an opportunity to make submissions. Before any disciplinary or other action is taken against the employee as a result of the findings of the investigation, the head of the organisation must inform the employee of the action that is proposed to be taken and give the employee an opportunity to make submissions. These employee submissions must be included when the head of the organisation gives the Ombudsman their written report on the outcome of their investigation.

A very delicately struck balance will be achieved by the scheme. Let me go back and put the point this way: the McGowan government has identified that ensuring the safety and wellbeing of children is at the heart of the reforms. A whole bunch of architecture is built around that, and some of that concerns the procedural fairness and natural justice that I have just alluded to, but an inescapable part of the architecture is ensuring that the safety and wellbeing of children is paramount.

[Member's time extended.]

Mr S.A. MILLMAN: I want to talk about shared responsibility. The member for Cockburn mentioned this before. Once again, this is a very comprehensive legislative response that has been put forward by the McGowan government. Organisations will not be left to fend for themselves once the scheme comes into effect. Firstly, we have the Ombudsman. The Western Australian Parliamentary Commissioner for Administrative Investigations was the first Ombudsman established in any jurisdiction in Australia. The position was established back in 1971—more than 50 years ago. For all the reasons the member for Cockburn articulated, the Ombudsman is exceptionally well placed to administer this scheme, with a long history of aptitude and capacity in these areas. We already have that skill and experience from the Ombudsman's existing functions. Then we will have the Ombudsman empowered to work closely and cooperatively with stakeholders in key sectors and individual organisations included in the scheme to provide education, advice and guidance to assist in building their capacity to meet their reporting obligations and comply with the scheme. Some of these will include developing tailored guidance and support materials and education programs for each sector, in collaboration with peak bodies for each sector, and providing advice and guidance to organisations to assist them in their handling of individual investigations. The provision of education, advice and assistance is set out in the functions of the Ombudsman, which include to educate and provide advice to organisations, and support organisations to make continuous improvement in the identification and prevention of reportable conduct and the reporting, notification and investigation of reportable allegations and convictions. One of the important features of the scheme is the power that is given to the Ombudsman to assist organisations in discharging their duty in order to take the necessary steps to protect children from child sex abuse.

The other feature of the scheme that I thought was very important is the protections for the people who report. The member for Cockburn already touched on the difficulties of conducting internal investigations given the positions of power often held by people who are the subject of these investigations and the seniority that they may hold within organisations. The royal commission identified that there had been some reluctance to report and in some organisations there was a culture of covering up. It is important that the scheme carries protections for those who do report. In fact, there are protections under the act for providing information under the scheme, including the protection from liability for giving identification, the prohibition from victimisation and a prohibition on publishing information that identifies or is likely to identify a person who has made a report under the scheme. Those protections for people who make reports pick up more of the information that was provided in the royal commission and more of the findings that were made by the royal commission.

I wanted to touch on what happens in certain circumstances. The scheme will empower organisations to deal with these investigations in the first instance, but it is important that there is a backstop mechanism so that if those organisations do not conduct their investigations in an appropriate way, the Ombudsman is empowered to conduct his own investigations. In certain circumstances, the Ombudsman may consider it is in the public interest to conduct his own investigation. The circumstances in which this may be desirable include if the matter relates to the head of an organisation, there is a significant conflict of interest that cannot be managed, or the size or nature of the organisation means it is unwilling or unable to undertake a proper investigation itself. The Ombudsman's monitoring function also gives rise to the need for the Ombudsman to undertake his own investigations to identify any practice improvements required.

If an organisation is the subject of an investigation and does not implement a recommendation from the Ombudsman, there will be consequences. This applies to both non-government and public sector entities. It is exactly the same as under the Ombudsman's legislation now and will apply equally to public and private entities. The Ombudsman may request that the head of the organisation notify the Ombudsman of the steps that have been or are proposed to be taken to give effect to the recommendations; and, if not, to provide reasons why not. When it appears to the Ombudsman that no reasonable steps have been taken within a reasonable time, the Ombudsman, after considering the comments made by the organisation, may send to the Premier a copy of the report and recommendations together with any such comments. When a copy of any report, recommendations or comments have been sent to the Premier, the Ombudsman may lay before each house of Parliament a report on the matters to which they relate. The Ombudsman shall not in any report make any comment defamatory of or adverse to any person unless that person has been given the opportunity of being heard in the matter and having his defence fairly set forth in the report. Again, one of the salient features of the scheme in its entirety is that it is not the government sitting over people; it is the Parliament through the office of the Parliamentary Commissioner for Administrative Investigations. That really gives life to some of those recommendations coming out of the royal commission.

Once again, we have sensible legislation that has been brought forward by the McGowan government to implement the recommendations of a royal commission that was started by Prime Minister Gillard more than 10 years ago. This is the latest piece of the puzzle, as I said earlier. We have the lifting of the statute of limitations for plaintiffs to bring claims relating to historical child sex abuse and we have the National Redress Scheme for those who are unable to bring forward those claims or who do not desire to bring forward those claims, again consistent with the recommendations of the royal commission that there will be people for whom court proceedings are not possible, too daunting, too traumatic or for whom the prospect will exacerbate the oftentimes psychological issues that they are suffering as a result of historical child sex abuse. In addition to those two avenues for seeking compensation or restitution, we have this protective scheme, which is designed to get in on the ground floor.

In the time that I have left, I wanted to mention two terrific organisations that operate in the electorate that I am fortunate to represent, Mount Lawley. One of them has been going for a number of years. It is a non-government organisation that carries out terrific work—terrific advocacy and counselling. That is the Phoenix Support and Advocacy Service Inc. The story of Phoenix began nearly 40 years ago when an idea was born out of the ashes of women who needed to tell their story. That was in 1984. The evolution of Phoenix represents the empowering journey survivors take to rise and reclaim their identity, find unknown strength and become victorious in embracing a freer version of themselves. Through this transition, they begin to heal and recover from past exploitations and injustices and work towards changing the future direction of their lives. The Phoenix Support and Advocacy Service helps victims of sexual abuse. It provides counselling, support, information and referral services, and generally assists those who have been through these incredibly traumatic experiences.

In the context of this legislation when we are talking about preventing child sex abuse or tackling child sex abuse at an early stage, I wanted to recognise the work that Louise Lamont and the people at Phoenix do. It is an incredibly diligent and hardworking organisation. It serves not only the community of Mount Lawley, but also the broader community of Western Australia. It is an asset to our local community and it does wonderful work. In the context of these reforms and this Parliament tackling the scourge of child sex abuse, it cannot be praised highly enough.

The other organisation that I wanted to reference is a law firm that I have spoken about previously—Rightside Legal. It has offices in Melbourne and Perth. Its Perth office is in the same building as my electorate office, my constituency office. One of its first cases was shortly after the passage of the legislation lifting the statute of limitations for historical victims of child sex abuse in Western Australia. Its practitioners and the practitioners associated with another organisation called No More—the solicitors who were retained to assist the royal commission—were unequivocal in their endorsement of the legislation that was previously passed by the Parliament to lift the statute of limitations for victims of child sex abuse. Since that legislation passed, we have seen a number of instances in which plaintiffs have been successful in bringing claims for historical sex abuse, most often against the Catholic Church.

I want to make special mention of my good friend Michael Magazanik who is a principal lawyer at Rightside Legal. He has always been a terrific campaigner for justice and a fierce advocate for the people who have suffered at the hands of organisations like the Catholic Church. I also want to commend all the people who work at Rightside. They go in, day after day, to do their jobs and are confronted by some of the most harrowing and traumatic stories that you could imagine. Day after day, they turn up and listen to those stories. They are empathetic and compassionate. They make these applications to the court and bring forward these claims. Frequently, they are able to obtain justice on behalf of their clients, justice on behalf of victims.

I am confident that this legislation will act in the way that it was precisely envisioned by the royal commission in trying to prevent child sex abuse. It is another important piece of the puzzle and for that I commend the Minister for Child Protection for her outstanding work in this field. I commend the legislation.

DR K. STRATTON (Nedlands) [7.41 pm]: I rise to speak in strong support of the Parliamentary Commissioner Amendment (Reportable Conduct) Bill and the mechanisms for child safety that it will provide. I stand here as both a mother and a social worker to say that it is vital that we ensure that the organisations that look after our children and their various needs are child safe and put children's interests first and at the centre of all their decision-making and actions. As a mother, of course I want to know that my children are safe in the organisations that support them and meet their various needs. I want to know that those organisations are themselves child safe, and that at every level of the organisations they are doing everything they can to ensure my children's safety, to protect them from harm and to have trauma-informed and responsive strategies to address any allegations or any issues of risk that they might face. Of course, most of our organisations that work with children are working consistently and working hard to uphold children's safety, and the adults working inside those organisations are motivated to ensure their safety and wellbeing. However, when issues and incidents of risk and safety are experienced and identified, it is essential that we have structures to report, investigate and manage those issues carefully.

