

Legal Update: Child Safe Organisations

Presented by Jessica Lipsett (Director)

Introduction



CORNEY & LIND
L A W Y E R S



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L A W

*Same team, same mission:
We are called to deliver just, redemptive outcomes...*

Child Safe Organisations Act 2024 (Qld)



Establishes an integrated child safe organisations system in Queensland, including:

1. Mandatory child safe standards;
2. Nationally consistent reportable conduct scheme.

Overseen by the Queensland Family and Child Commission.

Schedule 1 - child safe entities include 'religious bodies':

- A religious body that provides the following services is a child safe entity—
 - a community or support service, including, for example, a chaplaincy service or children's recreation service;
 - activities or services of any kind, including, for example, church services or youth groups.

Schedule 2 - reporting entities include 'religious bodies':

- A religious body that provides activities, facilities, programs or services in which adults interact with children.



History

Royal Commission into Institutional Responses to Child Sexual Abuse

“The allegations that have come to light recently about child sexual abuse have been heartbreaking. These are insidious, evil acts to which no child should be subject. The individuals concerned deserve the most thorough of investigations into the wrongs that have been committed against them. They deserve to have their voices heard and their claims investigated”.

- Julia Gillard, when announcing the Royal Commission

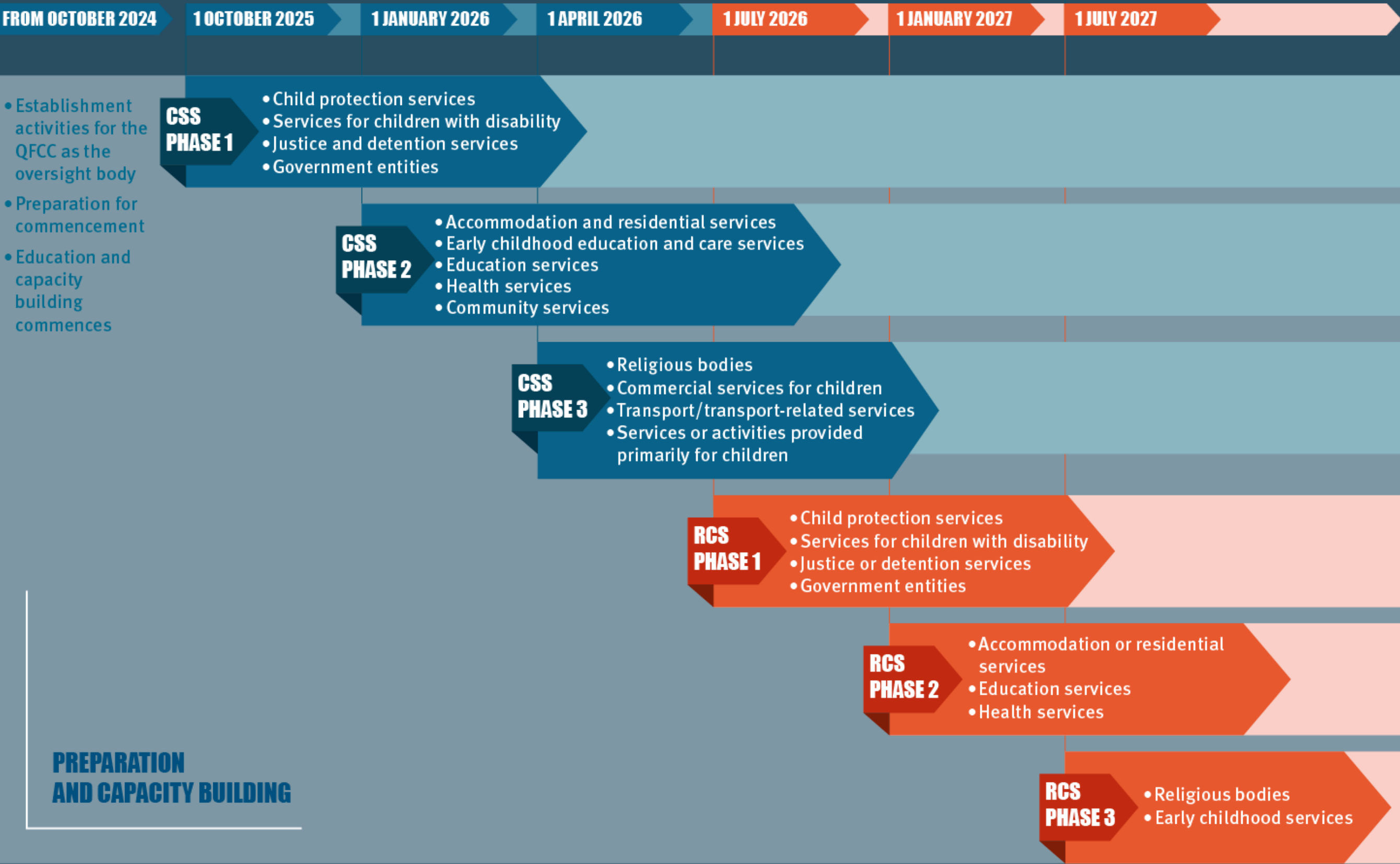
Recommendations:

