



Reportable Conduct Scheme Policy

1 Introduction

Aboriginal Legal Service of Western Australia (**ALSWA**) recognises that it has the responsibility to prevent certain conduct and to report certain matters in relation to children in connection with the Reportable Conduct Scheme (**Scheme**) established by the *Parliamentary Commissioner Amendment (Reportable Conduct) Act 2022* and administered by the Ombudsman Western Australia office.

ALSWA acknowledges children are vulnerable and this Policy in accordance with the Scheme aims to reduce the risk of harm to children in our organisation.

This Policy is designed to provide a framework for ALSWA and its workers to comply with the Scheme and provide a safe environment for children. In that light, this Policy must be interpreted in a manner that has the best interests of children as its paramount consideration.

2 Purpose

This Policy has been created to ensure that ALSWA has systems for:

- preventing Reportable Conduct by ALSWA Workers in the course of their engagement;
- enabling any person, including an ALSWA Worker, to report to ALSWA a Reportable Allegation or Reportable Conviction involving another ALSWA Worker;
- enabling any person, including an ALSWA Worker, to report to the WA Ombudsman a Reportable Allegation or Reportable Conviction involving senior ALSWA staff;
- notifying the WA Ombudsman of a report to ALSWA of a Reportable Allegation or Reportable Conviction involving an ALSWA Worker;
- investigating a Reportable Allegation or Reportable Conviction relating to an ALSWA Worker and taking appropriate action in response to a finding of Reportable Conduct; and
- the receipt, handling and disclosure of investigation information.

3 Application

This Policy applies to all individuals who are 18 years or older and are:

- an employee or officer of ALSWA; or
- a volunteer of ALSWA; or
- a contractor of ALSWA who are engaged to provide services to children (and their officers, employees, subcontractors, and volunteers),

together, **ALSWA Workers**.

4 Policy Representative

In accordance with the Scheme, the head of entity for ALSWA is the CEO. The person responsible for the implementation of this Policy and the Scheme will be the CEO's delegate, Human Resources Manager (**Policy Representative**).

The CEO will still retain overall responsibility that this Policy and the Scheme is implemented correctly, but the Policy Representative will have day to day management of the Policy.

If the Policy Representative is unavailable, such as they are on leave, the CEO will assume day to day management or they will delegate the responsibility to another person temporarily. This should be clearly communicated to ALSWA Workers.

5 Reportable Conduct

Consistent with the Scheme, Reportable Conduct includes the following:

- sexual offences (against, with or in the presence of, a child);
- sexual misconduct (against, with or in the presence of, a child);
- physical assault (against, with or in the presence of, a child);
- significant neglect of a child; and
- any behaviour that causes significant emotional or psychological harm to a child.

Reportable Conduct will not include conduct that is:

- reasonable for the discipline, management or care of a child or of another person in the presence of a child, having regard to:
 - the characteristics of the child, including the age, health and developmental stage of the child; and
 - any relevant code of conduct or professional standard that at the time applied to the discipline, management or care of the child or the other person; or
- trivial or negligible and that has been or will be investigated and recorded as part of another workplace procedure.

If you are unsure whether a matter constitutes Reportable Conduct you should contact the Policy Representative.

In accordance with ALSWA's other policies and procedures, including but not limited to the Child-Safe Organisation Policy, all ALSWA Workers must not engage in Reportable Conduct.

6 Reportable Conviction

Pursuant to the Scheme, a Reportable Conviction is a conviction of a sexual offence. A conviction includes:

- a court making a finding of guilty in relation to the offence;
- if there has been no formal finding of guilt before conviction, a court convicting the person of the offence;
- a court accepting a plea of guilty from the person in relation to the offence;
- a court acquitting the person following a finding under section 27 of the *Criminal Code Act Compilation Act 1913 (WA)* that the person is not guilty on account of unsoundness of mind or an acquittal following an equivalent finding under a law of another State, Territory or the Commonwealth.

Convictions include spent convictions.

Convictions do not include convictions that has been subsequently quashed or set aside by a court.

If any ALSWA Worker has any information that they or another ALSWA Worker has a Reportable Conviction, they **must** notify the Policy Representative.

Members of the public can also inform the Policy Representative of a Reportable Conviction of an ALSWA Worker, regardless of when and where the Reportable Conviction occurred.

