WORKING WITH CHILDREN CHECKS REPORT

Royal Commission
into Institutional Responses
to Child Sexual Abuse

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WORKING WITH CHILDREN CHECKS

Report

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Preface

The Royal Commission

The Letters Patent provided to the Royal Commission require that it 'inquire into institutional responses to allegations and incidents of child sexual abuse and related matters' (see Appendix A). In carrying out this task, the Royal Commission is directed to focus on systemic issues, be informed by an understanding of individual cases, and make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs. The Royal Commission does this by conducting public hearings, private sessions and a policy and research program.

Public hearings

A Royal Commission commonly does its work through public hearings. We are aware that sexual abuse of children has occurred in many institutions, all of which could be investigated in a public hearing. However, if the Royal Commission were to attempt that task, a great many resources would need to be applied over an indeterminate, but lengthy, period of time. For this reason the Commissioners have accepted criteria by which Senior Counsel Assisting will identify appropriate matters for a public hearing and bring them forward as individual 'case studies'.

The decision to conduct a case study is informed by whether or not the hearing will advance an understanding of systemic issues and provide an opportunity to learn from previous mistakes so that any findings and recommendations for future change that the Royal Commission makes will have a secure foundation. In some cases the relevance of the lessons to be learned will be confined to the institution that is the subject of the hearing. In other cases they will have relevance to many similar institutions in different parts of Australia.

Public hearings will also be held to assist in understanding the extent of abuse that may have occurred in particular institutions or types of institutions. This will enable the Royal Commission to understand the way in which various institutions were managed and how they responded to allegations of child sexual abuse. Where our investigations identify a significant concentration of abuse in one institution, the matter may be brought forward to a public hearing.

Public hearings also tell the story of some individuals, which will assist in a public understanding of the nature of sexual abuse, the circumstances in which it may occur and, most importantly, the devastating impact that it can have on some people's lives.

Private sessions

When the Royal Commission was appointed, it was apparent to the Australian Government that many people (possibly thousands) would wish to tell us about their personal history of child sexual abuse in an institutional setting. As a result, the Commonwealth Parliament amended the *Royal Commissions Act 1902* to create a process called a 'private session'.

A private session is conducted by a Commissioner and is an opportunity for a person to tell their story of abuse in a protected and supportive environment.

Policy and research

The Royal Commission has an extensive policy and research program that draws upon the findings made in public hearings and private sessions, as well as generating new research evidence.

Issues papers, roundtables and consultation papers are used by the Royal Commission to consult with government and non government representatives, survivors, institutions, experts, academics and advocacy and support groups. The broader community has an opportunity to contribute to our consideration of systemic issues and our responses.

The Royal Commission examines and synthesises the significant body of information and expertise identified through our activities. This informs the development of our recommendations.

This report

As set out by the Letters Patent, any report published prior to our final report, which is required to be submitted to the Governor-General by 15 December 2017, will be considered an interim report.

However, this report contains the Royal Commission's final recommendations on Working with Children Checks. It is based on laws, policies and information current as at 1 May 2015.

This report addresses paragraph (a) of the Letters Patent, which requires the Royal Commission to inquire into:

> *a. What institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future.*

The Royal Commission is examining what makes an organisation child-safe. Adequate recruitment, selection and screening practices are key elements of a child-safe organisation. Working with Children Checks are one tool within a broader suite of these practices that help to ensure the right people are selected to work with children. Working with Children Checks have been considered in public hearings conducted by the Royal Commission and have been a focus of investigation as part of our policy and research program.

The final recommendations in this report aim to strengthen the protection children receive through Working with Children Checks.

Executive summary

In Australia, each state and territory has its own scheme for conducting background checks for people seeking to engage in child-related work. These schemes, commonly known as Working with Children Checks (WWCCs) help ensure the right people are chosen to work or volunteer with children. They aim to do this by preventing people from working or volunteering with children if records indicate that they may pose an unacceptable level of risk to children.

This type of pre-employment screening for child-related work commenced in Australia in 2000, when New South Wales introduced its WWCC scheme. Since then, every jurisdiction has established some form of WWCC scheme.

WWCCs are one of a range of strategies needed to make organisations child-safe. They are one part of an organisation's recruitment, selection and screening practices. While an important tool, WWCCs – in the absence of broader child-safe strategies – do not make organisations safe for children. In fact, an over-reliance on WWCCs can be detrimental to children's safety. They can provide a false sense of comfort to parents and communities, and may cause organisations to become complacent due to the belief that people who have undergone WWCCs do not pose any risks to children – this is not the case.

WWCCs only detect people who have been reported previously, or come to the attention of authorities, for offending against children. However, many perpetrators of child sexual abuse have not been reported or convicted for past offences. This means that any risk they pose to children would not be detected via a WWCC.