The purpose of the reportable conduct bill is to keep children safe. It will support organisations and their staff to make children's lives safer, to ensure their voices are heard and acted upon, and that those organisations have appropriate channels and processes in place to effectively manage complaints and concerns. The bill, as we have heard and as we know, has its origins in the Royal Commission into Institutional Responses to Child Sexual Abuse, which was conducted over five years with its final recommendations being published in 2017. The McGowan government acted swiftly to examine and implement those recommendations, including in this place in 2018 when the Premier Mark McGowan delivered an apology to Western Australians who had been sexually abused in institutional care. I have noted before that I was here in the public gallery when that apology was delivered. I was here with survivors who access services through Tuart Place. That apology was very, very powerful for them. It was an acknowledgement of their experience and of their survival.

This bill is part of our ongoing progress and sustained efforts to implement those recommendations and to keep our children safe. I particularly want to acknowledge the leadership of the Minister for Child Protection in pursuing this very hard and complex work. Child sexual abuse or child abuse is what we in social work would call a wicked problem and it is only the brave who step into that place. The royal commission was informed by listening to the very difficult stories of many individuals who had been impacted over their lifetime by sexual abuse that had been perpetrated against them as a child in an institutional context such as a care home or an orphanage. It focused on systemic and institutional practices, and how and where institutions could and should have responded better. I want to say thank you to all the survivors who gave evidence to the royal commission. I note the importance of them being heard and believed, often for the very first time, in that royal commission process. We cannot underestimate the power of being heard and being believed because this was an experience that many of them were denied as children. The reasons that they provided evidence were not for their own purposes but to protect children into the future.

I want to particularly acknowledge a WA-based organisation that I have just mentioned—Tuart Place. It is actually located in the Minister for Child Protection's electorate and I know that she is a great supporter of and advocate for Tuart Place as well. It is a peer-led organisation that provides a counselling support and advocacy service for people who have been placed in any form of out-of-home care during their childhood, including church-run orphanages and other institutions located in Western Australia. It had its origins in providing services to child migrants and

forgotten Australians. Its average participant is over 51 years old and a significant number of participants are aged over 70 years. When the royal commission was announced, for many of them, one of their greatest fears was that they would die before they knew the outcomes or saw the impact of the royal commission. Tuart Place made a number of submissions as an organisation about the structure and the terms of reference of the royal commission, its reporting structure and on particular findings, including being a fierce advocate for a just redress scheme. Perhaps more importantly, it supported many individuals who were re-traumatised by the need and their desire to give evidence. That desire came at a sacrifice to them. Tuart Place provided counselling and helped people to prepare their submissions. It was through the organisation's hard work and commitment that many of those survivors were able to make a submission. I want to thank again all those survivors who gave evidence to the royal commission. It is because of their bravery that we stand here today introducing this bill.

Although the royal commission focused on historical experiences, in its final report it was clearly identified, and clearly we know, that child sex abuse in organisations is a problem that is not just in the past. It is current and something that needs to be addressed at a multitude of levels for the benefit of not only our children, but also our families and our communities. The bill before us tonight addresses organisational practices. The royal commission found that many institutions were remiss in their organisational culture, which, in some cases, allowed and even encouraged abuse to occur. Cultural factors included organisational and leadership norms, beliefs, assumptions and values. These included how the safety of children was implemented and what was normalised as appropriate or inappropriate behaviour. Many of those assumptions also led to children not being believed or being told that they were imagining what happened to them, that the particular person they were accusing could not possibly be responsible for such heinous crimes—outright denial and silencing of their experiences. Other cultural risk factors for institutional child abuse included instances in which the reputation of an organisation was being prioritised. This often meant that its reputation was protected at the expense of the child rather than listening to and acting on the disclosures made by the children whom it was responsible to and responsible for. This would often result in ineffective, inappropriate and superficial investigative and reporting procedures, or even non-existent investigative and reporting procedures. The oversight function that this bill will put into place addresses those significant fault lines.

Another major factor in organisations that leads to increased risk for children is the structure of and approach to the recruitment, screening and training of new staff. From the many findings of the royal commission, several recommendations were made to improve how organisations respond when a disclosure of sexual abuse is made by a child. This bill goes towards enacting recommendations 7.9 to 7.12 of the final report.

One key aspect that emerged from the commission was the need for child safe organisations. Child safe organisations make cultural changes in their institutions and community to ensure that child abuse is better reported and responded to, as well as ensuring that children's rights are respected and enshrined. Child safe organisations adopt the 10 child safe standards, incorporating them throughout their organisations to ensure that children are safe in their care. I am going to outline these 10 principles briefly here, as I think that they demonstrate how complex it is to create and sustain a child safe organisation and why an oversight mechanism is very important. These standards include that, firstly, child safety is embedded in the organisation's culture and reinforced by leadership and governance so that child safety is the responsibility at every level of the organisation—that is, frontline workers, reception staff, the CEO and the board—and that people always hold children at the centre of their decision-making.

Secondly, children are active participants in decisions that impact them. This means that children are given the opportunity to express their views and that those opportunities are explicitly created and structured into how the organisation operates. But, most importantly, those views are listened to, taken seriously and acted on, and if there are concerns from a child, they are supported in an age-appropriate way to communicate those concerns. This gives children the opportunity to feel more included and connected with the organisation caring for them, and encourages children to speak up and share their experiences as an ordinary occurrence. When speaking up is an ordinary experience, children are also able to speak out when something extraordinary and shocking happens to them.

Thirdly, as well as children, families and the community are included and are actively encouraged to be involved in the decisions that affect their child and children, also getting a say in the institution's policies and procedures and other ways of operating.

The fourth principle recognises that every child is different and is treated equitably with their diverse needs respected and celebrated, and communication opportunities are offered that reflect that diversity and enable the participation of all children.

The fifth principle is that the individuals who work with children are appropriate for the job, with screening, training and ongoing support with an emphasis on the safety of children they work with throughout their entire engagement with an organisation. This principle begins with the recruitment process, including ensuring that pre-employee screening, job advertising and referee checks have child wellbeing and safety at their core. At Wanslea, where I was involved in recruiting staff, a standard interview question would ask people to demonstrate what they understood

a child safe organisation to be and how they would contribute from their position to Wanslea being child safe. This was a standard question for all positions in the organisation—the receptionist, the childcare workers, the social workers, the researchers and the leadership. This very question being included as a standard was a key indicator that everybody was responsible within that organisation for the safety of children.

This is an important principle when considering the bill before us, as the oversight mechanism will also provide feedback and learning for the organisation about when practices such as screening at recruitment and throughout a person's employment might need attention. Given the scheme is about preventing child abuse, it is important that as many employees, or those engaged in the work of the organisation, are included. It includes people over 18 years of age who are paid employees, volunteers, contractors, ministers of religion, certain types of carers, including foster carers; and family day care educators. The definition of employee is consistent with all other jurisdictions with reportable conduct schemes, while the inclusion of contractors and volunteers, as well as paid employees, is consistent with the recommendations of the royal commission.

The sixth principle of a child safe organisation is that if there are complaints of child abuse, and child sex abuse in particular, they are responded to in a child-focused manner and that there is an appropriate complaint handling system that all staff and families understand. Complaints are to be responded to seriously, while reporting also considers the privacy and confidentiality of the child. In a child safe organisation, once the complaint is resolved, it is used as a learning mechanism so that systemic improvements are implemented—learning from past mistakes. This principle, when implemented appropriately in an organisation, would see a complaint handling policy that is child-focused and outlines responsibilities for responding to different types of complaints, again, at all levels of the organisation, from upper management to staff and volunteers. Everybody in the organisation should know what they should do if they receive a complaint of child abuse. Staff should have thorough knowledge of their roles and how children could disclose to them or express their concerns. They would be empowered by the organisation to report breaches of their code of conduct and be supportive when reporting or challenging unwanted or unsafe behaviours. This goes back to that issue of the reputation of an organisation being protected over the safety of a child.

For families, this process would be culturally safe, fair and accessible with its use encouraged for not just staff, but also families, communities, children and young people. It will allow children and families to know who they should approach in an organisation should they have any concerns or are feeling unsafe, and will give timely feedback to anyone who raises a complaint. We want people to feel listened to and heard, encouraging a working environment that is open and transparent for all. This principle also means that when complaints do happen, there will be policies and procedures in place to report them to the appropriate authorities, regardless of whether they are mandated to do so. All reports within the organisation will be analysed and recorded with respect to current practices, and where systemic issues are identified, they are addressed in a timely manner.

Responding to where things have gone wrong in the past and implementing new safeguards going forward allows organisations to continually develop and improve their child safe practices. Again, this child safe principle is enshrined in the bill before us tonight, but it takes responsibility and accountability beyond an individual organisation and makes child safety in an organisation more reliable and robust by this increased accountability. It makes this principle of appropriate, inclusive and just responses and complaint mechanisms embedded in external as well as internal systems.