7 Obligations to report Reportable Allegations

If any ALSWA Worker has any information that leads them to form the belief on reasonable grounds that another ALSWA Worker has engaged in Reportable Conduct, whether or not the conduct is alleged to have occurred in the course of that person's employment and regardless of when the Reportable Conduct has occurred, including before the introduction of this Policy, that ALSWA Worker **must** notify the Policy Representative (the **Reportable Allegation**).

Members of the public can also inform the Policy Representative of Reportable Conduct of an ALSWA Worker, regardless of when and where the Reportable Conduct is alleged to have occurred.

8 Notification Process

To notify ALSWA of a Reportable Allegation or a Reportable Conviction, the person must contact the Policy Representative at KClune@als.org.au, (08)9265 6674 as soon as possible with details of:

- the ALSWA Worker alleged to have engaged in Reportable Conduct or who has a Reportable Conviction; and
- any other information pertaining to the Reportable Conduct or Reportable Conviction.

9 ALSWA's Notification Responsibilities

Once notified of a Reportable Allegation or Reportable Conviction, the Policy Representative will notify the WA Ombudsman within 7 working days by completing the form at:

https://www.ombudsman.wa.gov.au/Reportable_Conduct/RCS-Notification-Form.htm. This will include providing the following information (to the extent it is known):

- details of ALSWA, including:
 - ALSWA's full legal name;
 - ALSWA's address;
 - ALSWA's contact information; and
 - details of the Policy Representative;
- details of the ALSWA Worker who is the subject of the Reportable Allegation or Reportable Conviction, including:
 - their full name;
 - any former name;
 - their date of birth; and
 - their Working with Children Check number;
- details of the alleged victim/s, including:
 - their full name;
 - their date of birth;
 - their gender;
 - any disabilities; and
 - any cultural/ATSI identification;
- details of the Reportable Allegation or Reportable Conviction, including:
 - the date it was reported to the Policy Representative;
 - the date of the alleged conduct;

- the type of allegation (ie. sexual offence, sexual misconduct or physical assault committed against, with or in the presence of, a child); and
- a description of the conduct; and
- the Risk Assessment (defined below) made and actions taken to protect children, including:
 - whether any children are currently at risk, and if so what actions has ALSWA taken to protect them;
 - whether the conduct has been reported to the Western Australian Police Force (**WAPOL**);
 - if the conduct has been reported to WAPOL, the date it was reported; and
 - how the CEO or the Policy Representative intends to deal with the conduct.

It is an offence not to notify the WA Ombudsman within 7 days of ALSWA being notified (through the Policy Representative). Accordingly, it is the responsibility of all management to ensure that any Reportable Allegation or Reportable Conviction is escalated to the Policy Representative so it can be reported to the WA Ombudsman within this time.

Once the Policy Representative, or any other person on behalf of ALSWA, has notified the WA Ombudsman of the Reportable Allegation or Reportable Conviction, they must notify all other relevant stakeholders at ALSWA so they are aware the obligation has been discharged.

10 ALSWA's Investigation Obligations

a. *Requirement to conduct investigation and preliminary matters*

As soon as practicable, after the Policy Representative becomes aware of a Reportable Allegation or Reportable Conviction involving an ALSWA Worker, the Policy Representative must:

- investigate the Reportable Allegation or Reportable Conviction personally; or
- arrange for an employee of ALSWA to investigate the Reportable Allegation or Reportable Conviction on their behalf; or
- engage a person or body as an independent investigator to investigate the Reportable Allegation or Reportable Conviction on their behalf.

The Policy Representative must inform the WA Ombudsman of the name and contact details of the person or body, or position or unit at ALSWA, responsible for conducting the investigation.

The Policy Representative is responsible for taking all reasonable steps to ensure the investigation is carried out in a timely manner.

b. *Investigation outcome*

As soon as practicable after conducting an investigation in relation to an ALSWA Worker, the Policy Representative (or the person they delegated the investigation to) must:

- make a finding of Reportable Conduct in relation to the ALSWA Worker if the Policy Representative has formed the view, on reasonable grounds, that Reportable Conduct involving the ALSWA Worker has occurred; or
- make a finding that there are no grounds, or no reasonable grounds, for the Policy Representative to form the view that Reportable Conduct involving the ALSWA Worker has occurred.