WWCCs will only contribute to keeping children safe if they are used in the context of broader child-safe strategies, such as appropriate leadership, governance and culture; quality recruitment, selection and screening; training; effective child protection policies and procedures; and child-friendly practices.

We decided to examine the WWCC schemes because early in our work it became apparent that the schemes were not as effective as they could be at contributing to children's safety in organisations. We therefore looked at the schemes as they currently operate and considered whether, if strengthened, children could be afforded better levels of protection from the schemes. We concluded, overwhelmingly, that this was the case.

Each state and territory has its own scheme, and each of the eight schemes operates independently of the others. They are inconsistent and complex, and there is unnecessary duplication across the schemes. There is no integration of the schemes, and there is inadequate information sharing and monitoring of WWCC cardholders. These problems create a number of weaknesses:

- Each scheme defines who needs a check differently, such that you might require a WWCC in one jurisdiction but not in another despite engaging in the same type of work.
- Aside from criminal history, there are no mechanisms to share information between jurisdictions for the purposes of assessing WWCC applications.
- People are able to 'forum shop', whereby a person with adverse records in one jurisdiction may be able to obtain a clearance in another

jurisdiction where the adverse records are not available.
- Screening agencies do not have the capacity to access WWCC decisions or the status of WWCC cardholders from other jurisdictions.
- Once a person holds a WWCC, the continuous monitoring does not include monitoring of national criminal history records.
- WWCCs are not portable across jurisdictional borders.
- People and organisations working across jurisdictional borders find it challenging to comply with the varied and complex schemes.

Combined, these problems mean that the system is not providing the protection to children that it otherwise could.

The varied and non-integrated schemes mean that WWCCs are not portable across borders. A person must apply for a WWCC in each state or territory in which they intend to engage in child-related work. Organisations and people working across borders report substantial challenges in working with the varied schemes, including extra costs and difficulty understanding and complying with the various laws.

These problems are not new and have been recognised by governments for some time. We believe that the absence of any action to fix these problems is a significant and inexcusable failure on the part of governments – these problems cannot continue to be ignored. Child protection is paramount and, as outlined above, there are obvious opportunities to strengthen this regime to better contribute to making organisations child-safe.

We have determined that implementing a national approach to WWCCs is overdue. For too long, governments have favoured maintaining their own systems over working together to achieve a more nationally consistent approach. We have therefore recommended a national model for WWCCs, by introducing consistent standards and establishing a centralised WWCC database to facilitate cross-border information sharing. Implementing these recommendations will improve the protection afforded to children by:

- creating a standardised approach so that key aspects of WWCC schemes are dealt with in the same way (for example, who needs a check and how records are assessed)
- allowing WWCCs to be portable across jurisdictions
- assisting organisations and people working across borders to comply with the schemes by reducing their complexity and duplication
- eliminating the opportunity for forum shopping, whereby potential perpetrators can work in locations with less rigorous checking or where access to adverse records is limited
- improving information sharing so that there is continuous monitoring of WWCC cardholders' national criminal history records and visibility of WWCC decisions across all jurisdictions.

In addition to these systemic improvements, our recommendations will also:

- require all religious leaders and officers or personnel of religious organisations to have WWCCs
- deny people convicted of certain serious offences against children the

right to appeal against adverse WWCC decisions, in some circumstances
- stop some jurisdictions placing conditions on WWCCs (eg supervision, role-based clearances), so that a person is either cleared or not cleared for child-related work.

We are aware that some stakeholders question the efficacy of the WWCC scheme because of the cost of its operation, the significant number of people who are required to hold WWCCs and the small number of people it prevents from working with children. We have not been able to draw conclusions about the overall effectiveness of WWCCs because of the limited research and evidence available. However, we share the view held by the majority of government and non-government stakeholders whom we consulted about WWCCs: that they deliver unquestionable benefits to the safeguarding of children.

We have made the following recommendations to strengthen the WWCC regime in Australia.

Recommendations

General

1. State and territory governments should:

    a. within 12 months of the publication of this report, amend their WWCC laws to implement the standards identified in this report

    b. once the standards are implemented, obtain agreement from the Council of Australian Governments (COAG), or a relevant ministerial council, before deviating from or altering the standards in this report, adopting changes across all jurisdictions

    c. within 18 months from the publication of this report, amend their WWCC laws to enable clearances from other jurisdictions to be recognised and accepted.

2. The South Australian Government should, within 12 months of the publication of this report, replace its criminal history assessments with a WWCC scheme that incorporates the standards set out in this report.