The remaining child safe principles deal with ongoing training, safe online environments and the requirements for regular review and organisational policies and procedures to document how the organisation remains child safe.

These 10 child safe standards demonstrate that child safety is a significant responsibility across all levels and operations of an organisations; many, though, are internally focused and driven. This bill will ensure that that responsibility now includes an external accountability, external oversight and an external learning mechanism.

The reportable conduct bill is specifically acting on the royal commission recommendations regarding oversight of complaint handling and, therefore, implements standards 5 and 6 of child safe organisations. As we have heard, it will require organisations to notify an impartial and independent oversight body of any reportable allegations, conduct or convictions of any of their employees, as defined.

The independent oversight body will be the Ombudsman, an impartial officer who serves Parliament and is independent of the government of the day. The Ombudsman is governed by the Parliamentary Commissioner Act 1971, which provides for the independence and impartiality of the Ombudsman and the capacity to undertake investigations of complaints as well as own-motion investigations, with all the powers of a standing royal commission. Further, we have heard the office of the Ombudsman has existing and specific expertise in investigating matters involving the safety and welfare of children, including its longstanding child death review practices and family and domestic violence review functions.

The scheme will ensure that child abuse in organisations is fully investigated and by providing oversight on how organisations handle and respond to those complaints and convictions will ensure that children are protected from abuse within institutions. It is estimated that around 4 000 organisations in this state will be covered by the scheme, including childcare services, child protection and out-of-home care services, disability services and religious institutions amongst others. There will be a graduated introduction so that organisations already used to regulation and oversight such as child care and out-of-home care organisations will be the first to enter this new scheme.

[Member's time extended.]

Dr K. STRATTON: Likewise, the type of conduct will be phased in—sexual offences and physical offences to begin with, and other types of conduct after the first 12 months of scheme.

The royal commission also found that confusion about reporting thresholds can act as a barrier to reporting child abuse. The scheme before us therefore addresses these findings by aligning the threshold for reporting child abuse with mandatory reporting legislation in Western Australia. This will provide one single threshold for reporting child abuse and further ensure that education and other guidance material regarding thresholds will be consistent across both schemes. It will remove, therefore, another barrier to reporting.

The recently passed amendments to the Children and Community Services Act 2004 expanded the mandatory reporter groups to include early childhood workers, ministers of religion, out-of-home care workers, registered psychologists, school counsellors, youth justice workers and Department of Communities staff. For persons who are mandatory reporters and who have reporting requirements under the scheme, this alignment in reporting thresholds will minimise confusion and increase the likelihood that suspected child abuse will be reported appropriately and acted upon by both the organisation and the Ombudsman.

This reflects another key focus of the scheme—that the best interests of the child are the paramount consideration. The bill will therefore ensure that there is minimal duplication of interviews of children and investigations. This will work, of course, to reduce children's trauma, avoid or mitigate re-traumatisation, and cause minimal disruption to the child and their family. The scheme will have mechanisms to avoid this duplication, including providing for consultation and sharing of information between the Ombudsman and other investigatory or oversight bodies, such as the Western Australia Police Force. It will also include the capacity for the Ombudsman to exempt a matter or an organisation from an investigation when considered appropriate, including that it is being investigated by another appropriate person or body. This will mean that, when telling their story, children will not have to repeat it to adults in order to have it acted upon. It will mean that when a child finds the courage to speak up, they will be listened to. A child who discloses will not just be acting on their own behalf. With an oversight body, there will also be the opportunity to develop a bigger picture of the patterns and issues in organisations, institutions and our sector and for them to learn from and rectify any gaps. A child who discloses will be making an organisation safe for not only them, but also all children.

As a social worker, I have seen the impact on children and their families who have not had their stories recognised or responded to appropriately, and I know the positive difference that truly listening to someone and taking action can make. Every child deserves the respect and care that this bill will bring to the organisations that they interact with—the respect and care of being kept safe.

I finish by noting once again that we would not be standing here today speaking on this bill if it were not for the people and organisations that provided evidence to the Royal Commission into Institutional Responses to Child Sexual Abuse. It is indeed on their shoulders that we stand. I acknowledge all those witnesses. I acknowledge their pain and their bravery. Again, as a mother and a social worker, I thank them. They are the reason that this bill is before this house and, in their honour, I recommend this bill to the house.

The ACTING SPEAKER (Ms M.M. Quirk): Member for Mirrabooka, it is throwing me that you are not in the right place!

MS M.J. HAMMAT (Mirrabooka) [8.02 pm]: I know. It is a good opportunity to try on some different personalities—freelancing around the house wherever we want!

I rise to support the Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2021. I also want to acknowledge the work that the Minister for Child Protection has done in bringing this bill to the house as part of a suite of reforms and measures to ensure that we respond to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. This bill deals with the specific recommendation from the royal commission to have a nationally consistent reportable conduct scheme and that schemes be established right around Australia. This bill will introduce a number of measures to address the issues raised during the royal commission and recommendations that were made about improving how children are protected. As others before me have said, the scheme that this bill will introduce will make our children safer. It will prevent them from harm and, for that reason, absolutely it should be supported.

Others before me have spoken about the royal commission and I also want to do that in my comments tonight because it was an important moment in Australian public policy. The royal commission was established by Julia Gillard in 2012. I do not think we should forget how momentous it was at the time. Indeed, it was not easy to call the royal commission and it certainly had its detractors, yet she understood that it was the right thing to do, that it was important to do it and that regardless of what the royal commission might find—whether it might make us feel uncomfortable—it was very important to have a process to shine a light on what had gone on in institutions around Australia over some time.

Like others before me have also done this evening, I want to acknowledge the work of the royal commission and its staff in grappling with what we now know was a series of very confronting and complex issues. It is difficult to imagine how it must have been to be part of that royal commission over five years and to deal with some of the material that they considered, some of the very difficult case studies that they inquired into and the stories that they heard. It would have been incredibly difficult and confronting work. Like the member for Nedlands, I also want to acknowledge the victims, who had an even more difficult task in coming forward to share their stories and give evidence and, as we have heard, effectively, relive trauma and events that were no doubt very difficult for them. I also acknowledge the victims who told their stories to the royal commission. We are indebted to them. We have the opportunity to do something good and positive as a result of their courage in speaking out—that is, to honour their commitment and evidence by implementing the kinds of recommendations that will assist in making our institutions safer for the children in their care.

We have a duty to honour those contributions, make sure that we learn the lessons of the past, take seriously the recommendations of the royal commission and set about legislating for the recommendations of the royal commission to ensure that our children have an opportunity for a safe future when they are in institutions. As others have also acknowledged, our families, communities and society at large will benefit when those things are put in place. This is a very important bill and is part of the long history of both the royal commission and the steps that this government is taking to honour the commitments from the royal commission.

The royal commission highlighted many times and in numerous ways that children who had been in institutions had reported abuse and had not been believed or that no action was taken as a result of speaking out. There were a number of case studies and incidents. I encourage anyone who does not understand the compelling case for this legislation and other legislative change to consider looking at that report, because it is indeed very sobering reading. I think the member for Cockburn shared one of those case studies in his contribution. I urge people who perhaps need to understand more of the context for this to familiarise themselves with some of the contents of the royal commission report.

The objective of the reportable conduct bill is to protect children from harm by implementing a scheme that will ensure that we report and investigate allegations of and convictions for child abuse involving employees in certain organisations by taking appropriate action to respond to findings of child abuse.

There are three main types of obligatory reporting in Australia. The first is mandatory reporting to child protection authorities. That means that designated individuals must, in certain circumstances, report to child protection authorities suspected and known cases of child abuse and neglect, including child sexual abuse. The second deals with the failure to report offences. That means that individuals face penalties if they fail to report to the police certain criminal offences committed, or believed to have been committed, by others. The third is reportable conduct schemes, which is the subject matter of this bill. These schemes ensure that heads of certain institutions that provide services to or engage with children report to an oversight body any allegations or instances of reportable conduct by their employees and volunteers. With the first two matters, mandatory reporting laws and the failure to report offences, the responsibility to report is placed on an individual, but reportable conduct schemes are different in that they place the responsibility to report on an institution, and this is discharged by a nominated office holder within that organisation. These kinds of schemes are important in ensuring that we have a balance of different ways that reporting can occur. One of the royal commission's findings was that a variety of different reporting models were operating in Australian jurisdictions and there was no consistent framework, with three different ways in which child sexual abuse could be reported operating in different ways in different states. We operate in a federated system and so the complexity and differences between states is familiar to us.

A recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse was to ensure that we have a nationally consistent reportable conduct scheme so that we will at least have consistent standards for organisations to apply to their duties and responsibilities. Reportable conduct includes a number of different forms of conduct, including sexual offences and sexual misconduct with or in the presence of a child. It includes other behaviours as well, such as physical assault, any behaviour that causes significant emotional or psychological harm to a child and any other offence that Parliament might decide is reportable conduct. Reportable conduct casts a net around a range of behaviours, again based on the findings of the royal commission, that we know can be damaging and traumatic for young people in institutions.

