

**Parliamentary Commissioner Amendment
(Reportable Conduct) Bill 2020**

The Australian Federation of Islamic Council Inc.

And

The Islamic Council of Western Australia Inc

Submissions

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Introduction

Child abuse is a continuing issue within societies throughout Australia. The main types of abuse are sexual, emotional, physical and neglect. Abuse is and has been reported to be exercised by various persons present in a child's life. This can be a parent, guardians, family members, care givers, educational providers, religious leaders and others.¹

The statistics on child abuse in Australia give much cause for concern. In Australia, one child is physically, emotionally or sexually abused every 16 minutes and it is usually by adults they have been taught to trust.²

The sad truth is that child abuse has only become more prominent in society due to the increased reporting rate not the increase rate of abuse. That means it is always there and always has been but unfortunately, over 30 percent of Australians do not see child abuse as a major issue.³

Australia is facing a crisis in the area of Child abuse and neglect with a dramatic increase in the number of children subjected to a substantiation of abuse or neglect.⁴

Despite, the increased reporting rates there are many instances where child abuse goes unnoticed, unreported and untreated. This leads to devastating events such as the death of a poor helpless baby on a Gold Coast Beach in 2018. This is one of many, we as Australians must do more to ensure the safety, protection and health of our children.

It is not enough that we have services that provide support and guidance. In this modern era the Government is responsible to pass laws that demand the reporting of actual behaviour or indications of abusive behaviour. We must also have clear laws that demand the reporting of reasonably suspicious behaviour for further investigation. Reporting child abuse and neglect

¹ AIFS (*Australian Institute of Family Studies*) 2014. Effects of child abuse and neglect for children and adolescents. Melbourne: AIFS. Viewed 22 May 2019.

² Study: Australia's child abuse crisis is worse than we think, *The New Daily* (12 November 2019).

³ Ibid.

⁴ Australia's Children, *Australian Institute of Health and Welfare* 2020

must be a community-wide responsibility and having laws to state the same sets this responsibility in stone.

We note that on 1 January 2009 the Western Australia Government took a step forward in mandating the reporting of child abuse whether it be an omission (neglect) or commission (abuse). Since that date doctors, nurses, midwives, teachers, police officers and boarding supervisors are obliged by law to report all reasonable belief of child sexual abuse.⁵

The Royal Commission into Institutional Responses to Child Sexual Abuse in taking a greater step forward and broadening that same responsibility, introduced the Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2020 (Green Bill).

The AFIC is pleased to have the opportunity to comment on this positive development in the child-protection apparatus. This is commendable progress in the path of protecting, monitoring and promoting the best interest of innocent and vulnerable children.

Acknowledgment

The AFIC acknowledges the growing need to better define child abuse and introduce better methods to recognise indicators of the abuse and neglect of children.

It is our duty to ensure and promote the safety, protection and best interest of children. Conduct which is reasonably suspected of being inappropriate and/or abusive must be reported for further investigation. In having a system of reporting and educating people that they are legally bound to report reasonably suspicious behaviour the rate of unreported abuse and neglect will inevitably decrease.

The AFIC supports The Royal Commission into Institutional Responses to Child Sexual Abuse and looks forward to being partner in improving the response to child abuse in Western

⁵ *Children and Community Services Act 2004.*

Australia. We believe that this approach can help protect children in all Australian states and territories.

Submissions

Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2020

Parliamentary Commissioner Act 1971 (Amended) (The Act)

Part 2 - The Parliamentary Commissioner for Administrative Investigations

We note that this section is primarily focused on refining the definition of certain terms in **The Act**. The purpose we believe is to reduce the need for judicial interpretation and eliminate the diversification of interpretations. Every law needs to be specific and clear in what it imposes and what it seeks to achieve.

We make the following further submissions:

1. At s19(4) of **The Act**, we believe the inclusion of the term 'reasonable' will aid in eliminating possible and/or potential bias:

If, at any time during the course of an investigation, it appears to the Commissioner that there may be reasonable grounds for making a report on that investigation that may affect or concern any department or authority to which this Act applies he shall, before making that report, afford to the principal officer thereof an opportunity to comment on the subject matter of the investigation.

2. We note that the Act ought to better define the parameters of 'reasonable conduct' at s19F of **The Act**.
3. We note that s19I(2)(a) of **The Act** should include safety:

the protection, **safety** and best interests of children are paramount considerations.

4. The AFIC agrees that it is vital to consider a child's view in investigating a reportable allegation or reportable conviction. Further, we note that it may establish a greater responsibility if we replace the word "should" with "must" at s19I(2)(c) and (d) of **The Act**:

(c) criminal conduct or suspected criminal conduct **must** be reported to the police; and

(d) the Commissioner and others involved in the reportable conduct scheme **must** work in collaboration to ensure a fair process is used in the investigation of reportable allegations and reportable convictions...

5. s19L of **The Act** should better outline the grounds of exemption to be relied on by the Commissioner in exempting *a class or kind of conduct of employees of a relevant entity from being reportable conduct*.

Further, the ability to exempt certain conduct places a great deal of discretionary power in the hands of the Commissioner. In turn, we suggest that the Commissioner's decision/s are to be subjected to the oversight of the Ombudsman's office and or another suitable body in order to maintain justice.

6. **The Act** grants the Commissioner a significant number of discretionary powers. It is our belief that there should be a monitoring agent to ensure the Commissioner exercises those powers lawfully and appropriately. This is to apply for s19N of **The Act**.
7. Under s19ZC we note that the Commissioner **should** disclose information regarding an investigation of child abuse to the child that is the subject of that particular investigation and parental guardian of that child with the exception of s19ZC(2).

19ZC. Investigation information **should be** disclosed to child or parent

(1) The Commissioner or the head of a relevant entity **should** disclose investigation information to any of the following...

Division 3 – additional amendments

8. s19F of **The Act** introduces the term 'significant' in:
- (iiia) significant neglect of a child;
 - (iiib) any behaviour that causes significant emotional or psychological harm to a child;

We note that term 'significant' is left open to interpreting as there is no clarity on what is to be considered significant negligence or harm. What is the standard by which negligence and harm are to be measured?

9. Schedule 2 amended – religious bodies should include:

(r) Saturday School; and
(s) Child monitoring services.

Part 3 — Working with Children (Criminal Record 2 Checking) Act 2004 amended (The Act 2004 amended)

10. The AFIC makes no submissions on the amendments of the **The Act 2004 amended**. We agree with the proposed amendments in refining the original Act so that it better defines the objective of the Working with Children (Criminal Record 2 Checking) Act 2004.

Conclusion

We agree that more needs to be done to protect and support the children of this country. We believe that one of the most effective means of ensuring the safety, protection and health of children is to have those provisions inbuilt into our legal system. This will deter perpetrators and also support people in coming forward.

The AFIC is grateful for this opportunity and looks forward to working together to better Australia's laws, communities and future.