3. The Commonwealth Government should, within 12 months of the publication of this report:

    a. facilitate a national model for WWCCs by:

        i. establishing a centralised database, operated by CrimTrac, that is readily accessible to all jurisdictions to record WWCC decisions

        ii. together with state and territory governments, identifying consistent terminology to capture key WWCC decisions (for example, refusal, cancellation, suspension and grant) for recording into the centralised database

        iii. enhancing CrimTrac's capacity to continuously monitor WWCC cardholders' national criminal history records

    b. explore avenues to make international records more accessible for the purposes of WWCCs

    c. identify and require all Commonwealth Government personnel, including contractors, undertaking child-related work, as defined by the child-related work standards set out in this report, to obtain WWCCs.

4. The Commonwealth, state and territory governments should, within 12 months of the publication of this report:

    a. agree on a set of standards or guidelines to enhance the accurate and timely recording of information by state and territory police into CrimTrac's system

    b. review the information they have agreed to exchange under the National Exchange of Criminal History Information for People Working with Children (ECHIPWC), and

establish a set of definitions for the key terms used to describe the different types of criminal history records so they are consistent across the jurisdictions (these key terms include pending charges, non-conviction charges and information about the circumstances of an offence)

c. take immediate action to record into CrimTrac's system historical criminal records that are in paper form or on microfilm and which are not currently identified by CrimTrac's initial database search

d. once these historical criminal history records are entered into CrimTrac's system by all jurisdictions, check all WWCC cardholders against them through the expanded continuous monitoring process.

Standards

Child-related work

5. State and territory governments should amend their WWCC laws to incorporate a consistent and simplified definition of child-related work, in line with the recommendations below.

6. State and territory governments should amend their WWCC laws to provide that work must involve contact between an adult and one or more children to qualify as child-related work.

7. State and territory governments should:

   a. amend their WWCC laws to provide that the phrase 'contact with children' refers to physical contact, face-to-face contact, oral communication, written communication or electronic communication

   b. through COAG, or a relevant ministerial council, agree on standard definitions for each kind of contact and amend their WWCC laws to incorporate those definitions.

8. State and territory governments should:

   a. amend their WWCC laws to provide that contact with children must be a usual part of, and more than incidental to, the child-related work

   b. through COAG, or a relevant ministerial council, agree on standard definitions for the phrases 'usual part of work' and 'more than incidental to the work', and amend their WWCC laws to incorporate those definitions.

9. State and territory governments should amend their WWCC laws to specify that it is irrelevant whether the contact with children is supervised or unsupervised.

10. State and territory governments should amend their WWCC laws to provide that a person is engaged in child-related work if they are engaged in the work in any capacity and whether or not for reward.

11. State and territory governments should amend their WWCC laws to provide that work that is undertaken under an arrangement for a personal or domestic purpose is not child-related, even if it would otherwise be so considered.

12. State and territory governments should amend their WWCC laws to:

    a. define the following as child-related work:

        i. accommodation and residential services for children, including overnight excursions or stays
        ii. activities or services provided by religious leaders, officers or personnel of religious organisations
        iii. childcare or minding services
        iv. child protection services, including out-of-home care (OOHC)
        v. clubs and associations with a significant membership of, or involvement by, children
        vi. coaching or tuition services for children
        vii. commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions
        viii. disability services for children
        ix. education services for children
        x. health services for children
        xi. justice and detention services for children, including immigration detention facilities where children are regularly detained
        xii. transport services for children, including school crossing services
        xiii. other work or roles that involve contact with children that is a usual part of, and more than incidental to, the work or roles.

    b. require WWCCs for adults residing in the homes of authorised carers of children

    c. remove all other remaining categories of work or roles.

13. State and territory governments, through COAG, or a relevant ministerial council, should agree on standard definitions for each category of child-related work and amend their WWCC laws to incorporate those definitions.

Exemptions

14. State and territory governments should amend their WWCC laws to:

    a. exempt:

        i. children under 18 years of age, regardless of their employment status
        ii. employers and supervisors of children in a workplace, unless the work is child-related
        iii. people who engage in child-related work for seven days or fewer in a calendar year, except in respect of overnight excursions or stays
        iv. people who engage in child-related work in the same capacity as the child
        v. police officers, including members of the Australian Federal Police
        vi. parents or guardians who volunteer for services or activities that are usually provided to their children, in respect of that activity, except in respect of:

            a) overnight excursions or stays
            b) providing services to children with disabilities, where the services involve close, personal contact with those children

    b. remove all other exemptions and exclusions
    c. prohibit people who have been denied a WWCC, and subsequently not granted one, from relying on any exemption.

15. State and territory governments, through COAG, or a relevant ministerial council, should agree on standard definitions for each exemption category and amend their WWCC laws to incorporate those definitions.

Offences

16. State and territory governments should amend their WWCC laws to incorporate a consistent and simplified list of offences, including:

    a. engaging in child-related work without holding, or having applied for, a WWCC
    b. engaging a person in child-related work without them holding, or having applied for, a WWCC
    c. providing false or misleading information in connection with a WWCC application
    d. applicants and/or WWCC cardholders failing to notify screening agencies of relevant changes in circumstances
    e. unauthorised disclosure of information gathered during the course of a WWCC.