The scheme will cover organisations where children are being cared for or supervised by someone other than their parent or guardian. It will cover a wide range of different organisations, including schools, religious institutions, childcare centres, hospitals, disability services, detention centres and residential care facilities. As other members have said, it is important to recognise that this bill not only captures employees as part of the definition of reportable conduct, but also recognises that volunteers, contractors and subcontractors are often involved in providing services to children as well, and it is quite right that they also be captured under the terms of the bill. Indeed, we recognise that religious bodies, including ministers of religion or religious leaders, should be included under the terms of the bill.

This scheme at its heart will ensure that if an employee, a child or their parent or guardian speaks up about abuse or suspected abuse by someone in an organisation, that organisation must act. The head of the organisation must tell the Ombudsman, who will ensure the matter is being properly investigated. If organisations do not do the right thing, there is an opportunity for penalties to apply. The scheme will not replace the organisation's existing complaints handling or disciplinary processes, but will build on its existing procedures and, importantly, introduce independent oversight into the steps that it takes.

The royal commission reported that it is often very difficult for individuals to report suspected or alleged child abuse, and there are a number of reasons for that. Others before me have commented on this, but people confront a range of barriers. Some are institutional barriers that go to the organisation's culture—I will talk a little bit more about those—and some are personal barriers, when people are perhaps uncertain about what to do. It is worth considering those barriers because they are at the heart of why many people choose not to act. We are creating a scheme that seeks to overcome those barriers, to normalise action and reporting, and that will make sure the wellbeing of children is at the centre of all decision-making.

When we think about institutions and the great deal we have learnt from the work of the royal commission—I again acknowledge the work it has done—we see that there are a number of barriers embedded in institutions where child abuse is taking place. Clearly, leadership, governance and culture lie at the heart of much of that and strongly affect how organisations respond if allegations are made. I think the evidence of the royal commission underlined that too often leaders in organisations prioritise the needs of their institution over the needs of the child and that they are concerned about protecting their public reputation and mindful of their legal liability rather than at the heart of their decision-making considering the impact on the child at the centre of the allegations.

Many organisations also lacked appropriate governance structures. They did not have proper policies, and if they had them, they had not explained them adequately to their staff or their volunteers, meaning that people did not understand what steps they needed to take in the event that they had concerns about the treatment of children in care. Culture, of course, is at the heart of so much of how organisations respond and adapt, and was itself found to be a really strong barrier for adequate reporting happening, either because that culture contributed to the perception that reporting child abuse was unimportant or because that culture actively discouraged it. In some cases, the culture normalised behaviour that we now would consider to be abusive.

Power structures were, unsurprisingly, identified as being institutional barriers to reporting. That is not surprising when we think about people in senior positions who have the structural power in an organisation to simply dismiss allegations as being wrong or fanciful, or in some cases actively intimidate subordinates into not taking action on their concerns. The royal commission also found that informal power structures in organisations were important and could influence how an organisation responded. If people at the centre of an allegation were considered to have skills that were in short supply or were maybe well liked and popular, it often protected them from reports being made about their behaviour.

The royal commission talked about how the culture some organisations have is perhaps due to the nature of the work that they do. I think it called them total institutions, ones that have a capacity not just to influence how people behave, but also how they live because they are in a residential caring arrangement. Military academies, immigration detention centres and boarding schools are all examples of institutions where people do not interact in an occasional way but live together. The power structures in those organisations were often more acute because individuals had little or no authority over decisions that could be made about their lives. When we think about institutional barriers and questions of culture, governance and power in institutions, I think the royal commission shone a strong light on how powerfully those things have worked as barriers to people reporting.

We also know that there are individual or personal issues that impact on a person's willingness to report abuse when they were aware of or suspected it. Often that is because people are concerned. They are either unaware and, as I said earlier, do not understand the organisational policies in place because they had not been properly explained to them, or they are confused about their legislative requirements to speak about abuse; for example, what level of evidence might be required to support the allegation. People are often concerned about the consequences for

themselves of reporting suspected abuse. I think it is really important to remember that and hold that at the centre of our consideration of this bill.

Having gone through the royal commission, we have a clarity that has not always been there on the appropriate steps to take and why they are so important. We are told again and again through the work of the royal commission about the entrenched barriers that people encounter. I think it is important to bear in mind that for individuals, the decision to report may be difficult for a range of reasons, but there is no question that it is necessary and the right thing to do. The reportable conduct scheme is about ensuring that our systems overcome those barriers and that reluctance, ensuring that people act.

As others have reflected, at the time of the commencement of the royal commission, New South Wales was the only jurisdiction with a reportable conduct scheme. It was established in 1999 in response to the Wood royal commission. During the life of the royal commission, schemes were introduced in Victoria and the Australian Capital Territory, and now we have this scheme for Western Australia. The experience with the New South Wales scheme very much informed the recommendation in the royal commission's report on how the scheme should be implemented in a nationally consistent way. At the heart of it is recognising that the success of the scheme lies in ensuring that we do not rely on only internal investigation, but also the concept of independent oversight so that we overcome those barriers and make sure that organisations properly conduct investigations when allegations are made.

[Member's time extended.]

Ms M.J. HAMMAT: Independent oversight is critical in helping organisations manage and identify risks to children, and that it removes, as we heard through the royal commission, some of the reasons why steps were not taken. It overcomes that and encourages organisations to take proactive steps. If there is no reporting to an external authority, there is, in effect, no accountability for the organisation. It is really interesting that one of the findings of the royal commission, that it shone a light on, is that many organisations did not report allegations to external authorities. Even when they were required to do so, or when it might have been beneficial to do it, they did not do it. This scheme will remove any ambiguity about that and ensure that in all cases there is reporting to an external authority. It will also stop the mishandling of complaints by internal organisations. We see again and again in the report of the royal commission that organisations cannot be relied on to get their internal investigations right. There are lots of reasons why complaints are mishandled when they are made, so it is important that there is that oversight.

This scheme will also help organisations that experience inadequate support or advice, particularly small or under-resourced organisations, or organisations in new or emerging sectors, so that they can access the learnings, if you will, from the independent oversight that this bill will put in place. Importantly, hopefully, in the passage of time, we will have a consistent system around Australia so that all organisations, particularly those that operate nationally, will understand their obligations and that they cannot avoid reporting on the basis that they were confused about or misunderstood the structure. We will have a system of oversight that is consistent across different sectors. It will be consistent across states, which will make it clear to all what needs to happen when allegations are made. It will ensure that it comes to the attention of the regulatory system and, if necessary, ensure it comes to the attention of the criminal system.

In closing, one of the significant things about a reportable conduct scheme is that it will allow us to better understand patterns and trends over time. It will allow for the collection of data that will hopefully give us insight into both how organisations can effectively respond and which organisations are successfully addressing the issues in their organisation and sector, and it will hopefully also allow us to identify where we need to assist organisations to develop their capacity to respond. Early detection and prevention strategies are at the heart of what we would all hope is the answer to institutional child sexual abuse. If we can prevent it by detecting it early, identifying high-risk situations and putting in place strategies, I think we can all agree that that is the best possible outcome. That is one of the really important aspects of this bill that will allow us to better understand and respond to improve our ability to prevent child sexual abuse.

I conclude my comments by saying that this is an important bill. It is an important piece of work in a large body of work that will reform how we care for children and our expectations about how institutions should respond to allegations of child sexual abuse when they are made. As I said at the outset, it is one of a number of pieces of legislation being introduced by this government to give effect to the recommendations of the royal commission. That royal commission undertook important work that will have a long-lasting legacy not just on legislation and work in this Parliament, but, I hope and I know others join me in this, also a profound impact on children and their safety when in institutions and away from the care of their parents. With that, I commend the legislation to the house.

MS J.J. SHAW (Swan Hills — Parliamentary Secretary) [8.24 pm]: I rise to make a brief contribution to this Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2021 second reading debate. I do so in my newly appointed role as Parliamentary Secretary to the Minister for Child Protection. I begin by saying that it is a great privilege to work in support of the minister. I have the great privilege to see on a daily basis her care for the

interests of children who are in state care and indeed children right across Western Australia. I think that one of the sad things in the debates we have been having most recently is the opposition's lack of understanding of just what a proactive, engaged minister she is. I have sat in briefings when she has had a daily update on the status of children around this state, and there are those opposite who would seek to besmirch that and belittle it, and they have absolutely no idea of the care and dedication that she gives to the child protection portfolio. Her prosecution of these issues and for the implementation of the royal commission's findings is testament to that. I want to give my full-throated support for the work that the minister does and put on the record my admiration for her work in this portfolio.

