

Part 1: Overview of our child protection role

1 The Ombudsman's Part 3A reportable conduct scheme

The NSW Ombudsman's employment-related child protection jurisdiction commenced in May 1999, when a system was established for the Ombudsman to oversee the handling of allegations of a child protection nature against employees of government and certain non-government agencies.¹

Our jurisdiction involves overseeing the handling of child abuse and neglect allegations that are made against employees² of more than 7,000 government and non-government agencies.³ The scheme was – and remains – a unique and unprecedented jurisdiction, not least because of the oversight it brings to both government and non-government organisations in their handling of child protection concerns and the conduct of their employees (including volunteers).

As the Commission is aware, following the 2013 Victorian Parliamentary Inquiry into the handling of child abuse by religious and other organisations, a decision was made to establish a reportable conduct scheme in that state. Our office has been providing ongoing advice to Victorian agencies to support the establishment of the new scheme.

Part 3A of the *Ombudsman Act 1974* requires and enables the Ombudsman to:

- **Receive and assess notifications** concerning reportable allegations or convictions against an employee
- **Scrutinise agency systems** for preventing reportable conduct by employees, and for handling and responding to allegations of reportable conduct and convictions
- **Monitor and oversight** agency investigations of reportable conduct
- **Respond to complaints** about inappropriate handling of any reportable allegation or conviction against employees
- **Conduct direct investigations** concerning reportable allegations or convictions, or any inappropriate handling of, or response to, a reportable notification or conviction
- **Conduct audits and education and training** activities to improve the understanding of, and responses to, reportable allegations, and
- **Report on trends** and issues in connection with reportable conduct matters.

All public authorities are subject to the requirements of Part 3A if the reportable conduct arises in the course of a person's employment. Some public authorities are 'designated agencies' and also need to notify reportable allegations if they arise from conduct that takes

¹ The scheme was established following recommendations arising from the Wood Royal Commission into the NSW Police Service.

² In this context, an 'employee' is defined broadly as including: any employee of the agency, whether or not employed in connection with any work or activities of the agency that relates to children, and any individual engaged by the agency to provide services to children (including in the capacity of a volunteer).

³ The NSW Solicitor-General recently clarified the reach of our jurisdiction and advised us that '[O]n its face the notion of "substitute residential care" in the care of children would appear to extend to any arrangement where an organisation has the care and control of children of a kind that would otherwise be provided by parents and caregivers, were a child in his or her place of residence. This advice has greatly increased the number of agencies and individuals deemed to fall within our employment-related child protection jurisdiction. We are currently working with organisations in the recreational camping and youth sectors, together with religious and other volunteer organisations, which run camps falling within the scope of this advice.

place outside of employment.⁴ Some non-government agencies are also subject to Part 3A requirements and must notify reportable allegations that arise both within and outside of employment.⁵ It is worth noting that historical allegations of child abuse only fall within our employment-related child protection jurisdiction if the involved individual is an “employee” of a relevant agency at the time when the allegation becomes known by the head of agency.

What is notifiable to the Ombudsman?

In 2003, a government review was initiated into the impact of child protection and employment screening legislation on employers in NSW. The review found that the term ‘child abuse’ raised strong emotions and that:

- there was a reluctance by some agencies to identify certain behaviours by employees towards children as ‘child abuse’, and
- employees were fearful of being labelled a ‘child abuser’ and their future careers being placed in jeopardy when allegations were made against them (regardless of the outcome of any investigation).

The *Child Protection Legislation Amendment Act 2003* amended sections of Part 3A of the *Ombudsman Act 1974*. These amendments removed the terms ‘child abuse’, ‘child abuse allegation’ and ‘child abuse conviction’ and replaced them with ‘reportable conduct’, ‘reportable allegation’ and ‘reportable conviction’. The amendments also clarified the types of matters that are reportable to the Ombudsman. In 2004, we issued revised guidelines for employers – *Child Protection in the workplace: responding to allegations against employees* – which explained the changes in terminology and included definitions of reportable conduct (see Annexure 3).

When an allegation of ‘reportable conduct’ is made against an employee of relevant government and non-government agencies – including non-government schools, approved children’s services and agencies providing substitute residential care – the head of agency is required to notify the Ombudsman of any reportable allegations or convictions involving their employees as soon as practicable and, the ‘notification’ must be made in any event, within 30 days of the head of agency becoming aware of the allegation or conviction.