Criminal history information

17. State and territory governments should amend their WWCC laws to include a standard definition of criminal history, for WWCC purposes, comprised of:

    a. convictions, whether or not spent

    b. findings of guilt that did not result in a conviction being recorded

    a. charges, regardless of status or outcome, including:

        i. pending charges – that is, charges laid but not finalised

        ii. charges disposed of by a court, or otherwise, other than by way of conviction (for example, withdrawn, set aside or dismissed)

        iii. charges that led to acquittals or convictions that were quashed or otherwise over-turned on appeal

    for all offences, irrespective of whether or not they concern the person's history as an adult or a child and/or relate to offences outside Australia.

18. State and territory governments should amend their WWCC laws to require police services to provide screening agencies with records that meet the definition of criminal history records for WWCC purposes and any other available information relating to the circumstances of such offences.

Disciplinary or misconduct information

19. State and territory governments should amend their WWCC laws to:

    a. require that relevant disciplinary and/or misconduct information is checked for all WWCC applicants

    b. include a standard definition of disciplinary and/or misconduct information that encompasses disciplinary action and/or findings of misconduct where the conduct was against, or involved, a child, irrespective of whether this information arises from reportable conduct schemes or other systems or bodies responsible for disciplinary or misconduct proceedings

    c. require the bodies responsible for the relevant disciplinary and/or misconduct information to notify their respective screening agencies of relevant disciplinary and/or misconduct information that meets the definition.

Response to records returned

20. State and territory governments should amend their WWCC laws to respond to records in the same way, specifically that:

    a. the absence of any relevant criminal history, disciplinary or misconduct information in an applicant's history leads to an automatic grant of a WWCC

    b. any conviction and/or pending charge in an applicant's criminal history for the following categories of offence leads to an automatic WWCC refusal, provided the applicant was at least 18 years old at the time of the offence:

        i. murder of a child

        ii. manslaughter of a child

        iii. indecent or sexual assault of a child

        iv. child pornography–related offences

        v. incest where the victim was a child

        vi. abduction or kidnapping of a child

        vii. animal-related sexual offences.

    c. all other relevant criminal, disciplinary or misconduct information should trigger an assessment of the person's suitability for a WWCC (consistent with the risk assessment factors set out below).

21. State and territory governments should amend their WWCC laws to specify that relevant criminal records for the purposes of recommendation 20(c) include but are not limited to the following:

    a. juvenile records and/or non-conviction charges for the offence categories specified in recommendation 20(b)

    b. sexual offences, regardless of whether the victim was a child and including offences not already covered in recommendation 20(b)

    c. violent offences, including assaults, arson and other fire-related offences, regardless of whether the victim was a child and including offences not already covered in recommendation 20(b)

    d. child welfare offences

    e. offences involving cruelty to animals

    f. drug offences.

22. The Commonwealth Government, through COAG, or a relevant ministerial council, should take a lead role in identifying the specific criminal offences that fall within the categories specified in recommendations 20(b) and 21.

Assessing risk

23. State and territory governments should amend their WWCC laws to specify that the criteria for assessing risks to children include:

    a. the nature, gravity and circumstances of the offence and/or misconduct, and how this is relevant to children or child-related work

    b. the length of time that has passed since the offence and/or misconduct occurred

    c. the age of the child

    d. the age difference between the person and the child

    e. the person's criminal and/or disciplinary history, including whether there is a pattern of concerning conduct

    f. all other relevant circumstances in respect of their history and the impact on their suitability to be engaged in child-related work.

24. State and territory governments should amend their WWCC laws to expressly provide that, in weighing up the risk assessment criteria, the paramount consideration must always be the best interests of children, having regard to their safety and protection.

Eligibility to work while an application is assessed

25. State and territory governments should amend their WWCC laws to permit WWCC applicants to begin child-related work before the outcome of their application is determined, provided the safeguards listed below are introduced.

Applicants

    a. applicants must submit a WWCC application to the appropriate screening agency before beginning child-related work and not withdraw the application while engaging in child-related work

    b. applicants must provide a WWCC application receipt to their employers before beginning child-related work

Other safeguards

c. employers must cite application receipts, record application numbers and verify applications with the relevant screening agency

d. there must be capacity to impose interim bars on applicants where records are identified that may indicate a risk and require further assessment.

26. State and territory governments that do not have an online WWCC processing system should establish one.

27. State and territory governments should process WWCC applications within five working days, and no longer than 21 working days for more complex cases.

