

APPENDIX D. CONFIDENTIALITY AND LEGAL PROTECTION

The *Children and Community Services Act 2004* (the Act) protects the identity of the reporter and protects against legal prosecution or professional misconduct.

The legislative requirements of the Act override the Department's policies, professional codes of conduct and professional confidentiality requirements.

If reports are made in good faith and with the best interests of the child in mind, the Act protects staff from:

- civil or criminal liability in respect of the disclosure;
- a breach of any duty of confidentiality or secrecy imposed by law; and
- a breach of professional ethics or any principles of conduct applicable to the person's employment, or
- a breach of professional conduct.

Professional confidentiality is protected when staff provide information in the best interests of the child regarding concerns or beliefs of child abuse to the Department of Communities, Child Protection and Family Support (CPFS) or other prescribed authorities who are directly involved in responding, investigating or supporting the child. This protection does not extend to discussion or disclosure of information to other parties who are not directly involved.

While the Act protects the identity of the reporter, there are some circumstances where the identity of the reporter may be released. These are:

- for the purpose of CPFS assessment;
- for investigative purposes by WA Police or to prosecute an offence;
- for court processes such as child protection, family law or adoption proceedings;
- with the written permission of the reporter; or
- by an application under the Freedom of Information Act 1992.

Disclosure of a mandatory reporter's identity carries a maximum fine of \$24,000 and 2 years' imprisonment.

The identity of a person who makes a mandatory report of child sexual abuse will always be known to the WA Police because the Mandatory Reporting Service must send a copy of every mandatory report to the WA Police for assessment.

Where there is suspected or alleged abuse or misconduct, staff must not disclose or make use of the information in a manner that breaches confidentiality under Sections 23 and 129 of the *Children and Community Services Act 2004* and s242 of the *School Education Act 1999*.