Section 25C requires the head of agency to ‘make arrangements within the agency to require employees of the agency to notify the head of agency of any such reportable allegation or conviction of which they become aware. We encourage agencies to notify

⁴ Under s25A of the *Ombudsman Act 1974*, designated government agency means any of the following:

- (a) the Department of Education and Training (including a government school) or the Department of Health,
 - (a1) a Division of the Government Service (or a part of a Division of the Government Service) prescribed by the regulations for the purposes of this definition,
 - (b) a local health district within the meaning of the [Health Services Act 1997](#),
 - (c) any other public authority prescribed by the regulations for the purposes of this definition.

⁵ Designated non-government agency means any of the following:

- (a) a non-government school within the meaning of the [Education Act 1990](#),
- (b) a designated agency within the meaning of the [Children and Young Persons \(Care and Protection\) Act 1998](#) (not being a department referred to in paragraph (a) of the definition of *designated government agency* in this subsection),
 - (b1) an approved education and care service within the meaning of the [Children \(Education and Care Services\) National Law \(NSW\)](#) or the [Children \(Education and Care Services\) Supplementary Provisions Act 2011](#),
 - (c) an agency providing substitute residential care for children,
 - (d) any other body prescribed by the regulations for the purposes of this definition.

us at the earliest possible opportunity, whether by way of formal notification or initially through telephone contact, so that we can play an early role in guiding agencies through their initial response.

Section 25A of the Ombudsman Act defines a “reportable allegation” as an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.

Section 25A of the Ombudsman Act defines ‘reportable conduct’ as:

- (a) Any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), or
- (b) Any assault, ill-treatment or neglect of a child, or
- (c) Any behaviour that causes psychological harm to a child,

whether or not, in any case, with the consent of the child.

The section also specifies that reportable conduct does not extend to:

- (a) conduct that is reasonable for the purposes of discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or
- (b) the use of force that, in all circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- (c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25C of the Act.

Our role in keeping agency systems under scrutiny

We primarily fulfil our section 25B requirements to scrutinise agencies’ systems through our ongoing oversight and monitoring of reportable conduct matters; by conducting direct investigations, as well as our through our intelligence gathering activities. These activities are complemented by our keep under scrutiny function. Our ability to undertake auditing activities is dependent on other competing demands on our resources, such as taking a proactive role in overseeing the handling of the high volume of serious reportable conduct matters involving criminal allegations.

Under section 25B of the Ombudsman Act, the Ombudsman is required to keep under scrutiny the systems that agencies have in place for preventing reportable conduct, as well as the systems for handling and responding to reportable allegations (including allegations which are exempt from notification) and convictions, involving employees of designated government or non-government agencies, or other public authorities. Audits are one way for the Ombudsman to review such systems. Audits of agencies may be conducted independently of the investigation and monitoring role of the Ombudsman.

The purpose of an audit is generally to assist an agency to improve its systems and practices for providing safe environments for children in its care. It is also to identify and promote good practice across agencies. The Ombudsman does this by assessing the policies and practices within an agency, and providing it with advice about the good practice we identify and areas

for improvement. Our audits might also identify the need for training – we discuss this area of our work below.

Our education and training role

The Ombudsman employs a range of strategies to raise awareness and knowledge of the reportable conduct scheme among designated agencies, including non-government schools, and to support employers to meet their obligations under the scheme. These strategies include:

- Publishing on our website a range of factsheets and practice updates for employers (see Annexures 4-8).
- Providing direct telephone advice to employers, who are able to contact our Employment-related Child Protection Division at any time.
- Delivering employment-related child protection training to staff of agencies falling within the reportable conduct scheme, including workshops on responding to child protection allegations against employees and handling serious allegations (the latter workshop is frequently delivered by the Deputy Ombudsman and Community Services Commissioner) – see section 2.1.1 for the number of workshops delivered.
- Providing targeted information sessions to build the capacity of specific sectors/agencies, particularly those which are ‘new’ to our jurisdiction.⁶
- Regularly meeting with agencies to discuss emerging systemic or practice issues, and convening ‘case conferences’ to discuss individual investigations.
- Hosting stakeholder forums⁷ and giving presentations at conferences and seminars.⁸
- Providing detailed feedback to the agencies we audit under section 25B of the Ombudsman Act.

██████████, since 2011 we have been working with non-government schools to promote a consistent approach to child protection and to identify new ways to ensure they and their member schools fulfil their child protection responsibilities. In 2013, we commenced an audit of the independent school sector’s systems for preventing and responding to child abuse allegations, focusing on compliance with our ‘class or kind’ determination with the AIS. The audit has provided us with the opportunity to provide targeted feedback both to individual non-government schools and their representative bodies.