Clearance types

28. All state and territory governments should amend their WWCC laws to specify that:

a. WWCC decisions are based on the circumstances of the individual and are detached from the employer the person is seeking to work for, or the role or organisation the person is seeking to work in

b. the outcome of a WWCC is either that a clearance is issued or it is not; there should be no conditional or different types of clearances

c. volunteers and employees are issued with the same type of clearance.

Appeals

29. All state and territory governments should ensure that any person the subject of an adverse WWCC decision can appeal to a body independent of the WWCC screening agency, but within the same jurisdiction, for a review of the decision, except persons who have been convicted of one of the following categories of offences:

- murder of a child
- indecent or sexual assault of a child
- child pornography-related offences
- incest where the victim was a child

and

a. received a sentence of full time custody for the conviction, such persons being permanently excluded from an appeal

or

b. by virtue of that conviction, the person is subject to an order that imposes any control on the person's conduct or movement, or excludes the person from working with children, such persons being excluded from an appeal for the duration of that order.

Notwithstanding the above any person may bring an appeal in which they allege that offences have been mistakenly recorded as applying to that person.

Portability

30. Subject to the implementation of the standards set out in this report, all state and territory governments should amend their WWCC laws to enable WWCCs from other jurisdictions to be recognised and accepted.

Duration and continuous monitoring

31. Subject to the commencement of continuous monitoring of national criminal history records, state and territory governments should amend their WWCC laws to specify that:

    a. WWCCs are valid for five years

    b. employers and WWCC cardholders engaged in child-related work must inform the screening agency when a person commences or ceases being engaged in specific child-related work

    c. screening agencies are required to notify a person's employer of any change in the person's WWCC status.

Monitoring compliance

32. All state and territory governments should grant screening agencies, or another suitable regulatory body, the statutory power to monitor compliance with WWCC laws.

33. All state and territory governments should ensure their WWCC laws include powers to compel the production of relevant information for the purposes of compliance monitoring.

Governance

34. The Commonwealth, state and territory governments should:

    a. through COAG, or a relevant ministerial council, adopt the standards and set a timeframe within which all jurisdictions must report back to COAG, or a relevant ministerial council, on implementation

    b. establish a process whereby changes to the standards or to state and territory schemes need to be agreed to by COAG, or a relevant ministerial council, and must be adopted across all jurisdictions.

35. The Commonwealth, state and territory governments should provide an annual report to COAG, or a relevant ministerial council, for three years following the publication of this report, to be tabled in the parliaments of all nine jurisdictions, detailing their progress in implementing the recommendations in this report and achieving a nationally consistent approach to WWCCs.

36. COAG, or a relevant ministerial council, should ensure a review is made after three years of the publication of this report, of the state and territory governments' progress in achieving consistency across the WWCC schemes, with a view to assessing whether they have implemented the Royal Commission's recommendations.

PART I
OVERVIEW

1 Introduction

Each state and territory in Australia has a scheme dedicated to screening people who are seeking to engage in child-related work. Commonly known as Working with Children Checks (WWCCs), these schemes check a person's records, such as their criminal history, to assess whether they would pose a risk to children if permitted to engage in child-related work. These checks are one of a range of elements that combine to make organisations child-safe and help ensure the right people are chosen to work with children.

Early in our work, we were struck by the variation across, and lack of integration between, these schemes. Consequently, we decided to examine them in more detail so that we could determine whether strengthening Australia's WWCC regime could protect children better.

We found that the eight schemes, which operate independently of each other, are inconsistent and complex, and contain unnecessary duplication. We found that they are impeded by inadequate information sharing and the lack of continuous monitoring of people with WWCCs. We also determined that the various schemes and underpinning laws are difficult to understand and apply, make compliance difficult, and have loopholes that can be exploited. The overall effect is the weakening of the protection children receive vis-à-vis people engaged in child-related work.

Our examination led us to conclude that there is a need for a nationally consistent approach to WWCCs. While governments themselves have recognised this need, they have not taken action to achieve this. We have therefore made a number of recommendations in this report to:

- align each of the WWCC schemes through introducing consistent standards to key aspects of the schemes
- create a national system by establishing a centralised database, improving information sharing and expanding the continuous monitoring of WWCC cardholders' national criminal records.

This report details our examination of Australia's WWCC schemes and our recommendations for strengthening the schemes and the protection they afford children.

1.1 Our work on WWCCs

Why we examined this issue

We, the Royal Commissioners, have been tasked with examining institutional responses to child sexual abuse. As part of this task, we have been asked to examine what institutions and governments should do to protect children more effectively against sexual abuse in institutional contexts.[1]

Central to this is examining effective ways to make organisations safe for children. According to the expert view of the Australian Children's Commissioners and Guardians, a 'child-safe organisation' is one that consciously and systematically:

- creates conditions that reduce the likelihood of harm to children
- creates conditions that increase the likelihood of identifying harm
- responds appropriately to any disclosures, allegations or suspicions of harm.[2]

WWCCs are an important tool – in a suite of recruitment, selection and screening practices – used in Australia to help make institutions safe for children and protect them against sexual (and other forms of) abuse. They seek to do this by requiring people to undergo screening to commence child-related work and prohibiting people from such work if, as a result of the screening, they are determined to pose an unacceptable risk of harm to children.