- Rec 6.8 - require relevant organisations to comply with 10 Child Safe Standards (CSS) as a best-practice approach to keep children safe;
- Rec 7.9-7.12 - establish nationally consistent Reportable Conduct Schemes (RCS) to provide independent oversight of organisational responses to allegations of child abuse across all sectors.

The QLD Government has accepted or accepted in-principle all CSS and RCS recommendations.



Sector Implementation Timeline



Implementation timeline for Phase 3





Child Safe Standards

1. Child safety and wellbeing is embedded in organisational leadership, governance and culture.
2. Children are informed about their rights, participate in decisions affecting them and are taken seriously.
3. Families and communities are informed and involved in promoting child safety and wellbeing.
4. Equity is upheld and diverse needs respected in policy and practice.
5. People working with children are suitable and supported to reflect child safety and wellbeing in practice.
6. Processes to respond to complaints of child abuse are child focused.
7. Staff and volunteers are equipped with the knowledge, skills and awareness to keep children safe through ongoing education and training.
8. Physical and online environments promote safety and wellbeing and minimise the opportunity for children to be harmed.
9. Implementation of the Child Safe Standards is regularly reviewed and improved.
10. Policies and procedures document how the organisation is safe for children.





- **Standard 1: Child safety is embedded in institutional leadership, governance and culture**
 - The institution publicly commits to child safety and leaders champion a child safe culture.
 - Child safety is a shared responsibility at all levels of the institution.
 - Risk management strategies focus on preventing, identifying and mitigating risks to children.
 - Staff and volunteers comply with a code of conduct that sets clear behavioural standards towards children.
 - Staff and volunteers understand their obligations on information sharing and recordkeeping.

Universal Principle



- Universal Principle = a child safe entity must provide an environment that promotes and upholds the right to cultural safety of children who are Aboriginal persons or Torres Strait Islander persons.
- Royal Commission finding - strong connection to culture is a protective factor against child abuse for ATSI children.
- Must be embedded in each of the 10 Child Safe Standards:
 - Equal importance to the 10 Child Safe Standards;
 - Same enforcement powers available to QFCC.



Resource

Keeping Our Kids Safe - Cultural Safety and the National Principles for Child Safe Organisations

Secretariat - National Aboriginal and Island Child Care (SNAICC)

KEEPING OUR KIDS SAFE: CULTURAL SAFETY AND THE NATIONAL PRINCIPLES FOR CHILD SAFE ORGANISATIONS



Principle-based regime



No 'one size fits all' approach

- Principles should be applied at a broad, organisational level and flow down to specific services or activities
- Organisations should reflect and consider how the Standards apply to them
- Ensure a culture of continuous improvement to respond to challenges and continue to hold child safety as a core priority



Monitoring & Enforcement

Commission may monitor the operation of a child safe entity to ensure the entity is implementing and complying with the Child Safe Standards and Universal Principal - section 15.