⁶ For example, in February this year we provided a workshop to DEC’s Early Childhood Education and Care Directorate as part of our ongoing work in building capacity in the approved children’s services sector. The 20 participants included Regional Managers, staff responsible for approving children’s services providers and staff taking inquiries. We held a similar forum for newly accredited out-of-home care agencies in August 2014. In addition, in 2013 we convened a roundtable discussion with large out of school hours (OOSH) providers, the Department of Education and the OOSH peak body to discuss strategies for improving the child protection knowledge and capability of that sector.

⁷ For example, to coincide with the ten year anniversary of the introduction of the reportable conduct scheme in 2009, we held a major two-day symposium bringing together expert practitioners to discuss the unique issues arising from the investigation of reportable allegations and convictions. Over 320 delegates attended the symposium. In June 2013, we hosted an employment related child protection forum on the risk management of employees where there is evidence of risk to children but where this evidence is not sufficient for the person to be charged or dismissed. The forum, which was attended by approximately 100 people, had a particular focus on the challenges involved in handling cases of sexual misconduct, where behaviour may constitute a crossing of professional boundaries, but is not found to be grooming or another sexual offence under the law.

⁸ For example, we addressed attendees at the NSW Family Day Care 2013 professional networking and development forum.

The intersection of our reportable conduct function and the Working With Children Check

The allegation based system which triggers a notification under Part 3A of the Ombudsman Act complements the new Working With Children Check (WWCC) system. In June 2013, we were required to commence a legislative function to support the WWCC.

In determining whether an investigation into a reportable allegation has been properly conducted, and whether appropriate action has been taken in response, we check to see whether, as required under the *Child Protection (Working with Children) Act 2013*, relevant misconduct findings have been notified to the Children's Guardian.

In this regard, under section 35 of the Working with Children Act, reporting bodies are required to notify the Children's Guardian of findings of misconduct in relation to:

1. Sexual misconduct committed against, with or in the presence of a child, including grooming of a child.
2. Any serious physical assault of a child.

In addition, Schedule 1, Clause 2A of the Act, enables the Ombudsman to make a 'notification of concern' to the Children's Guardian if we form the view, as a result of concerns arising from the receipt of information by our office in the course of exercising our functions, that '*on a risk assessment by the Children's Guardian, the Children's Guardian may be satisfied that the person poses a risk to the safety of children*'.⁹ It is also important to note that this clause is not limited to matters arising from the exercise of our functions under Part 3A; if sufficient concerns arise from information which we have received from exercising *any* of our wide-ranging functions, we can refer the matter to the Children's Guardian.

Both section 35 referrals and Schedule 1, Clause 2A referrals by our office trigger a 'risk assessment' by the Children's Guardian in relation to whether the involved individuals pose a risk to children. Under this function, the information we supply to the Office of the Children's Guardian (OCG) about individuals who may pose a risk to children triggers formal risks assessments by the OCG of that person's suitability to work with children.¹⁰ Through this function, we have helped identify individuals of concern whose histories would not have been scrutinised under the WWCC processes if not for the information we have supplied.

Furthermore, under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*, our office – and other agencies – can also refer information to the Children's Guardian to assist her in developing profiles of individuals where there is some information indicating possible emerging risk.

We routinely provide information to the OCG under Chapter 16A to inform its administration of the WWCC. (In this regard, it is worth noting that many of our Chapter 16A referrals relate to persons for whom a risk assessment trigger already exists, but we hold additional relevant information that may not be known to the OCG.) This practice recognises that our office does not hold or have access to every piece of

⁹ *Child Protection (Working with Children) Act 2013*, Schedule 1, Clause 2A

¹⁰ These referrals are known as Notifications of Concern.

information about an individual that may be relevant to a WWCC risk assessment. Similarly, the information held or that is otherwise accessible by the OCG about persons applying or being verified for child-related work can be complemented in significant ways by the Ombudsman's holdings.

Since the commencement of Schedule 1, Clause 2A, our office has provided a significant number of notifications of concern to the OCG, and has exchanged critical risk-related information under Chapter 16A (see section 2.1.1). We discuss our work in referring risk-related information to the OCG in further detail in section 2.

We believe that our office and the OCG are establishing an effective business relationship. A strong and strategic working relationship between our agencies is critical to ensuring that we both carry out our distinct (but related) functions in a complementary and productive manner.