As I mentioned, this bill is intended to implement the recommendations of the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse. Many of my colleagues and I were the beneficiaries of a very comprehensive briefing provided by the Ombudsman. I would like to put on the public record my thanks for that briefing. This is a very complex, very sensitive issue, and quite an emotional one. I am quite sure that the Ombudsman staff have turned over in their minds as well the ways they intend to go about implementing this legislation. Indeed, they gave us a great briefing. I have every confidence in the Ombudsman's ability to administer the proposed scheme, and I would like to also thank staff for providing us with such a great briefing.

For those who may not be familiar, on 12 November 2012, then Prime Minister Julia Gillard announced that she would recommend to the Governor-General that a royal commission be appointed to inquire into institutional responses to child abuse. In fact, *The Guardian* Australia has done an absolutely fantastic piece on the genesis and conduct of that inquiry, and in it the commission was called —

> … something survivors and their advocates had been seeking for years after allegations in Australia and in other countries, notably the US and Ireland.

It was calling for a royal commission into institutional child sexual abuse. At the time, Prime Minister Gillard recognised, and I think we now know absolutely to be true —

> "There has been a systemic failure to respond to it," … "The allegations that have come to light recently about child sexual abuse have been heartbreaking.

I would add that those allegations were not recent; they had been ongoing for decades —

> These are insidious, evil acts to which no child should be subject. There have been too many revelations of adults who have averted their eyes from this evil."

Successive Prime Ministers had resisted the calls for royal commissions. They said that state inquiries and investigations had been held. I think it is fairly well acknowledged again, now, that in the main, those state inquiries had not been adequately resourced, the terms of reference were not quite right, or they had not been put together in such a way or resourced appropriately to truly get to the heart of the matter to unearth and shed light on so much absolutely despicable conduct. Prime Minister Gillard ordered the commission after some really explosive allegations by detective chief inspector Peter Fox from New South Wales police. He had written an article in the *Newcastle Herald* and he said —

> … that victims of historical abuse were coming forward in increasing numbers.
>
> "Often the church knows —

He was talking about the Catholic Church —

> but does nothing other than protect the pedophile and its own reputation," … "I can testify from my own experience that the church covers up, silences victims, hinders police investigations, alerts offenders, destroys evidence and moves priests to protect the good name of the church."

Prime Minister Gillard four days later held a press conference to announce a royal commission that would examine all religious organisations, state care providers, not-for-profit bodies and other child service agencies, including how those organisations responded to abuse allegations. Indeed, that is the subject of the legislation before us today. Justice Peter McClellan was appointed to head the royal commission, leading a team of six commissioners.

It is interesting when these inquiries are undertaken to look at the ways in which they both uncover the scale of the abuse and the failures to address it, and then how they go about developing mechanisms and recommendations to address improvements in the way that abuse is both uncovered and responded to. In the case of the royal commission, it held private sessions that led survivors to speak directly to one of the six commissioners about their experiences. The commission held public hearings in which it heard from witnesses and gathered evidence from them after investigation, research and preparation. It undertook a comprehensive policy and research program that included round tables throughout Australia and papers that examined prevention, identification, response and justice for victims. It held 8 000 private sessions. That is quite remarkable. It held 444 days of public hearings. The budget for the inquiry was $372 million. I do not know that there has ever been such an extensive royal commission as that one.

The commission heard from 1 200 witnesses during the public hearings. It examined 1.2 million documents and generated more than 45 400 pages of transcripts. It also incrementally released findings from more than 100 studies it had commissioned, as well as findings from investigations into various institutions. It found what so many have known or suspected for decades; that is, tens of thousands of children have been sexually abused in many Australian institutions. More than 4 000 individual Australian institutions were reported to the commission as places at which abuse had occurred. In many cases, these institutions had harboured several abusers. Some of the most common themes to emerge from the inquiry were the catastrophic failure of leadership within institutions to take the concerns of children, parents and staff seriously; the failure to follow up and investigate complaints; and the failure to take disciplinary action against alleged and known perpetrators, or to report alleged or known perpetrators to police. The commission also found that some leaders felt that their primary responsibility was to protect the institution's reputation and the accused person. The impact of this was absolutely devastating, allowing perpetrators to continue to abuse in some cases dozens of victims over decades.

More than 15 000 survivors of institutional abuse or their relatives contacted the royal commission. They are the people who were brave enough to step forward. There would be so many others who might not have felt the ability to do so or who, unfortunately, tragically, took their own lives, or who did not report the abuse, or, if they did, were not believed. A significant portion of the people who contacted the royal commission made allegations of child sexual abuse that had occurred in Catholic Church institutions. Of all the people who attended a private session with the commissioner, 37 per cent reported abuse that had occurred in institutions managed by the Catholic Church. The royal commission's scale, complexity and quality was absolutely unprecedented. Its work has been widely acknowledged as being absolutely world leading. It is a model of best practice. As I say, it led to dozens of findings and recommendations aimed at improving the way that we protect our children across the nation.

I want to acknowledge that the Western Australian Parliament also instated a parliamentary inquiry. That was the inquiry by the Joint Standing Committee on the Commissioner for Children and Young People into the monitoring and enforcing of child safe standards. I believe the report of that inquiry was tabled in August 2020. That inquiry examined the scope and direction of the work being undertaken by government agencies, regulatory bodies and non-government organisations to improve the monitoring of child safe standards and the role of the Commissioner for Children and Young People in ensuring that Western Australia's independent oversight mechanisms operate in a way that make the interests of children and young people the paramount consideration.

I have read the report produced by that inquiry. It is titled *From words to action: Fulfilling the obligation to be child safe*. I would like to acknowledge the work of Hon Dr Sally Talbot, MLC, in the other place in her chairpersonship of that inquiry, and the other committee members, particularly my colleague the member for Kingsley, who I also share an office with. She and I have discussed this inquiry and I know that she was incredibly personally invested in it. I imagine she had some really harrowing accounts provided to her. Again, we have incredibly deeply committed people in this Parliament—I will acknowledge on both the government and the opposition side—to child protection. There are some who, unfortunately, would prefer to protect the institutions that have perpetrated this sort of abuse, and that has been very topical and incredibly disappointing, but, nonetheless, in many instances, there are members on both sides of Parliament who are very committed to these matters and I want to acknowledge their work.

The report of the joint standing committee found two common factors that led to the creation of an unsafe environment for children and young people. The first was a failure by institutions to put the interests of children above all other considerations. The second was a failure by governing bodies to assess and monitor the capacity of institutions to give primacy to the interests of children. The committee also held a series of hearings in Western Australia, and in interstate and overseas jurisdictions, to see how governments and organisations have responded to the growing demand for these failures to be rectified.

The basic premises of the report are straightforward. They are that the institutional failure to put the interests of children first will be rectified once organisations embed the national child safe principles in the heart of their operations. The failure to effectively assess and monitor the capacity of institutions to put the interests of children first will be addressed when independent oversight renders systems transparent. The report made 19 recommendations and 65 findings, which have been taken up by the state government. This legislation seeks to implement and institute the independent oversight systems recommended by both the royal commission and the joint standing committee.

The royal commission highlighted the number of times and ways in which children reported abuse and either were not believed or no action was taken. It recommended that the states and territories establish reportable conduct schemes to prevent harm to children by holding organisations accountable for the conduct of their staff. The reportable conduct scheme that will be introduced by this legislation will support people to speak up about concerning behaviours, help prevent child abuse, and improve an organisation's systems and processes for preventing abuse and dealing with complaints and reports of abuse about their staff. If an employee, or a child or their parent or

guardian, speaks up about abuse or suspected abuse by someone in an organisation covered by the scheme, the organisation must act. The head of the organisation must tell the Ombudsman, who will ensure that the matter is being investigated properly. If organisations do not do the right thing, penalties will apply. The scheme will cover organisations in which children are being cared for or supervised by someone other than their parent or guardian. Organisations covered by the scheme include schools, religious institutions, childcare centres, hospitals, disability services, detention centres and residential care facilities. Anyone who speak up in good faith will be protected from liability for giving information and from victimisation when they do. In essence, children will be heard, believed and supported, and reporters will be protected. The scheme will put the interests of children first, which is exactly what has been recommended in those reports. If a concern is raised, the organisation must assess the risk to the child and take action before commencing the investigation. It is important that children not be subject to multiple interviews and investigations; therefore, information can be shared between investigative bodies.

The scheme will not replace an organisation's existing complaints handling and disciplinary processes. Organisations can build on their existing procedures and reporting requirements to integrate the requirements of the scheme. In fact, when we discussed this with the Ombudsman's office, one of the comments that they made was that there is a process of continual improvement and feedback about what other organisations are doing, which is aimed at improving the schemes of organisations. That will, no doubt, be a good consequence of the institution of this process. A finding of reportable conduct may trigger a reassessment of a person's working with children check. The government intends to introduce that as part of separate reforms. The scheme will not replace existing requirements to report child abuse to the Department of Communities and to the WA Police Force. If WA police decides to investigate, the criminal investigation will always take priority.