Our early public hearings highlighted the importance of WWCCs in helping to prevent institutional child sexual abuse. Yet, they also raised questions about the operation and effectiveness of some of Australia's WWCC schemes. We also received early feedback from some stakeholders regarding the challenges and inconsistencies that arise from having different WWCC schemes in each state and territory. We therefore considered the operation and effectiveness of the eight WWCC schemes currently operating in Australia.

Key issues examined

We heard from a broad range of government and non-government stakeholders who support the use of WWCCs as a tool to help prevent institutional child sexual abuse.[3] This view is reflected in the literature and research, particularly when WWCCs are combined with other child safe strategies.[4]

Given this broad support and the established WWCC schemes in each state and territory, we focused our inquiry on how the schemes, as they operate presently, could be improved to strengthen protection against child sexual abuse.

It became apparent through our work that there are several issues related to WWCCs that need to be addressed, including:

- the inconsistent protection children receive against sexual abuse in institutional contexts as a result of the varied requirements of, and differences between, the state and territory WWCC schemes
- the fact that WWCCs are not portable across jurisdictions
- the compliance challenges people and institutions face in navigating inconsistent WWCC laws, when operating across borders
- the opportunities for perpetrators to forum shop for WWCCs in jurisdictions with less stringent screening processes or where certain background records are less likely to be identified and assessed
- the limited information sharing and capacity to monitor records across jurisdictions.

To address each of these issues, we directed our attention and resources to two main areas of work, as outlined below.

A national approach to WWCCs

First, we considered whether or not a national approach would address the issues identified above and, in the process, strengthen the capacity of WWCCs to prevent institutional child sexual abuse. In doing so, we considered the type of national approach that would best achieve this goal. In addition, irrespective of the approach chosen, we examined which aspects or elements of the current schemes are crucial for ensuring WWCCs are as effective as possible in preventing child sexual abuse, and which should therefore be the subject of consistent standards.

Key standards

Second, after identifying those aspects of the current schemes that we considered should be the subject of standards, we set out to identify their content and scope. This required us to consider a number of questions about who should need a WWCC, how applications should be assessed, the different outcomes of WWCCs, and the rights and obligations of people with a valid WWCC.

Needing a WWCC	• Who should and should not need to obtain a WWCC? • What offences should apply when engaging in child-related work without a valid WWCC?
Assessing WWCCs	• What types of information should be included in WWCCs, and how should this information be assessed? • How could jurisdictions better share information? • Should people be able to engage in child-related work while their WWCC applications are pending?
WWCC outcomes	• What types of clearances should successful WWCC applicants receive? • How can jurisdictions' access to WWCC decisions be improved? • When should WWCC applicants be allowed to appeal adverse decisions?
Holding WWCCs	• Should WWCCs be portable across jobs and jurisdictions? • For how long should WWCCs be valid? • What types of information should be monitored continuously? • How should compliance with WWCC laws be monitored?

Links with our work on child-safe organisations

It is widely recognised that WWCCs provide a minimum check[5] and are but one of a suite of strategies that can be used to ensure institutions are child-safe.[6] For example, a scoping review that we commissioned found that the considered evaluations of WWCCs 'emphasised that criminal background checks appear to be universally considered as an important component of pre-employment screening practices. However, such statements were almost never made without emphasising the limited effectiveness of using criminal background checks as the only pre-employment screening practice to safeguard children from sexual abuse by staff'.[7] Our work on this issue has therefore been informed by our broader work on child-safe organisations. This work includes identifying key elements of child-safe organisations and how they should be implemented in practice.

Limitations of our work

Our work on WWCCs was limited by our terms of reference and the research and evidence available.

We considered work with children, but not other vulnerable people

In line with our terms of reference, we considered WWCCs as a pre-employment screening tool for *child*-related work. The schemes in the Australian Capital Territory and Tasmania, known as Working with Vulnerable People Checks (WWVPs), assess a person's suitability to work with vulnerable people. While these checks cover child-related work, they are not specific to that area. Accordingly, we limited our examination of the Australian Capital Territory and Tasmanian WWVP schemes to those aspects concerning work with children. We recognise the value of pre-employment screening for work with vulnerable people other than children, but it is up to the state and territory governments to decide whether to extend their schemes to cover such work. Moreover, the Australian Capital Territory and Tasmanian governments will need to consider whether and how the recommendations and standards in this report apply to 'disadvantaged adults'[8], as well as children.