- May give an assessment report to a child safe entity to provide guidance or make recommendations.
- If the assessment report includes a recommendation, the child safe entity must give the commission a written response about its implementation of the Commission's recommendations.

Section 16(1) - QFCC may direct the head of a Child Safe Entity to conduct a self assessment of implementation of, and compliance with, the child safe standards and universal principle.

Compliance Notices (Section 18)

- If the Commission believes that a child safe entity is failing to implement or comply with the child safe standards, it may issue a compliance notice stating:
 - The reasons for giving the notice;
 - Each CSS the Commission believes the entity has not implemented or complied with;
 - The action the entity is required to take (and date by which it must be taken).
- The child safe entity must comply with the notice unless it has a reasonable excuse - maximum penalty 100 penalty units.



Enforceable Undertakings

Section 19 - The Commission may accept a written undertaking from a child safe entity, which:

- States the action the entity will take to ensure the child safe standards and universal principle are implemented and complied with;
- State the day by which the action is to be taken.

The Commission may accept or reject the written undertaking:

- A rejection must be communicated by written notice including reasons for the decision;
- If the Commission accepts the undertaking, it becomes an enforceable undertaking.

Section 21 - A child safe entity that gives an enforceable undertaking must comply with the undertaking, unless it has a reasonable excuse. Maximum penalty - 100 penalty units.



Other Enforcement Action

Section 23 - Application to Court

- Available where the Commission is satisfied that a child safe entity has failed to comply with a compliance notice or enforceable undertaking.
- If the Court is satisfied of non-compliance, it may make 1 or more of the following orders:
 - An order directing the child safe entity to comply with the compliance notice or enforceable undertaking;
 - An order that the child safe entity pay the State a civil penalty (up to 100 penalty units);
 - Any other order the Court considers appropriate.

Section 24 - The Commission may publish the name of a child safe entity, and details of its failure to comply, if an entity does not comply with a compliance notice or enforceable undertaking.

Reportable Conduct



Section 26 - Reportable Conduct includes:

- A child sexual offence;
- Sexual misconduct committed in relation to, or in the presence of, a child;
- Ill-treatment of a child;
- Significant neglect of a child;
- Physical violence committed in relation to, or in the presence of a child;
- Behaviour that causes significant emotional or psychological harm to a child.

No requirement for a criminal proceeding in relation to the conduct to have been commenced or concluded.

May include a single act or omission, or a series of acts or omissions (even if each act or omission does not, of itself, amount to reportable conduct.

Reportable Allegation

An allegation or other information that leads a person to form a reasonable belief that a worker of a reporting entity has committed reportable conduct.

Worker = employee, volunteer, contractor, sub-contractor, consultant, an executive officer, a trainee, a minister of religion, religious leader or officer of the religious body.

Reportable Conviction

The conviction of a worker of a reporting entity for an offence against a law of a State or the Commonwealth that may involve reportable conduct.





Requirement for Systems

Section 30 - Head of Reporting Entity must ensure systems in place

- A system for preventing the commission of reportable conduct by a worker of the entity in the course of performing work for the entity (ie. Code of Conduct, supervision); and
- A system for enabling any person, including a worker of the entity, to notify the head of the entity of a reportable allegation or reportable conviction relating to a worker of the entity of which the person becomes aware (ie. Child Protection Risk of Harm Reporting Form); and
- A system for enabling any person, including a worker of the entity, to notify the commission of a reportable allegation or reportable conviction involving the head of the entity of which the person becomes aware (ie. Guideline 8 - Child Protection Reporting Procedure); and
- A system for investigating and responding to a reportable allegation or reportable conviction relating to a worker of the entity (ie. Procedure for responding to concerns).

Head of an entity = The Chief Executive Officer for the entity (however described).



Notification

Section 33 - Notifying Reportable Allegations & Convictions

- A worker who becomes aware of a reportable allegation or a reportable conviction regarding a worker of a reporting entity must report the matter:
 - To the head of the reporting entity;
 - If the matter relates to the head of the reporting entity, to the Commission.
- Any person may notify the Commission of a reportable allegation or reportable conviction about a person at any time.