The scheme will be rolled out over two years. Organisations that exercise a high degree of responsibility for children, and where there is a heightened risk of child abuse, will be phased in first. The Ombudsman will help organisations to prepare for the commencement of the scheme and provide guidance and support once the scheme is operational. Once the scheme commences, WA will be one of four states with a reportable conduct scheme, so parents and carers who move to WA from these states can be assured that organisations responsible for their children are subject to similar scrutiny.

The introduction of this bill forms part of the McGowan government's broad program of work to safeguard children, protect victims and heal survivors, including the recently passed Children and Community Services Amendment Bill, which implements recommendations of the royal commission to require ministers of religion to report child sexual abuse. The protection of children and their safety and wellbeing is at the heart of these important reforms.

I conclude by acknowledging all the victims who have come forward over the years in both the state and territory inquiries that were held prior to the royal commission—all those brave people who, despite these complaints mechanisms or investigation processes not being in place, nonetheless very bravely came forward and shared their experiences. It is so important to honour and acknowledge what they did. Many years ago—I think it was my second job out of university—I worked for the Senate Joint Standing Committee on Foreign Affairs, Defence and Trade on its military justice inquiry. As part of that process, we had submissions from and private hearings with people who were genuinely psychologically damaged from things that had happened to them when they chose to step forward and report misconduct and allegations of bullying. They felt that people in the system had turned their backs, refused to hear, protected themselves and essentially protected hierarchies. Their experiences are real, but I would argue they pale into insignificance against a child's experience in trying to come forward, or an adult who chooses to come forward and revisit those experiences, even though they happened years ago and they suspect they may not be believed. We have to honour that. We have to recognise the impact on families and individuals. These people have had to share deeply personal stories. I am sure that some of them have done that because they wanted to share their stories. Some of them will have come forward because they want to make a difference. They want to see the systems changed. So many inquiries have talked about the devastating lifelong impacts of child sexual abuse and the devastating consequences of not responding to abuse appropriately. I want to honour the bravery and resilience of the survivors and commemorate those who have struggled under the burden and have unfortunately lost their lives.

I thank those who have been champions for change. I particularly acknowledge the member for Bassendean, who has been unrelenting in his pursuit of protections for victims of child sexual abuse. Again, we have to acknowledge the champions of people who have come into this place and taken up this issue. On that note, I commend the bill to the house.

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [8.42 pm]: I rise to make a contribution on behalf of the opposition on this important bill, the Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2021. In doing so, I point out that the shadow minister, Hon Nick Goiran, is in the other place, but I am indebted to him for the provision of some notes and information about the bill. He has conducted investigations and attended briefings et cetera that have been provided by the minister's office and the Ombudsman, so that is a good bit of instruction for me.

Certainly, the opposition will be supporting this bill; there is no issue about that. Any endeavour to effectively ensure the reporting and appropriate handling of child abuse when it occurs in the community is important. Such abuse and neglect happens for a range of reasons across a variety of demographics, and all members of the community can play a role in helping to keep children safe. Due to the nature of child abuse, there can be variations in the number of reported and actual cases of abuse. As many as one in seven boys and one in three girls will experience some form of sexual abuse in their lives. Of these, many are abused by someone they know. One in three Australians would not believe children if they disclosed that they were being so abused.

This bill will introduce a legislated reportable conduct scheme in Western Australia. It will implement findings of the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse, which made 409 recommendations, of which 310 were for the WA government to action. This bill was released as a green bill in November 2020 for stakeholder feedback at the end of January 2021. It relates to various other bills, including the Children and Community Services Amendment Bill 2021, and is focused on implementing the recommendations of the royal commission. It is not uniform legislation, but I believe it was agreed by the Council of Australian Governments. Similar schemes are in place in the Australian Capital Territory, New South Wales and Victoria, and these schemes were considered in the creation of this bill.

The briefing attended by members of the opposition had representatives including the Ombudsman, the Deputy Ombudsman and staff. Those attending were told that the legislation will implement a reportable conduct scheme that will require mandatory notice to the Ombudsman, and that failure to do so will result in penalties. The Ombudsman will monitor any internal investigations. If the Ombudsman is not satisfied that the investigation is proceeding well, they can launch their own investigation. I should point out that the Ombudsman referred to here is the parliamentary commissioner.

Significant information was presented relating to the sharing of information to prevent duplication between the Ombudsman and other groups such as the coroner and the Corruption and Crime Commission. If an allegation is made, the regulatory burden will then fall on the applicable organisation. Organisations will want to establish the veracity of the allegations—a fact assessment—and that will potentially provide evidence for further inquiry. Consultation had been taking place at that point with 132 authorities, including six unions and the Department of Communities. The best interests of the child are paramount in the considerations of the legislation. The legislation seeks to reinforce that, specifically by minimising multiple investigations, with police investigations taking priority. The Ombudsman has a memorandum of understanding with the coroner and strong relationships with the police, and it is rare that information would not be shared. The Ombudsman will provide key differences between Western Australia and other jurisdictions. I assume that information was provided to Hon Nick Goiran consequent to those briefings. Penalties in the bill are based on other jurisdictions and existing legislation. That is what we know about the raw facts of the matter.

As I said, the bill seeks to implement findings of the Royal Commission into Institutional Responses to Child Sexual Abuse, which recommended that state and territory governments should establish a nationally consistent legislative reportable conduct scheme based on the approach adopted by New South Wales that obliges heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees. In opposition, we support the fact that this bill is an effort to achieve this endeavour. It will establish a reportable conduct scheme for Western Australia through the amendment of the Parliamentary Commissioner Act to confer oversight duties onto the Ombudsman. The bill will compel heads of government and non-government organisations to notify the commissioner of reportable conduct abuse involving children within their organisation such as employees, volunteers and contractors, so the commissioner can then review the investigation findings or undertake investigations of their own.

The explanatory memorandum tells us that an estimated 4 000 organisations in Western Australia will be covered by this reportable conduct scheme, including accommodation and residential services; religious institutions; childcare services; child protection and out-of-home care services; and disability, education, health and justice and detention services. The scheme will be phased in with childcare services, child protection and out-of-home care services, and education, health and justice and detention services covered in the first year, and then the remaining services after 12 months of operation of the scheme. The type of conduct will also be phased in, with sexual offences, sexual misconduct, physical assault and other prescribed offences covered by the scheme in the first year and the remaining types of conduct after 12 months of operation of the scheme. It will apply to organisations that exercise a higher degree of responsibility for children when there is a heightened risk of child abuse. These organisations need to notify the Ombudsman of allegations and convictions of child abuse involving their employees. It also provides mechanisms to minimise duplication of interviews and investigation when there has already been an investigation by another person or a body. An appreciation of how difficult it can be for victims to retell and provide evidence over and again is reflected in that. The shadow Minister for Child Protection flagged a number of issues in relation to this. One related to resourcing. Although the Ombudsman stated that he was satisfied with the amount of resourcing

covered in the budget, Hon Nick Goiran is aware that there may be concerns, particularly from the not-for-profit sector, regarding the extra workload required to ensure that the obligation to report can be properly supported and communicated.

There are also concerns around long-term training and resourcing. Also, the Western Australian Local Government Association and other organisations have raised concerns about what they consider to be an unrealistic time frame for how they intend to proceed with matters within the seven working day time frame; that is, seven days of having been notified of the reportable allegation or conviction. This time frame will make it difficult to obtain industrial or legal advice.

The definition of "investigator" is very broad. There are concerns about the level of expertise and capacity to adequately and appropriately investigate allegations or convictions of child abuse. The bill provides that under proposed section 19W(1)(a)(i) of the Parliamentary Commissioner Act an employee of a relevant entity must investigate the reportable allegation or reportable conviction or permit the engagement of an independent investigator. This raises the question of what skills and qualifications are required by the employee to undertake the investigation, given the potential nature of the allegations. The definition of "investigator" in clause 5 is broad. It states —

> ***investigator***, conducting an investigation under Part III Division 3B, means a person or body conducting the investigation under that Division on behalf of the head of a relevant entity for the purposes of the reportable conduct scheme;

That is quite a broad definition.

There are also concerns around the issues of notification and disclosure. Under proposed section 19ZH(3), it seems that the head of an organisation has a significant role in making the call, without any oversight in determining, amongst other things, that the child has sufficient maturity and understanding to consent to the disclosure and that the child does not consent to the disclosure. This raises the question about whether the head of the relevant entity is the best person to determine the maturity and understanding of the child, particularly when a conflict of interest may exist. Proposed section 19T(2)(b) raises the question of what protection is given under that proposed section to a person making a report to the commissioner about a head of an entity, with the protection of whistleblowers being particularly important. To that end, protections in place for the entity are also important.