We focused on how WWCCs can help to prevent child sexual abuse

In line with our terms of reference, our work focused on how WWCCs can be used to address institutional child sexual abuse. Even so, many of the recommendations and standards in this report are relevant to other forms of child abuse. This is because WWCCs aim to ensure that children are protected against all abuse and operate in the same way irrespective of the type of child abuse they seek to prevent. Additionally, tools aimed at preventing child sexual abuse, such as WWCCs, need to be considered in the context of broader child-safe strategies, to ensure they do not impede the prevention of other forms of child abuse.

We faced challenges due to the limited research and evidence on WWCCs

We faced challenges in examining WWCCs due to the limited research and evidence on this tool, including in relation to best practice. While we acknowledge this limitation, we are of the view that it should not impede progress in addressing the aforementioned issues with the current schemes (for example, the lack of portability and limited information sharing across jurisdictions), particularly given there has been a longstanding agreement among government and non-government stakeholders that these issues need to be addressed.

Greater safeguards are needed for children while appropriate mechanisms are put in place to identify and gather further evidence to inform best practice in this area. Moreover, in addition to the research and evidence that is available, we were able to reach an informed view about ways to strengthen WWCCs using a range of different methodological approaches, which are set out in section 1.2 below.

We did not delve into other schemes or policy issues

There are a range of other schemes, policy issues and services that intersect with or relate

to WWCCs that are mentioned throughout this report. For example, the reportable conduct scheme in New South Wales requires some organisations to notify the NSW Ombudsman of certain allegations and convictions against employees where children were involved. This scheme is relevant to the WWCC scheme because the screening agency in New South Wales checks these records as part of the WWCC. Another example is kinship care, a form of out-of-home care that relates to the WWCC in so far as people who provide this form of care to children will usually need to obtain a WWCC.

We did not examine these related schemes or issues in detail for the purposes of this report. We only considered these issues to the extent that they apply to WWCCs. These schemes or issues may be the subjects of later reports by the Royal Commissioners.

1.2 This report

How we prepared this report

In preparing this report, we considered the WWCC schemes; input from experts and stakeholders familiar with the operation of WWCCs; information from private sessions, written accounts and public hearings; and research and other information on WWCCs.

Analysis of WWCC schemes

We analysed the WWCC schemes in each state and territory, paying particular attention to the laws and regulations underpinning those schemes. In doing so, we considered:

- how state and territory governments currently approach WWCCs
- whether there is a consensus or majority approach to specific aspects of WWCCs
- the approach adopted in jurisdictions whose WWCC schemes are more developed.

We also considered academic critiques, formal reviews and audits of the various schemes.[9]

Input from experts and stakeholders

We received 80 submissions in response to our WWCC issues paper, released in June 2013. These submissions informed our thinking and helped us to identify the problems with the WWCC regime in Australia. These submissions are publicly available on our website. [10]

In addition, representatives from 23 government and non-governments organisations attended our Canberra roundtable on WWCCs.[11] Key themes addressed through the submissions and roundtable discussions included:

- the essential elements of WWCCs, and their role in preventing child sexual abuse
- the strengths and weaknesses of current approaches to WWCCs
- whether there should be a national approach to WWCCs, and its nature and scope
- how to improve information sharing between jurisdictions.

In August 2013, we released an issues paper on child-safe organisations. Many responses

addressed WWCCs by placing them in the broader context of child-safe organisations.[12]

In January 2014, we invited governments and other key jurisdictional stakeholders to respond to a consultation paper on WWCCs. Throughout our work, we also sought the views of children's commissioners, screening agencies and CrimTrac by way of targeted consultations and requests for information.

Private sessions and written accounts

Through private sessions and written accounts, the Royal Commissioners heard from some victims and survivors about their experiences with WWCCs. Many noted concerns about the absence of any WWCC scheme at the time of their abuse, while others shared their views about how they were affected by the schemes in place when they were abused in institutions. Some even shared their individual experiences by responding to our WWCC issues paper.

Public hearings

Our public hearings afforded us a further opportunity to examine the various WWCC schemes.

Case study number one[13] showed problems arising from the WWCC screening agency communicating directly with WWCC applicant Steven Larkins about his clearance and the concerns that the screening agency had identified. Mr Larkins was able to deceive his employer and the screening agency, which meant that the risks he posed while working with children were concealed. This problem has been rectified in New South Wales by introducing online verification processes.

Case studies have highlighted the importance of having WWCC schemes in place. For example, case study number nine[14] showed what can happen when people are employed without adequate background and criminal history checks. In this case, although there was no obligation to conduct a criminal history check at the time, Mr Perkins was employed as a bus driver at St Ann's Special School, without a check being conducted of his criminal history. A check of his history would likely have revealed his previous sexual offences against children. Adequate background and criminal history checking is an important part of ensuring organisations are child-safe and helps to guard against and prevent abuse to children by known offenders.