If the above finding is that Reportable Conduct occurred, the Policy Representative must, as soon as reasonably practicable after the finding is made, ensure that:

- appropriate action is taken in relation to the employee in response to the finding; and

- if the Policy Representative has formed the view that it is needed, appropriate action is taken to improve the identification or prevention of Reportable Conduct or the reporting, notification or investigation of Reportable Allegations and Reportable Convictions involving ALSWA Workers.

c. *ALSWA Worker involvement/procedural fairness*

Any investigation will be conducted in accordance with ALSWA's **investigation / grievance policy**, subject to any additional requirements in this Policy.

Before any adverse finding is made against an ALSWA Worker based on an investigation under this Policy, the Policy Representative:

- must:
 - inform the ALSWA Worker that they are the subject of the investigation;
 - inform the ALSWA Worker of the detail of the Reportable Allegation or Reportable Conviction being investigated; and
 - give the ALSWA Worker the opportunity to make submissions to the Policy Representative setting out the ALSWA Worker's response to the allegations in the investigation; and
- must, after complying with the above requirements and considering any submissions made by the ALSWA Worker:
 - inform the ALSWA Worker of any proposed adverse finding; and
 - give the ALSWA Worker an opportunity to make submissions to the Policy Representative setting out the ALSWA Worker's responses to the proposed adverse finding.

Before any disciplinary or other action is taken in relation the ALSWA Worker based on the findings of the investigation, the Policy Representative must inform the ALSWA Worker of the proposed action and give them an opportunity to make submissions setting out the ALSWA Worker's response to the proposed action.

Where an ALSWA Worker has been informed they are the subject of an investigation, the Policy Representative must, as soon as practicable after the end of the investigation, give the ALSWA Worker:

- a written notice stating that the investigation has ended; and
- a written report setting out the findings of the investigation and the reasons for those findings.

d. *Keeping the WA Ombudsman notified*

Throughout the investigation, the Policy Representative must, as soon as practicable, notify the WA Ombudsman in writing if the Policy Representative:

- forms the view on reasonable grounds that:
 - the matter does not constitute Reportable Conduct; or
 - the report of the matter to ALSWA is frivolous or vexatious or not made in good faith;
- becomes aware that another appropriate person or body is dealing with or investigating the matter;
- is required by law to comply with the directions of another person or body in relation to the investigation of the matter; or
- is requested or directed by another appropriate person or body to cease, or discontinue for a period, the investigation.

As part of a notice referred to above, the Policy Representative may request from the WA Ombudsman an exemption from the requirement to continue the investigation.

e. *Notifying the WA Ombudsman of the outcome*

The Policy Representative must, as soon as practicable after the investigation ends, provide a written report to the WA Ombudsman which outlines:

- the findings of the investigation and the reasons for those findings;
- any submissions made by the ALSWA Worker;
- any disciplinary or other action taken, or proposed to be taken, in relation to the ALSWA Worker;
- if ALSWA does not propose to take any disciplinary or other action in relation to the ALSWA Worker, the reasons why no action is to be taken;
- any action taken, or proposed to be taken, as a result of the findings of the investigation, to improve the identification or prevention of Reportable Conduct, or the reporting, notification, or investigation of Reportable Allegations and Reportable Convictions involving ALSWA Workers; and
- any other relevant information.

11 ALSWA Workers notifying WA Ombudsman directly

Any ALSWA Worker who has made a report to the Policy Representative and is not satisfied with the response they received, may disclose any information directly to the WA Ombudsman where that person believes on reasonable grounds that it reveals Reportable Conduct involving another ALSWA Worker or is otherwise relevant to a Reportable Allegation involving another ALSWA Worker.

If, on reasonable grounds, you believe that the Policy Representative or CEO has engaged in Reportable Conduct, or is otherwise involved in a Reportable Allegation, you should report this directly to the WA Ombudsman.

12 Disclosure of information to children, parents or guardians

Disclosable Information includes:

- the progress of the investigation;
- the findings of the investigation; and
- any action taken based on the investigation.

The Policy Representative may disclose Disclosable Information to a child who is the subject of conduct that forms the basis of a Reportable Allegation or a Reportable Conviction that is being, or has been, investigated by the Policy Representative, or a parent or guardian of the child, or a person who has parental responsibility of the child.