Section 34 - Head of Entity must Notify Commission

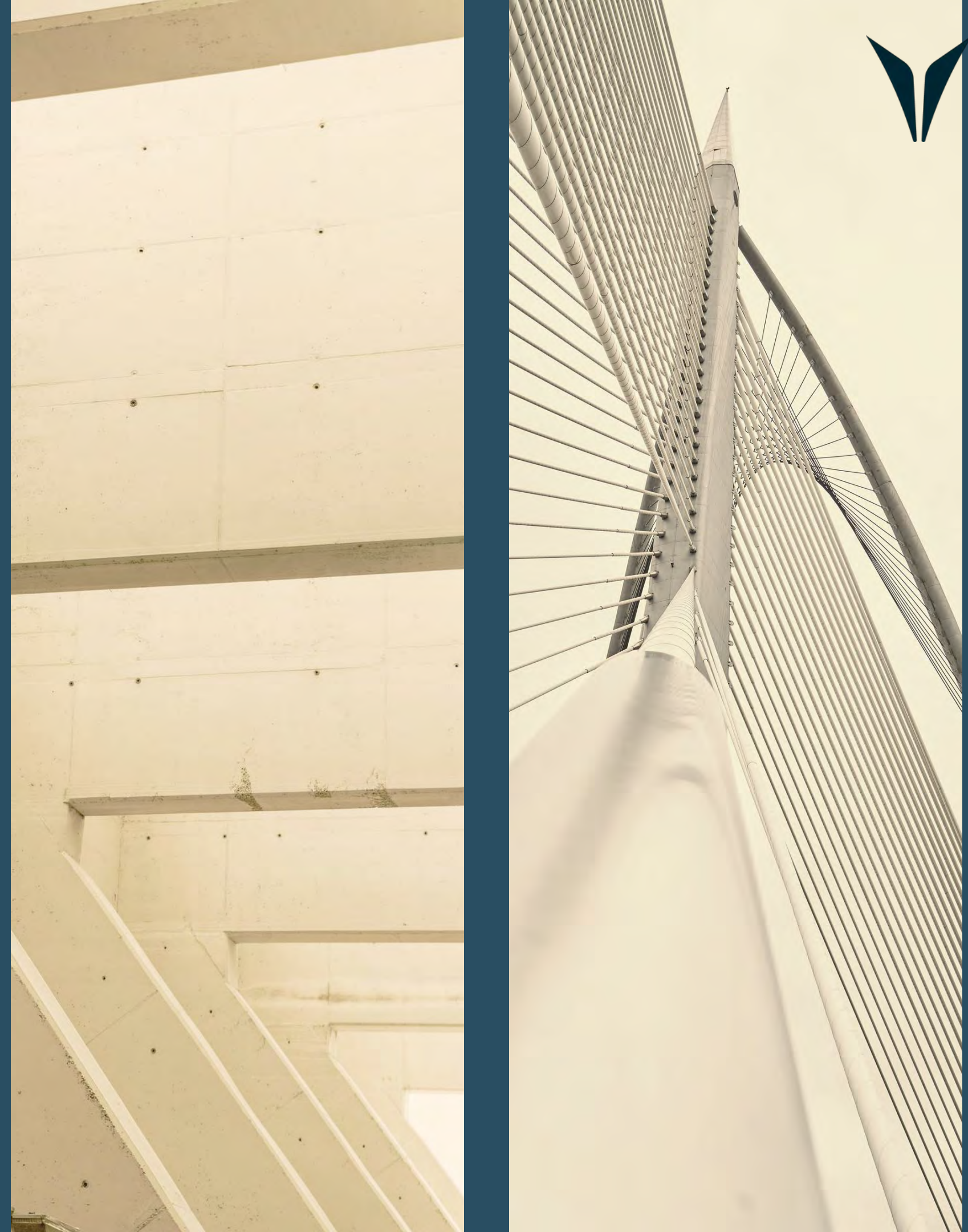
- Unless the head of a reporting entity has a reasonable excuse, they must give the Commission written report about:
 - A reportable allegation about a worker of the entity;
 - A reportable conviction of a worker of the entity
- Initial report - must be made within 3 business days, unless the Commission agrees to a longer period (Maximum penalty - 100 penalty units).
- Interim or Final Report - within 30 business days, unless the Commission agrees to a longer period (Maximum penalty - 100 penalty units).