Our role in monitoring and reviewing the delivery of community services

It is also important to stress that our reportable conduct jurisdiction is informed, and enhanced by, our broader functions under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-CRAMA). These functions include (but are not limited to) the following:

- Promoting and assisting the development of standards for delivering community services, and educating service providers, clients, carers and the community generally about those standards.
- Monitoring and reviewing the delivery of community services and related programs, including making recommendations for improvement in the delivery of community services and promoting the rights and best interests of service users.
- Inquiring, on our own initiative, into matters affecting service providers, visitable services and persons receiving or eligible to receive a community service.
- Receiving, assessing, resolving and investigating complaints and working with agencies to improve their complaint handling procedures.
- Reviewing the situation of individual children or groups of children in out-of-home care.
- Reviewing the causes and patterns of child deaths and identifying ways in which these deaths could be prevented or reduced.

Our dual Part 3A and CS-CRAMA oversight functions have been in place for over 12 years (following the merger of the Community Services Commission with the Ombudsman's office in 2002). Our combined jurisdiction assists us in identifying systemic issues that specifically relate to the out-of-home care system, as well as those which intersect with the broader child protection system.

Following a decision by the Ombudsman in 2010 to integrate our employment-related child protection oversight and our community services monitoring and review role, we have been able to better identify, and seek to address, a range of systems issues impacting on the broader child protection system. Examples of this work are provided in this statement and in a range of earlier documents that we have provided to the Commission. In particular, many of the systemic issues which our office has been involved in progressing over recent years were

summarised in our confidential May 2013 submission to the Commission – *Systemic issues relevant to the handling of sexual abuse/sexual misconduct allegations and related cases.*

We would be happy to provide the Commission with updated advice about our systemic work as part of its ongoing examination of out-of-home care and reportable conduct.

2 Evolution of our operational practice

Much of our earlier work was largely targeted at establishing the framework for the implementation of the reportable conduct scheme across NSW – including an extensive education and support program involving more than 7,000 agencies – which focussed on raising awareness of agencies’ notification obligations; assisting them to establish child protection systems and building their investigative capacity.

Over time, many of the agencies we oversight have increased their competency in handling reportable allegations. As a result, over the past five years we have been able to develop a more streamlined, outcome-focussed approach to the oversight of agencies’ investigations. We have entered into extensive negotiations with a range of sectors in relation to strengthening child protection knowledge and practice, supported by ‘class or kind’ determinations which exempt relevant agencies from having to notify us of less serious forms of alleged reportable conduct.¹¹ For example, we have entered into 20 class or kind determinations with various government agencies, dioceses, non-government organisations and independent school peak bodies. In March 2012, we entered into a class or kind determination with the Association of Independent Schools, which covers Knox Grammar School.

As a result of this sector development work, we have been better placed over recent years to focus on initiatives aimed at refining and improving our own practices – as well as those of agencies within our jurisdiction – in connection with the handling of reportable conduct involving criminal allegations. In large part due to the effect of our class or kind determinations, matters involving serious criminal allegations now make up a significant proportion of our work; for example, we currently have 112 open matters concerning individuals who have been charged with criminal offences relating to children. In addition, we have a further 169 open notifications that either are, or have been, the subject of a police investigation but where charges were not, or have not yet, been laid.

2.1 Changes to our operational structure and business practices

As part of a broader office restructure, in 2010 the Ombudsman decided to appoint the Community and Disability Services Commissioner and Deputy Ombudsman to lead the Employment-Related Child Protection Division (ERCPD) and merge its operations with the Community Services Division – forming a single Human Services Branch.

After taking up the role, the Deputy Ombudsman introduced a suite of staged reforms which included changes to the ERCPD’s operating structure and business processes. It is important to note that these reforms took place against the background of new information sharing

¹¹ Sexual offences and sexual misconduct allegations must be notified to our office and are not included in any of our class or kind determinations.

provisions in October 2009¹² following recommendations stemming from the Special Commission of Inquiry into Child Protection Services. Chapter 16A has provided significant scope for our office and other prescribed bodies to proactively share risk-related information to promote the safety, welfare and wellbeing of children. [REDACTED]

Another significant change to our business practice involved ERCPD staff gaining direct access to the Community Services' database, KiDS, and the NSW Police Force database, COPS.¹³ Our access to both systems has enabled us to not only gain insights into risks relating to individual children that were previously not apparent to us – and that often went beyond the reportable conduct allegation being overlooked – but to also identify intra and inter agency practice weaknesses, including a failure by agencies to proactively share information. As we outlined in our May 2013 submission to the Commission,¹⁴ our direct access to these databases has allowed us to identify and address problems with individual cases as well as systems weaknesses in areas such as:

- carer probity screening
- potential gaps in the WWCC relating to police intelligence holdings and
- problems caused by the existence of multiple civilian profiles on the COPS system (known as CNIs).