Although we certainly support efforts to undertake these reports and to bring about this legislation, it is fair to say that, in the eyes of the opposition, the current minister and the McGowan government have been seen to have failed in key areas of child protection in Western Australia. The minister knows full well of those concerns from debates that took place in this Parliament in the last month, culminating in calls for her resignation. We hold that the creation of the mega-department of Communities is somewhat responsible for that and, in the face of the evidence, it is not a good outcome for some of our most vulnerable children. Revelations in 2006 about the death of an 11-month-old child, Wade Scale, led to an Ombudsman report and review that led to a primary recommendation that a standalone department, being the Department for Child Protection, be created. That was adopted by Premier Carpenter in 2007, implemented by his successor, Premier Colin Barnett, in 2008 and then reversed by Premier McGowan in 2017 with the machinery-of-government changes.

Reference has been made to the Commissioner for Children and Young People and a report that was released. I want to talk about another report that was commented on by Hamish Hastie in September last year in a WAtoday article headed "WA opposition calls for 'full time' Child Protection Minister in wake of damning report". This report focused on the story of Macie who in 2017 was sexually assaulted at the age of 13 and placed in residential care with a teenage boy who was a known sexual offender. Both children's pleas to the department to be removed from the home fell on deaf ears. The minister could not state how many times reportable offenders had been placed in department care homes with other vulnerable children since 2017. That issue was also raised in the Standing Committee on Estimates and Financial Operations by Hon Nick Goiran. The then Commissioner for Children and Young People, Colin Pettit, said in his report that the young girl's placement in a residential care home with another child with a history of sexual assaults was not a unique event or even an isolated practice in Western Australia. The article went on to say —

> "Case records, department policies and the experiences of department and [community sector organisation] staff demonstrated that other children and young people with harmful sexual behaviours have resided in out-of-home care settings with other children," he said.

Mr P. Papalia interjected.

The ACTING SPEAKER: Minister for Police, did you want to say something? Thank you.

Mr R.S. LOVE: It continues —

> Mr Pettit found the management systems of the department were not fit for purpose and impeded —

The ACTING SPEAKER: Sorry?

Mr R.S. LOVE: This is Colin Pettit saying this, not me. It continues —

> decision-making for children and young people and organisational accountability.
>
> The report urged the state government to implement all recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse.

We know there have been instances in the past of children in the care of the department going missing. This was raised during discussions in the estimates hearings in the Legislative Council on 18 October 2021. I will cut to the chase. There is quite a bit of commentary. The relevant section relates to an exchange between Mr Mace and Hon Nick Goiran, which states –

> **Hon NICK GOIRAN**: Parliamentary secretary, my question related to the 82 children in care whose whereabouts were identified by the minister as unknown in the last financial year. My question was: have they been found?
>
> **Hon SAMANTHA ROWE**: Mr Mace.
>
> **Mr MACE**: Of the 80 children that are referred to —
>
> **Hon NICK GOIRAN**: Eighty-two.
>
> **Mr MACE**: Of the 82, there are two children we have not been able to contact.

That is another example of problems within the organisation that have been highlighted by the shadow Minister for Child Protection and brought to the fore in this Parliament.

I turn to a report on 6PR radio on 28 January this year. Liam Bartlett was talking to Katie, who, with her husband, has been a foster carer for more than 15 years. This relates to foster parents being threatened with jail over Facebook posts and their reports to the media.

Ms S.F. McGurk: You have no idea what you're talking about. You know that, don't you?

Mr R.S. LOVE: I am reporting the concerns that have been outlined by Hon Nick Goiran. These transcripts are public. They have been aired in public. The minister could dispute them but they are people's views and they have been reported in other places. The report reads —

> Katie was pushed to the brink when two children in her care—aged one and 18 months old—since birth, raised concerns that potential a foster home for these kids had drugs and domestic abuse attached to them.
>
> "We were told we were too emotionally attached to these children," Katie said when asked what Communities said in response to her concerns.
>
> "It got to the point where we were at complete breaking point. We went through all our case workers all the way up to the director-general, and constantly told we were too attached or don't understand Aboriginal culture.

They felt bullied and they are people who have given their time to try to provide for other people and children in their care. There are questions around case load numbers. I have been here when questions have been asked of the minister around case load numbers. We know that there are situations in which case loads can be way above those that should be put in place. That has been highlighted in this place. That has been denied by the minister or we have been told that it is not an issue, but we know that is not the case. Of course, then we had the extraordinary situation, as reported by *The West Australian* of 25 February, of the police raid on a Western Australian Department of Communities' worker who happened to have a different viewpoint about the culture of the organisation and made allegations of widescale racism within the organisation. That led to debates in this place. They are on record. It is not something new to the minister, I am sure, that we feel that there are still questions that need to be answered around that whole episode, including what led to it and where the department is with rectifying the situation there. It also includes determining whether there is, as reported by psychologist Dr Tracy Westerman, widescale racism in the department. What is being done to address that? Will any of the recommendations that the report made ever see any action in the department?

In closing, I wish to go back to what I said at the beginning, which was that the opposition will support the legislation. We will be asking some questions in the consideration in detail stage, which I understand will take place tomorrow. I look forward to the progress of the bill through the house, which will have our support.

MS S.F. McGURK (Fremantle — Minister for Child Protection) [9.02 pm] — in reply: I will just calm down for a minute because in some of the things that the previous speaker just raised, he decided to roll a whole lot of issues into this matter before us, a very important matter. The previous speakers, all from the government, until the last speaker, acknowledged victims of child sex abuse who very bravely came forward and told their stories, particularly to the royal commission. Of course, it was a federal Labor government and Prime Minister Gillard that called the royal commission to which, as a country, we are very indebted. We are indebted to the people who called the royal commission, we are indebted to the people who conducted the royal commission, but mostly, we are

indebted to those who came forward and told their stories. It was the power of their bravery and the truth that they told that has brought the focus of the country on ensuring that we learn the lessons from that abuse and put in place structures to ensure that that abuse does not take place again. As distinct from that honouring of past victims, the last contribution we heard was in stark contrast. It mixed up a whole lot of issues about child protection and matters before my portfolio—a very varied number of issues—which I think only highlighted the lack of understanding that that particular member has of the issues before us. That is all that the member demonstrated. It is a little embarrassing. As one of my colleagues just pointed out to me, it is worth making the point that a former member of the National Party, who is still sitting in the other house, is currently facing child sex abuse charges himself. He has still not had the grace to stand down.

Point of Order

Mr R.S. LOVE: That is clearly a matter of sub judice and I do not think that should actually be aired here.

The DEPUTY SPEAKER: Thank you, member. I will not be upholding the point of order. Carry on, minister.

Debate Resumed

Ms S.F. McGURK: I will make the point that he has not had the good grace to stand aside from his parliamentary duties while those charges are being heard. I think that would be the decent thing to do. I think most people would acknowledge that that would be the decent thing, but a former member of the National Party has chosen not to do that. I notice the member did not bother to talk about that.

I thank the members who spoke in the second reading debate. This is an important matter before Parliament—the introduction of a reportable conduct scheme in Western Australia to deliver on our commitment as a government to implement all the relevant recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. I have no doubt that this scheme will make Western Australian children safer. Members have pointed out the architecture of the scheme and the way that the scheme will operate. I will not go over all of that detail again in my response to the second reading contributions, but I think it is important that we understand that the scheme will not replace an organisation's existing complaints handling or disciplinary processes. Organisations will be able to build on their existing procedures and reporting requirements to integrate them into this scheme. It is intended to build on existing structures in organisations that will be covered by the scheme. The scheme will not replace the existing requirements of mandatory reporting—that is, those professions that are required to report child abuse to the Department of Communities and the Western Australia Police Force. If WA police decide to investigate, a criminal investigation will always take priority. As previous speakers have pointed out in this debate, this bill forms part of our program of work to improve child safety, protect victims and heal survivors, including the recently passed Children and Community Services Amendment Bill, which extended mandatory reporting requirements to ministers of religion and a number of other professions and occupations to report child sex abuse.

I want to make a few points in response to issues that were raised but, first of all, I want to acknowledge the sensitivity in which a number of the speakers addressed this important matter. One of the challenges with having a new scheme like the reportable conduct scheme for a number of institutions that have a lot of dealings with children is that this is a new concept for this state, so it will take some time to build a knowledge base, not only for those organisations that will be subject to the scheme but also the community on the whole. We are trying to build a knowledge base of child sexual abuse and child abuse more generally and the responsibility that we have is to keep our eyes open to that abuse, report it, build our own knowledge base generally in the community, and also to have a particular focus on organisations or circumstances in which children might be at risk. That is what this scheme does.

Again, we are very grateful to the work of the royal commission that gave us a framework—a very robust road map to do this work. In fact, we have reported annually, as a government, on implementation of the relevant royal commission recommendations. We made a commitment to implement all those recommendations that applied to Western Australia.

The government has released three different annual reports—in 2018, 2019 and 2020—and we will shortly release the report on what we did in 2021 to implement the recommendations of the royal commission.