Contents of Initial & Interim Report

- Details of the Reportable Allegation/Conviction
- The name & DOB (including former names or alias) of the worker subject of the Reportable Allegation/Conviction;
- If the worker currently performs work for the reporting entity - any action (including risk management action) taken in response to the Reportable Allegation/Conviction;
- Whether a Sector Regulator or the Police has been contacted about the Reportable Allegation/Conviction;

Interim Report

- The facts and circumstances of the Reportable Allegation/Conviction (to the extent available);
- An update on any action taken in response to the Reportable Allegation/Conviction;
- If the worker has made written submissions to the head of the reporting entity in relation to the Reportable Allegation/Conviction, a copy of those submissions.





Investigation & Report

Section 36 - Head of Entity must Investigate

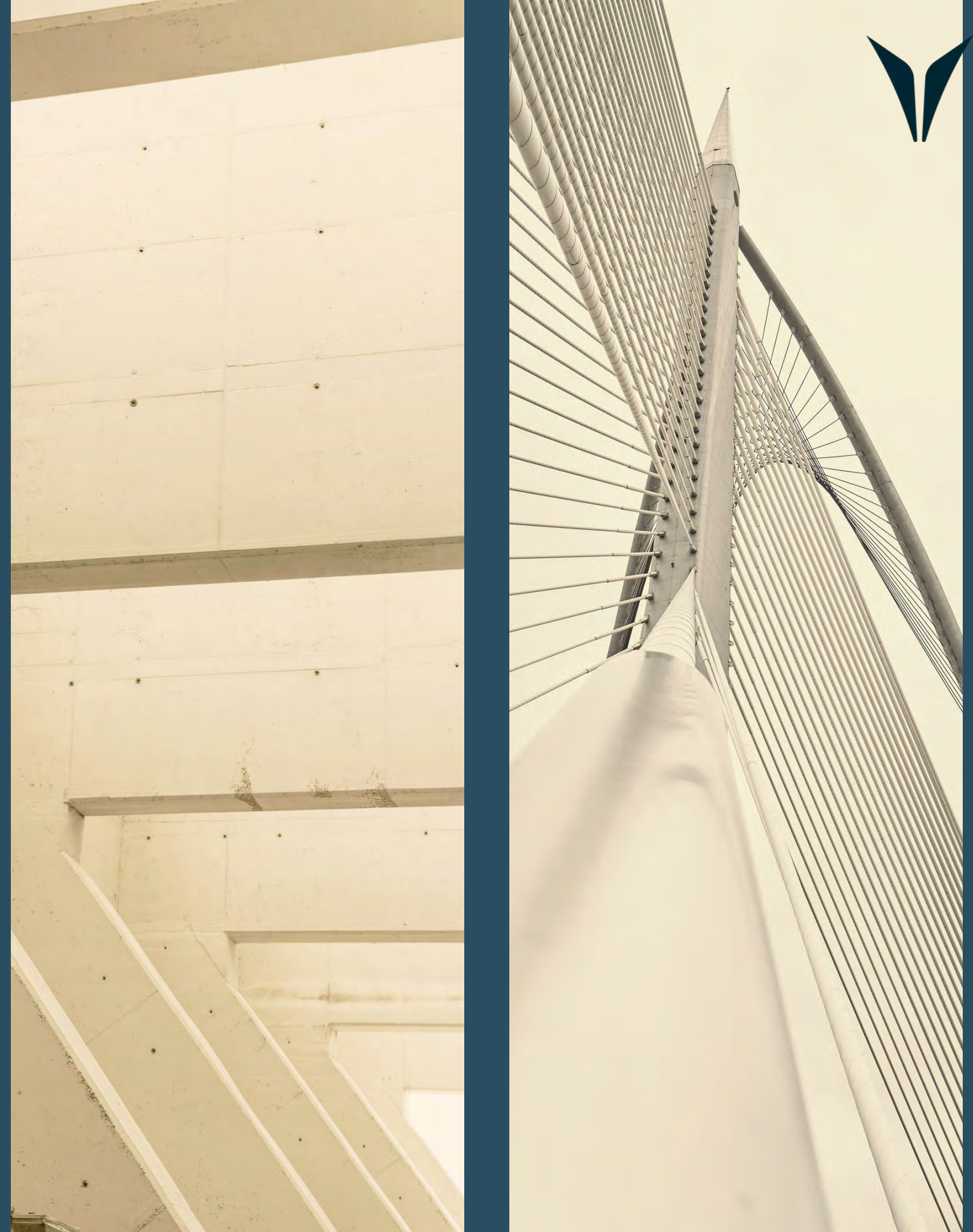
- As soon as practicable after becoming aware of Reportable Allegation/Conviction, the head of the entity must:
 - Ensure an investigation of the Reportable Allegation/Conviction is conducted;
 - Notify the Commission that the investigation is being conducted; and
 - Provide contact details for a person the Commission may contact in relation to the investigation.
- If the head of entity is not reasonably able to investigate, they must notify the Commission of the Reportable Allegation/Conviction as soon as practicable after becoming aware, and give the Commission reasons why they cannot reasonably investigate.