In establishing systems for preventing and responding to reportable allegations, we were initially managing a high volume of notifications from a relatively inexperienced and diverse range of agencies that needed significant guidance and support. During this period, our ability to strategically target our resources and undertake significant proactive work was very limited.

By substantially reducing the volume of notifications that we receive each year through various class or kind determinations, we have been able to concentrate our efforts on improving our analysis of, and response to, serious reportable conduct matters through:

- Repositioning our strategic focus towards more active monitoring of more serious, higher risk allegations.
- Increasing the proportion of investigators at a senior level in our ERCPD.
- Increasing the level of practical support to agencies responding to allegations of serious reportable conduct.

2.1.1 Particular initiatives to support agencies in responding to allegations of serious reportable conduct

We have implemented a range of policy and practice changes in recent years to ensure that we add value to agency investigations in practical ways, and that we identify and address inhibitors to good practice.

¹² Chapter 16A of the *Children and Young Persons (Care and Protection Act) 1998*.

¹³ Access to COPS was provided by the NSWPF to Ombudsman staff initially in 2002 in connection with our policing oversight function. Access to the Policing Oversight Data System (PODS) commenced in 2003. With the advent of our new role in reviewing child deaths in 2002, staff involved in carrying out this function were also given access to COPS in 2003 and PODS in 2005; these staff also had access to the KiDS system from 2002. Additional licenses to allow access to both KiDS and COPS were provided to ERCPD staff somewhat later; a limited number of licenses were issued for KiDS in late 2011 and for COPS in early 2012.

¹⁴ NSW Ombudsman, Submission to the Royal Commission – *Systemic issues relevant to the handling of sexual abuse/sexual misconduct allegations and related cases*, May 2013.

Key initiatives that we have undertaken to support agencies in responding to allegations of serious reportable conduct include:

- Taking an increasingly proactive role in relation to serious allegations, including substantially increasing our 'in-house' access to Police and Community Services databases in order to obtain a holistic understanding of the prevailing risks in particular matters and to better inform our assessment of any action that may be required. We have also played a role in remedying data integrity issues identified through our direct access to the COPS and KiDS databases.
- Since our new legislative function under the WWCC commenced in June 2013, we have made 449 referrals of information to the OCG, including 28 Notifications of Concern, 284 Chapter 16A referrals and 149 responses to Notices issued under section 31 of the *Child Protection (Working With Children) Act 2013*.
- Engaging with Police on a frequent basis in relation to significant reportable conduct matters (this approach played an important role in prosecutions involving multiple victims), and having a much greater emphasis on engaging with Police in relation to taskforces. As we discuss in the following sections, particularly when agencies are less experienced in handling reportable conduct and interacting with Police, we play an active role in facilitating police/agency contact and in briefing police on relevant holdings and possible avenues of inquiry. (As noted previously, we are currently handling 112 open matters concerning individuals charged with criminal offences relating to children).
- Reaching an agreement with the Police Commissioner in 2009 regarding Standard Operating Procedures (SOPS) which clearly outline the responsibilities of local police in providing practical support to agencies responding to allegations of reportable conduct under the Part 3A scheme – these SOPS are attached (see Annexure 9).
- Revising our reportable conduct definitions in August 2010, prompted in large part by the difficulties agencies were facing in investigating, and making appropriate findings in relation to alleged sexual misconduct. Our revised definition makes it clear that, in addition to sexually explicit comments or behaviour, sexual misconduct can include boundary breaching behaviour, such as an inappropriate and overly personal or intimate relationship with, or conduct towards, a child or young person. The revised guidelines have allowed employers to be able to pursue broader lines of inquiry and examine the nature of inappropriate relationships without the need to establish 'grooming' [REDACTED].
- Reviewing the range of findings available to agencies and allowing agencies, in appropriate circumstances, to find that an allegation is 'not sustained – [due to] a lack of evidence of weight', rather than 'false'. The finding of 'false' is now reserved for cases where there is compelling evidence to demonstrate that an allegation is untrue, rather than simply a lack of evidence of weight [REDACTED].
- Promoting and strengthening the mechanisms for greater interagency collaboration and information exchange, including actively promoting and utilising Chapter 16A in relation to reportable conduct matters.
- Developing two new training packages to help agencies improve their responses to allegations made against their employees. Since establishing a cross-office community education and training unit in late 2009, we have delivered 73 child protection

workshops to more than 1,400 stakeholders – 33 of these workshops were delivered by the Deputy Ombudsman to almost 700 participants.¹⁵

A number of these initiatives are discussed in further detail later in this statement.