Member for Moore, perhaps when you make these speeches, you might listen to the responses. You said that the Commissioner for Children and Young People called on us to implement the royal commission recommendations. That is exactly what we are doing with this bill and what we have been doing since 2017 with a program of work implementing the royal commission's recommendations. You might decide to throw around all sorts of claims and accusations, but we are actually implementing those recommendations. There is no question about that.

Several members interjected.

The DEPUTY SPEAKER: Members!

Mr S.A. Millman interjected.

The DEPUTY SPEAKER: Member for Mount Lawley!

Mr R.S. Love interjected.

The DEPUTY SPEAKER: Deputy Leader of the Opposition, the minister is responding.

Ms S.F. McGURK: I am proud that the government is on track to implement the royal commission's recommendations over a 10-year time frame. Our approach to implementing those recommendations is to heal past hurts. A number of members mentioned the removal of the statute of limitations for child sex abuse, our participation in the National Redress Scheme and, importantly, our support for organisations such as those that were mentioned in the second reading contributions, including Tuart Place in my electorate, which is a very good group of people who support victim survivors of child sex abuse and abuse more generally, and other organisations that are part of the child sex abuse therapy services in Western Australia, including, for instance, Phoenix Support and Advocacy Services. Healing past hurts is part of our approach, and protecting children now with the implementation of this reportable conduct scheme. Ensuring that we have a robust system for implementing and overseeing this scheme is part of not only protecting children now, but also preventing further harm in the future. This will go to building up the capacity of our whole society to understand the vulnerabilities of children and ensure that we do everything we can to make sure children are safe.

I want to make a brief comment about building our understanding in the twenty-first century about child sex abuse and what occurs. One of the areas in which society has to build up its knowledge is about harmful sexual behaviours in children: Why do those behaviours start to emerge? How do we understand them? How do we build capacity, not just in a specialist field, but also across a range of organisations in our community, to understand harmful sexual behaviours and deal with them in a mature and evidence-based fashion? I have asked the Department of Communities to start working on that to build a framework for partnerships with some very good organisations that we have in our state and also that we work collaboratively with organisations in other states. Members will be aware of child advocacy centres in Western Australia such as Parkerville and the multidisciplinary approach taken by a number of government agencies. They are best practice in understanding that children are at the centre of their efforts. They only have to tell their stories once and then we wrap around them all the different supports that they, and if it is non-familial, their family need to get through this difficult time. A number of people who are working in that field have now gone on to work in PERCAN WA, the Pursuit of Excellence in Responding to Child Abuse and Neglect in WA, or the centre for excellence as it is otherwise known. They have been looking at how we understand trauma. I also acknowledge the Australian Centre for Child Protection and Professor Leah Bromfield, from the University of South Australia, with whom we do a lot of work. How do we build up our understanding of these difficult issues and the effect they have on children, and how do we ensure a good therapeutic response as well?

All those organisations are doing good work now and the Department of Communities and the government are working to partner with them to support that work. A number of members talked about understanding the cultural sensitivities or environment in which some of this abuse takes place. I am not referring to institutions but to culturally and linguistically diverse communities and Aboriginal communities. If we do not properly understand how to talk about these issues sensitively, we will drive that abuse further underground. We do not want to do that. We want to expose it and talk about it in a way that people feel comfortable and that is effective. That is the work we have in front of us.

Tonight we are talking about the reportable conduct scheme. As I said, I will not go into the mechanics of the bill. I want to particularly thank the Ombudsman and his very capable staff who have done very good consultation, through the Department of Communities initially. It was then decided that the Ombudsman's office was the correct body to have independent oversight of this scheme. They have done a lot of good work in helping put the bill together, and I thank them for that. We will start to see robust professionalism in applying this reportable conduct scheme and in building up the capacity of the organisations that are likely to be affected by it.

In his very ham-fisted way, the member for Moore, in reading out some notes that were given to him by the shadow minister, raised a whole lot of issues. I guess I feel entitled to be a little insulting about that, because of the way that the member for Moore managed to roll out a whole lot of child protection issues in his contribution to the second reading debate, some of which were valid issues. For instance, the concern from Western Australian Local Government Association about the time frames by which organisations will have to report to the Ombudsman's office if they have concerns. Those sorts of things are considered under this bill to ensure that extensions can be given if organisations are not sure about what has been reported to them. Also, the time frame for implementation has ensured that there will be capacity building and there will be time to go out there and make sure that education is provided and information given to those organisations, and also requests for exemption for providing certain information and notification.

Importantly, the issue the member for Moore raised about the challenges of getting reliable information from children is important and not one that has been glossed over in this bill. It is crucial that the way we deal with children at

the centre of not just sex abuse but any sort of abuse is age appropriate and does not re-traumatise them or contaminate any evidence that might come before us in those disclosures. There is a lot of sensitivity about that and a lot of thought has been given to the way this bill manages that. Some of them were good points. The member will find that is the case in the examination of this bill in this house. But I fully expect that members in the other place will have the opportunity to examine that in detail so that people will get some assurance that we are embarking on best practice in regard to some of these issues.

The good questions the member for Moore asked about sensitivity and consideration were in stark contrast to some of the other points the member raised, saying that the government had failed in key areas of child protection and calling for my resignation. Really, the member for Moore had no idea what he was talking about. All he heard was that there had been a call for my resignation as Minister for Child Protection, there were concerns about child protection and there was a mega-department—whatever that is. About 5 500 or 6 000 people work in that department; that is not a mega-department. It is a department that deals with public housing, child protection and a number of social issues. It is not a mega-department. It is a department that is working to ensure that it has the capacity to deal with some of the most complex issues in our society. It is actually doing some good work. If the member had listened to the debate last week, he would have heard that the child protection staff in our state deal with some very, very complex issues and they do an excellent job. They have been resourced well under our government, although we understand that there are challenges and there are vacancies, and we are always looking at how we can improve the resourcing and support for those staff within either the Department of Communities or the community sector organisations that we work with—in fact, all the actors in child protection work who provide important support to children, particularly those in care, including foster care.

Again, the member picked out one quote from one carer. I am very familiar with the case that he referred to. A former carer had concerns about a child and whether the Department of Communities and the police had taken her concerns of abuse seriously. I can assure him that they took those concerns seriously and they were thoroughly investigated. The former carer in question was not threatened for speaking out. It was pointed out to them that if they disclose publicly information that can reveal the identity of a child in care, there are penalties under the act. That is all that occurred with that particular carer.

As I said, the member rolled in a whole lot of different issues, including the case that this government asked the Commissioner for Children and Young People to investigate—that is, the case of a young girl who met someone who was a reportable offender in a residential group home and later on was sexually abused by that young person. That was a terrible situation, and this government asked the Commissioner for Children and Young People to investigate how we could improve our systems. We adopted a number of the recommendations made by the children's commissioner, including that we would ensure that no reportable offenders were placed in residential group homes. I want to make one point, because some fairly hysterical claims were made by members of the opposition that this government had placed a teenage girl in a group home with a young person who was a reportable offender—that is, someone who is held by the police to a higher standard of offence. It is important to note that we came to office in March 2017. That young man who was a reportable offender was placed in a group home under the previous government. He had already been placed in a residential group home by the previous government. I have not heard the shadow opposition spokesperson say that very often. I doubt that the member for Moore had any comprehension of half the issues that he was talking about. These are complex issues. It is a challenge. Is the opposition saying that any young person who has harmful sexual behaviours or displays any sort of difficult behaviours should be placed alone and never with any other young people? It is a challenge for our jurisdiction and jurisdictions around Australia and the world to manage complex behaviours but not completely isolate those young people and cause further damage to them. Of course, our primary consideration is to ensure the safety of the young people in residential group homes and out-of-home care more broadly, and that is what we intend to do. This reportable conduct scheme will apply to the out-of-home care system and to government and community sector organisations that run any sort of institution, whether it is a disability group home, a child protection group home and the like.

I want to clarify for the record a few things that the member referred to. I have been child protection minister for just over five years. The nature of child protection is to deal with very high risk, difficult situations, and our management of the system is not exempt from that. That is the reality of the child protection system. I am very proud of some of the reforms, investment and attention to detail that this government has applied to child protection, and I urge the member to pay attention to some of that detail instead of just picking up a speech and giving a spray. To that end, he said that he would never hear whether we had implemented any of the recommendations of Indigenous Psychological Services or the Westerman report. In fact, last week I was at a symposium hosted by the Family Inclusion Network of Western Australia, which represents the families of parents who have children in child protection. It was a very positive symposium. We heard presentations from a number of Aboriginal organisations that are working in child protection. It was incredibly heartening to hear about the work that this government has contracted and empowered these organisations to do and some of the innovation that we are seeing in child protection.

I digress. On the matters before us today, it is a positive development to have this bill debated in the Western Australian Parliament. It is a sign that this government takes implementing the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse seriously and will build the state's capacity to make sure that children in the state are as safe as possible.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]