Section 37 - Investigation Report

- As soon as practicable after the investigation is completed, the head of the reporting entity must prepare, and give to the Commission, a written Final Report.

Contents of Final Report

- The facts and circumstances of the Reportable Allegation/Conviction (to the extent available);
- The findings after completing the investigation, including whether or not the worker has engaged in Reportable Conduct;
- The reasons for the findings;
- Copies of documents relied upon in making the findings;
- Information about whether the matter has been referred to another entity (if the matter involves other entities);
- If the worker currently performs work for the entity - any action, including risk management action, taken in response to the Reportable Allegation/Conviction;
- Any action taken, or proposed to be taken, to improve the reporting entity's ability to identify Reportable Conduct and report and investigate Reportable Allegations/Convictions;
- If no action is to be taken - the reasons why.





Commission Response

Section 38 - Commission may seek further information from the head of the reporting entity in relation to the findings regarding the Reportable Allegation/Conviction, and the reporting entity's response to the findings.

Section 41 - Commission may monitor reporting entity's investigation

- If the Commission "considers it is in the public interest", it may monitor the progress of an investigation. This may include:
 - Observing interviews;
 - Conferring with a person carrying out the investigation;
 - Providing advice and guidance; and
 - Requesting information in relation to the investigation.

Section 43 - Commission may investigate where:

- The Commission believes it is in the public interest;
- The Commission believes the head of the reporting entity has failed to investigate;
- The investigation relates to the head of the reporting entity's handling or investigation of the Reportable Allegation/Conviction;
- The head of the reporting entity is the subject of the Reportable Allegation/Conviction.

Working with Children Checks



- Provisions in place requiring 'working with children checks'/Blue Cards in every jurisdiction.
- QLD/NSW/VIC – No Card, No Start provisions introduced.
 - An individual cannot commence work with children and young people until their working with children check is approved.
 - Maximum penalty for employer – 100 penalty units.
- All Child Protection Policies should include processes for screening of workers, and record keeping for working with children checks (including expiry dates).

“Failure to Protect” offence



**Criminal
Code QLD
s 229BB**

Occurs where an adult:

- holds a position in an organisation that provides services to children
- knows there is a significant risk that an adult associated with the organisation will sexually abuse a child under the care, supervision or control of the organisation;
- has the power to reduce or remove this risk; and
- fails to reduce or remove the risk.

Penalty - 5 years imprisonment

“Failure to Report” offence



**Criminal
Code QLD
s 229BC**

Occurs where an adult:

- Gains information that causes them to believe on reasonable grounds that a child sexual offence is being/has been committed against a child by another adult; and
- Without reasonable cause, fails to disclosure the information to Police as soon as reasonably practicable.

Penalty - 3 years imprisonment



VOCARE
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Thank you.

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