2.1.2 The work of the Serious Reportable Conduct Team

The Commission has requested that we set out how our Serious Reportable Conduct Team and its Intelligence Group operate.

The ERCPD’s Serious Reportable Conduct Team (SRCT) is headed by the Director, Employment-Related Child Protection, and is comprised of a team of senior investigators who work collaboratively with investigation and support staff to ensure timely responses to high risk notifications and enquiries. The SRCT was established 18 months ago and, since that time, it has developed and refined its processes for ensuring that information relating to serious reportable allegations – or children otherwise identified as being at-risk – are responded to quickly and as comprehensively as possible.

Our most experienced investigators regularly liaise with senior police from local area commands and the Child Abuse Squad in relation to investigating serious reportable allegations.

We routinely refer detailed briefings to police which has resulted in the commencement and/or enhancement of police investigations and the preferment of criminal charges. Generally, referrals of information to police are in the form of briefing documents and are usually released in accordance with Chapter 16A of the Care and Protection Act.¹⁶

A Director from the Ombudsman’s executive management team is the central contact point for our office and police, and in many cases, she liaises directly with the relevant Commander in the first instance to facilitate the necessary exchange of information. A copy of our protocol for liaison with Police is attached at Annexure 10.

We also work closely with Community Services, the OCG and employers to ensure that critical child protection information is appropriately shared and managed to mitigate risks to children. Increasingly, we fulfil this important role at an early stage in our oversight of matters. We have quarterly liaison meetings with both agencies to track the progress of systemic issues identified through our oversight.

To facilitate the efficient and consistent identification of (and responses to) risk, the SRCT established an Intelligence Group. The establishment of the Intelligence Group was driven by a number of factors, including:

- The unique position our office is in to contribute to identifying child protection risks through our direct access to the policing and child protection databases combined with our own reportable conduct holdings – this access provides us with a ‘helicopter’ view

¹⁵ Our introductory workshop, *Responding to child protection allegations against employees*, provides an overview of employer obligations under the Ombudsman Act, and covers the steps involved in the investigation process, risk assessment and risk management. Our advanced training course, *Handling serious child protection allegations against employees*, is designed for senior management and investigators and focuses on how to handle allegations that may involve criminal conduct, equipping participants with specialist and practical knowledge to help them deal with some of the more complex challenges associated with more serious allegations.

¹⁶ *Children and Young Persons (Care and Protection Act) 1998*.

of critical information which is not readily accessible to other agencies (see Annexure 2 – [REDACTED]).

- The recognition that our notification of concern function under the WWCC would need to be supported by strong internal intelligence systems to help us gather and analyse evidence to effectively identify individuals who may pose a risk to children at the earliest opportunity.

All new serious reportable conduct notifications and enquiries relating to children potentially being at-risk, flow through the Intelligence Group to ensure that our oversight is informed by all available relevant information. The Intelligence Group conducts a range of information checks drawing upon publicly accessible information sources, secure sources such as the KIDS and COPS databases, as well as our own holdings. When necessary, we also request information held on the OCG's WWCC database, and from other police data sources.

As the Intelligence Group is still in its infancy, it will be critical that we reassess and refine our processes over time.

Triage and assessment

New matters flowing through the Intelligence Group are assessed and triaged under the guidance of the Director, who ensures that all accesses to secure databases are properly authorised and are in accordance with procedures aimed at protecting personal information.¹⁷

At the initial intake stage, limited checks are conducted to enable the Director to 'triage' the matter, including determining whether or not more thorough intelligence checks are warranted. Where a more in-depth intelligence check is required, the Director refers the matter to an Intelligence Group officer who creates a profile outlining relevant information holdings and the nature of any immediate risks which need to be addressed, together with recommended action.