The Policy Representative must not disclose Disclosable Information if the disclosure:

- would put the wellbeing of the child, or the safety of another person, at risk;
- would contravene the *Children and Community Services Act 2004* (WA) ss 124F or 240;¹
- would compromise an investigation under the Scheme, a police investigation or an investigation under this Policy; or
- would be to a parent, guardian, or a person with parental responsibility, where the Policy Representative is satisfied that the child has sufficient maturity and understanding to consent to the disclosure, and the child does not consent to the disclosure.

¹ These provisions require a person who in the course of their duties becomes aware of the identity of a reporter or notifier of child abuse (or similar conduct), they must not disclose information which identifies, or may lead to the identification of, the reporter or notifier unless an exemption applies under those sections or the Act. This Act, and the exemptions, can be accessed here: https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_132_homepage.html

13 Prohibition of publishing information

No person may publish, or cause to be published, information that identifies, or is likely to identify:

- a person that has made a report under this Policy; or
- a person as a child who is the subject of conduct that forms the basis of either a report under this Policy or a finding of Reportable Conduct.

Publishing information includes any form of written publication (eg. book, newspapers, magazine, social media) or audio/visual publication (eg. radio broadcast, television).

You may publish information if you are required or authorised at law.

14 Risk Assessment

As part of the investigation into a Reportable Allegation or Reportable Conviction, the Policy Representative will be responsible for ensuring that the risk to a child, the ALSWA Worker who is the subject of the allegation, other affected people and the investigation is assessed.

The three stages of risk assessment are:

(a) Initial risk assessment

Based on all relevant information known at the time that the Reportable Allegation is made, the Policy Representative will identify and take steps to minimise the risk to:

- the child(ren) who are the subject of the allegation;
- other children with whom the ALSWA Worker may have contact;
- the ALSWA Worker against whom the allegation was made;
- ALSWA;
- other parties to the alleged incident (such as witnesses or reporters);
- the proper investigation of the allegation; and
- other investigations, including by the WAPOL.

This is the Risk Assessment referred to in section 9 above which is provided to the WA Ombudsman.

(b) Ongoing Risk Assessment

If new risks or information becomes known to the Policy Representative which significantly alters the level or risk, the initial risk assessment and risk mitigation actions will be adjusted, and information provided to the WA Ombudsman.

(c) Final risk assessment

When an investigation concludes, the Policy Representative will inform the WA Ombudsman of any actions taken or proposed to be taken. Such actions may include improvements to identification or prevention of Reportable Conduct, reporting of Reportable Allegations, or investigation of Reportable Conduct.

The risk assessment may consider all relevant risks to ALSWA's entire operations, including environmental factors and work practices that result in situations that pose risks to children. Identified risks and corresponding actions may include ongoing support to those affected, improvements in education, systems and policies.

Examples of support and the corresponding risk groups are outlined below:

- The children - counselling, ongoing support, future contact with the employee;
- The ALSWA Worker - ongoing support, training, remedial or disciplinary action;

- Others affected - ongoing support;
- Organisational culture - improved education and awareness around child safety issues for children, employees or both;
- Systems - any work practices, skills or gaps that contributed to the Reportable Allegation and how these can be addressed;
- Physical environment - any changes that may be required; and
- Policies and procedures - reviewing whether the policies and procedures in place are able to accommodate all issues that arose during the investigation,

together, the **Improvement Actions**.

Any Improvement Actions will be documented and provided to the WA Ombudsman in the report referred in 10e.

15 Compliance with WA Ombudsman requests

The Policy Representative, and any other ALSWA Worker, must comply with any reasonable request made by the WA Ombudsman in relation to the Scheme or application of this Policy.

If you are unsure whether you should comply with a request by the WA Ombudsman, you should contact the Policy Representative or obtain independent legal advice.

16 Breach of this Policy

A breach of this Policy or the Scheme may constitute an offence at law. This may also constitute serious misconduct justifying disciplinary action up to and including termination of your employment or engagement with ALSWA.

17 Further information

You can obtain further information about this Policy by contacting the Policy Representative.

If you need information about the Scheme and are uncomfortable discussing this with someone at ALSWA, you can contact the WA Ombudsman at (08) 9220 7471 or reportableconduct@ombudsman.wa.gov.au, or you can get information at www.ombudsman.wa.gov.au.