



# Information Sheet: Mandatory Reporting of Child Sexual Abuse

## Out-of-home care workers

Mandatory reporting refers to the legal requirement for certain persons to report child sexual abuse to child protection authorities.

Mandatory reporting of child sexual abuse in Western Australia is governed by the [Children and Community Services Act 2004](#) (the Act). In October 2021 the Western Australian Parliament passed the [Children and Community Services Amendment Act 2021](#) to introduce new mandatory reporter groups, including 'out-of-home workers'.

The legal obligation for out-of-home care workers to report child sexual abuse commenced on **1 November 2023**.

## Out-of-home care worker – definition

A person whose role falls within the definition of 'out-of-home care worker' in section 124A of the Act (below), is a mandatory reporter.

Extract from Section 124A - Terms used

***“out-of-home care worker”*** —

(a) means an adult who holds an office or position with, or is otherwise employed or engaged by, an out-of-home care service provider and whose duties include —

(i) the provision of social services to children who are the subject of a placement arrangement or to carers of those children; or

(ii) duties prescribed, or of a class prescribed, for the purposes of this subparagraph;

but

(b) does not include an adult who —

(i) provides care, at the adult's usual place of residence, for children who are the subject of a placement arrangement; or

(ii) is employed or engaged as a student or volunteer;”

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Organisations will need to determine which specific roles fall within the scope of the definition of out-of-home care worker by considering the definitions of **out-of-home-care service provider**, **placement arrangement** and **social services** in the Act.

### Definitions of out-of-home care service provider, placement arrangement and social services

**Out-of-home care service provider** means a person who has entered into an agreement under section 15(1) for the provision of placement services. (s124A)

**placement arrangement** means an arrangement under section 79(2) for the placement of a child. (s3)

**social services** means services provided to assist children, other individuals, families and communities including, but not limited to, the following services —

- (a) preventative services;
- (b) protective services;
- (c) placement services;
- (d) child care services;
- (e) information and advisory services;
- (f) education and training services;
- (g) counselling services;
- (h) therapeutic services;
- (i) advocacy services;
- (j) mediation services;
- (k) crisis services;
- (l) family violence services;
- (m) support services; (s3)

### Key points to note:

- Adults who provide care for children under a placement arrangement in their usual place of residence, for example, foster carers (including kinship/relative/family carers), are excluded from the definition in line with recommendation 7.3 of the [Royal Commission into Institutional Responses to Child Sexual Abuse](#).
- It does not matter if a person's role as an out-of-home care worker is paid or unpaid – both are captured.

## When must an out-of-home care worker make a mandatory report?

From 1 November 2023, an out-of-home care worker must make a report to the Department of Communities' Mandatory Reporting Service if they:

- form a **belief** that a **child** is, or has been, the subject of **sexual abuse** that occurred on or after 1 November 2023; and
- the belief is based on **reasonable grounds**; and
- the belief is formed, on or after 1 November 2023, **in the course of their paid or unpaid work as an out-of-home care worker**.

## Will out-of-home care workers have to report child sexual abuse they knew of before they became mandatory reporters?

Mandatory reporting of child sexual abuse is intended to protect children from sexual abuse that may be occurring now. The duty to make a report applies if the reporter forms the belief on or after commencement day (which is the day they became a mandatory reporter), and the belief relates to sexual abuse that occurred on or after the commencement day or is still occurring. For out-of-home care workers, this is on or after 1 November 2023.

Where there is ongoing concern for the safety of children arising from historical abuse (which may have occurred when a person who is now an adult was a child) a person may contact Communities' Central Intake Team on 1800 CPDUTY (1800 273 889), or by submitting a [Child Protection Concern Referral Form](#).

Historical abuse may also be reported to Police for investigation and potential prosecution (if the victim is over 18 years of age you should seek their views before doing this).

## Who do I make a mandatory report to and when does it need to be made?

The Department of Communities' Mandatory Reporting Service receives and responds to mandatory reports of child sexual abuse. The best way of making a mandatory report is through the [Mandatory Reporting website](#). Reports can be made 24 hours a day, seven days a week.

A mandatory report must be made as soon as practicable after the reporter forms their belief regarding the sexual abuse of a child.

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An initial report can be made in writing or orally; however, if an oral report is made, it must be followed by a written report as soon as practicable after making the oral report (ideally within 24 hours). Failure to submit a written report as soon as practicable after submitting an oral report is an offence that carries a maximum penalty of \$3,000.

### What has to be included in a mandatory report?

Under section 124C of the Act, a mandatory report is to contain the following information:

- the reporter's name and contact details;
- the name of the child, or, if this cannot be obtained after reasonable inquiries, a description of the child; and
- the grounds on which the reporter believes that the child has been the subject of sexual abuse or is the subject of ongoing sexual abuse.

The following information is also to be provided to the extent that it is known:

- the child's date of birth;
- where the child lives;
- the names of the child's parents or other appropriate persons (e.g. adult relative or person who the child usually lives with); and
- the name of the person alleged responsible, their contact details and their relationship to the child.

### What if I don't make a mandatory report?

Failure to make a mandatory report is an offence with a maximum penalty of \$6,000.

If a person is charged with the offence of failing to make a mandatory report, there is a defence under section 124B(3) of the Act if the person can prove that he or she honestly and reasonably believed that a report had already been made to the Department of Communities or that the Department of Communities had already made inquiries or taken action in relation to the child's wellbeing.

### How will my identity be protected if I make a mandatory report?

Section 124F of the Act has strict provisions about the confidentiality of the identity of a mandatory reporter. Anyone who becomes aware of the identity of a mandatory reporter must not disclose identifying information to another person unless an exception under that section applies. The maximum penalty is a fine of \$24,000 and imprisonment for two years.

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## How will I be protected from liability if I make a mandatory report?

Section 129(2) of the Act provides protection for mandatory reporters from liability. This section provides that mandatory reporters who make a report under section 124B(1) in good faith:

- do not incur any civil or criminal liability; and
- are not to be taken as having breached any duty of confidentiality; and
- are taken to have not breached any professional conduct principles.

## Where can I find more information?

Further information about mandatory reporting laws is available in the mandatory reporting online training, which can be accessed through the [Mandatory Reporting of Child Sexual Abuse website](#), and the [Mandatory Reporting Resources page](#).

## What if I have concerns about a child's wellbeing due to physical, emotional abuse or neglect?

If you are mandatory reporter of child sexual abuse but have concerns about a child due to physical, or emotional abuse or neglect, including exposure to family and domestic violence, you can and should notify the Department of Communities. This will enable a professional assessment of the circumstances and action to be taken to protect the child and other children where necessary.

If you are concerned about a child's wellbeing, but are not making a mandatory report, please contact the Central Intake Team on 1800 273 889 or submit a [Child Protection Concern Referral Form](#).

Please note that the Department of Communities is unable to provide tailored legal advice in response to enquiries from out-of-home care service providers or out-of-home care workers about who may be a mandatory reporter under the Act. Some organisations may choose to get legal advice to assist them.