The initial response to a new notification will assess the adequacy of the agency's response to known risks, including whether it has undertaken an appropriate assessment of, and response to, identified risks. Where we identify that the agency has understated the level of risk, or taken inadequate action to properly manage identified risks, we prioritise telephone contact with the agency to explain our concerns and canvass potential options for strengthening the agency's risk management response. While we have no authority to direct or require an agency to take certain action to manage risks, agencies are very responsive to our suggestions. However, in circumstances when an agency inadequately responds, we will usually escalate our involvement by making more formal inquiries and requiring the agency to provide information supporting its actions and decisions around assessing and managing risks.

As part of our intelligence checks, we also aim to identify any alternative child-related work (including as a volunteer) that the person who is the subject of the reportable allegation may be involved in. Where we identify other work of this kind, we ascertain whether there are associated risks with that work and, if so, whether they are being addressed. Where any such risks are not being addressed, we take action in an attempt to ameliorate risks. For example, if police are involved in investigating the matter, we will alert police to the person's alternative employment, so that they can raise identified concerns directly with the 'other employer'. If

¹⁷ This information is stored in accordance with NSW Government and our own internal information security requirements. The Ombudsman's Information and Intelligence Manager conducts audits of our staff access to internal and external databases to confirm compliance with established procedures.

there is no police involvement, we might facilitate the lawful provision of relevant information to the ‘other employer’.

If the other employer also happens to be within our Part 3A jurisdiction – we will engage directly with them about making a notification, managing risks and coordinating its response with all other involved agencies. In cases where we identify another employer but they are not within our employment-related child protection jurisdiction, and/or they are not a prescribed body for the purposes of Chapter 16A, we consider what other action can be taken such as referring relevant information to the OCG.

Facilitating information exchange

In many circumstances, the intelligence profile will recommend the need for a referral of information to appropriate authorities, including the Police, Community Services and the OCG. In these cases, we contact those agencies as quickly as possible and alert them to the type of information identified. Where those agencies confirm they do not have (or have not identified) the information and that it is relevant to their investigation or inquiry, we then facilitate the provision of that information through the ‘owning’ agency [REDACTED].

Approval by a senior officer is required for all external releases of information. Releases of information under Chapter 16A require approval at Director-level or above. In the case of information released under s34 of the *Ombudsman Act 1974*, approval must be obtained from a statutory officer. The requirement to obtain approval at such a senior level reflects the serious potential consequences of any inappropriate release of information.

In relation to Part 3A cases where the employing agency and/or other relevant agencies are aware of all relevant information, and the documentation that we receive indicates they are taking appropriate action, we will *generally* have a limited direct role – for example, providing general guidance under our usual oversight practices – until the reportable conduct investigation is finalised. However, where we have identified that the reportable allegations have been, or should have been, reported to Police and/or Community Services, we make it a priority to obtain up-to-date information about the status of the matter, including obtaining information directly from COPS and KiDS. This is a priority so that we can ensure that the employer agency is not taking action that may compromise the Police/Community Services response, and that Police and Community Services are responding appropriately.

Once we have established that appropriate reports have been made and the employer agency is aware of what action it should and should not be taking while a criminal or child protection response is underway, our investigators will consider all relevant available information and identify any gaps in information being used to inform any criminal or child protection response.

Our office is often the only agency with access to all relevant information about a particular matter, and in these circumstances, we will take a more active role to ensure information is shared with appropriate parties and acted on accordingly. We are regularly in a situation where we are required to liaise with relevant parties immediately to facilitate information exchange, requiring us to continually reassess other operational priorities. We discuss referrals of information to Police further in section 2.2.

Identifying and addressing data integrity issues

We take action to remedy data integrity issues whenever they come to our attention. For example, we have developed a ‘multiple CNI register’ to log and refer to police examples of persons with multiple civilian profiles (CNIs) in cases where a failure to link the CNIs would potentially result in critical information relevant to employment screening not being identified and/or a pattern of potentially high risk behaviour not being identified by police investigations.¹⁸

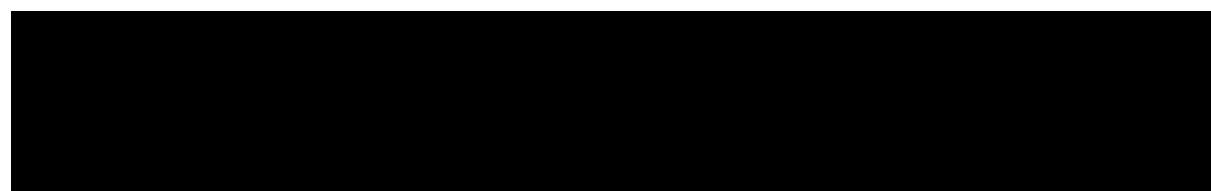
By way of illustration, after receipt of a Part 3A notification where, following our own intelligence checks and subsequent police liaison, an historical investigation was reopened and led to charges being laid against an alleged paedophile [REDACTED]. Critically, we identified that the subject employee had two separate police CNIs, under completely different names that were unlinked in the database, one of which contained information about credible historical sexual assault allegations, while the other CNI (under the person’s ‘professional’ name) did not.

We also on occasion identify police events or cases that have linked the wrong person as the person of interest (POI), whether through human error or because of identity confusion. In these cases, we have taken steps to ensure the incorrect POI is removed from the record and the correct POI is linked.

Similarly, we are frequently in the position of identifying holdings within the KiDS system where Community Services either did not identify (or would not have identified) the involved person when conducting a check on the subject person, because the person had not been linked to the relevant child’s record. In these cases, we have raised our concerns with Community Services and have requested that it take steps to ensure the relevant records are linked.

While these case-by-case data remediation efforts are resource-intensive, this work is given priority given the potential significant impact data discrepancies can have on identifying and responding to child protection risks. (More broadly, we have highlighted the need for Community Services to address this issue from a systems perspective.)

2.2 Referring matters to Police



On receipt of information about reportable allegations, our immediate priority is to assess whether the information meets the threshold for a report to Community Services and/or Police and, if so, establishing whether or not this has already occurred. The timely reporting of criminal allegations to Police – and where appropriate, the reporting of risk of significant harm (ROSH) concerns to Community Services – are critical to ensuring that any criminal and/or child-protection response, are not compromised.

¹⁸ It should be noted that this process predated our function in connection with the current WWCC.

Our new operating environment has allowed us to further strengthen our already constructive relationship with the NSW Police Force, and our shared commitment to ensuring child sex offenders are identified and prosecuted.

We also work closely with employers who have not recognised their responsibility to refer matters to the police, guiding them through this process and ensuring that their workplace response to matters does not compromise any police investigation. Increasingly, we fulfil this critical role at an early stage of our oversight of matters – because of the imperative to act promptly when children are at risk.

Since 2009, we have raised concerns about matters where Community Services had not reported criminal child abuse allegations to police. In response to an investigation that we conducted last year concerning Community Services' response to a report about a teacher alleged to have sent a sexually explicit text message to a child, Community Services has acknowledged that their policies for reporting such criminal allegations to police are inadequate. They have told us they are developing improved policies and procedures to guide frontline staff on when and how to refer matters to police. We are pleased that Community Services has made this commitment but believe it is essential practice in this critical area improves as soon as possible.

Where we identify that reporting obligations have not been met, we triage the matter for urgent/priority action. This will generally involve making telephone contact with the relevant agency to: provide advice about the need to make reports to Community Services and/or Police; provide guidance on the type of information it should include in such reports; and to emphasise to the agency that it may need to suspend any response to the reportable allegation pending clearance from those agencies.

We closely monitor the agency's compliance with our advice until we are satisfied that the relevant authorities are aware of the matter and that the agency understands how it should proceed. In addition to maintaining contact with the agency about its compliance, we confirm via the Police or Community services database that the reports have been made and that an appropriate level of information was included in the reports to enable those agencies to assess what, if any, action they should take [REDACTED].

When we identify through the Police or Community Services database that one or both of these agencies intends to take action on a matter, we will often maintain ongoing dialogue with the employing agency, to ensure it does not hinder or inadvertently compromise the child-protection or criminal response [REDACTED].

We also identify matters where it appears that Police or Community Services have determined not to take any action in response to an employer's report, in circumstances where we have reason to believe that action is warranted. This can often be a result of the report failing to clearly articulate the criminal conduct. In such cases, we might guide the employer to provide further information to Police and/or Community Services; we may initiate direct dialogue with Police or Community Services; or we might coordinate and facilitate an interagency meeting to promote a thorough exploration of the relevant evidence and investigative options [REDACTED].

Finally, it is generally the role of the employing agency to report criminal allegations to Police and ROSH matters to Community Services. The Ombudsman's involvement generally

revolves around identifying reporting failures; liaising with relevant parties to remedy problems with the response to matters; and monitoring compliance with required actions. However, we will frequently make reports directly to Police and/or Community Services. This includes in cases that involve technical legal and/or evidentiary issues; where there is no other agency currently involved in the particular matter [REDACTED]; or where the matter requires urgent action [REDACTED].