Aspects of WWCC schemes have also been raised in other public hearings and have contributed to our work on and understanding of this regime.

Research

We contracted the Parenting Research Centre and the University of Melbourne to undertake a literature review on evaluations of pre-employment screening practices for child-related work that aim to prevent child sexual abuse.[15] We also reviewed literature examining a range of issues related to WWCCs. In addition, we analysed WWCC data from July 2008 to June 2013 from the Northern Territory, Queensland, Victoria and Western Australia.[16]

How we use certain terms

Child

In line with our terms of reference, the term 'child' has the same meaning in this report as under the *Convention on the Rights of the Child*[17] – that is, a person under 18 years of age.[18]

Child-related work

The term 'child-related work' is an overarching term used in this report to refer to the definitions of various terms in WWCC laws that spell out who does and does not need a WWCC (for example, contact with children, engagement or work). Although the meaning of child-related work differs across the WWCC schemes, when used in this report, the term mainly refers to work, whether on a paid or voluntary basis, that usually involves contact with children that is more than incidental to the work. The term is discussed further in Chapter 5 of this report.

Child sexual abuse in institutional contexts

As noted above, WWCCs help to protect children against sexual abuse in institutional contexts. The term 'child sexual abuse' is used in this report to refer to:

> any act that exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards. Sexually abusive behaviours can include the fondling of genitals; masturbation; oral sex; vaginal or anal penetration by a penis, finger or any other object; fondling of breasts; voyeurism; exhibitionism; and exposing the child to or involving the child in pornography. It includes child grooming, which refers to actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child, to lower the child's inhibitions in preparation for sexual activity with the child.[19]

Our terms of reference specify that child sexual abuse happens in an institutional context if, for example, the abuse:

- happens on a premises of an institution or where its activities occur, or in connection with its activities
- is engaged in by an institution's official in circumstances where the institution has, or its activities have, in any way contributed to the risk of abuse
- happens in any other circumstances where an institution is, or should be treated as being, responsible for adults having contact with children.[20]

Pre-employment screening

Pre-employment screening is a common tool to obtain or verify information about job applicants and assess their suitability for the role at hand.[21] The types of screening used in Australia vary widely and include criminal history checks, psychometric testing, employment verification and drug testing. In line with our terms of reference, the Royal Commission has focused specifically on pre-employment screening for child-related work.

Unless otherwise specified, the phrase 'Working with Children Checks' and its abbreviated form WWCC are used in this report as an umbrella term to refer to pre-employment screening for child-related work. This includes the screening schemes in the Australian Capital Territory and Tasmania, which are called WWVPs, and in South Australia, which are called criminal history assessments.

How this report is structured

The WWCC report consists of four parts.

Overview

Part I explains why we examined WWCCs and outlines our work on this issue. In addition, it provides an overview of the eight WWCC schemes operating in Australia. In doing so, it highlights the key features of those schemes as well as the key similarities and differences between them.

A national WWCC scheme

Part II explores the need for a national approach to WWCCs and how such an approach could best be achieved in Australia. It outlines our view that a national approach to the WWCC scheme is needed in Australia to:

- ensure children receive equal legal protection against the risk of sexual abuse in institutional contexts by people engaged in child-related work
- allow the checks to be portable across jurisdictions
- lessen compliance challenges, including for people and services operating in more than one jurisdiction
- eliminate the risk of forum shopping
- improve information sharing between jurisdictions.

Standards

Part III recommends a number of key standards that we believe should be incorporated into the existing WWCC schemes to bring them to a consistent standard. The recommended standards concern four main aspects of WWCCs:

- needing a WWCC
- assessing information for WWCCs
- WWCC outcomes
- holding WWCCs.

Impact, benefits and implementing recommendations

Lastly, Part IV outlines the potential impacts and benefits of the recommendations made in this report. It also identifies timeframes for their implementation and makes additional recommendations regarding governance arrangements and monitoring of progress.

2 WWCCs in Australia

2.1 Nature, objectives and limitations

Nature

All Australian states and territories require people seeking to work with children to undergo some degree of pre-employment screening, referred to as WWCCs. Broadly speaking, the schemes established to regulate this screening specify:

- who does and does not need a WWCC, and the application process
- the types of information assessed and the processes for determining risks to children
- the outcomes of WWCC applications (for example, clearances or bars)
- the rights and obligations of WWCC cardholders and the organisations employing them, including with respect to the continuous monitoring of relevant records.

Needing a WWCC

Each scheme identifies who does and does not need a WWCC. In general, people need a WWCC if they will be engaged in child-related work. Whether or not work is considered to be child-related usually depends on the nature of the contact with children (for example, physical); the type of engagement (for example, paid work); the nature of the work (for example, school crossing services or ministers of religion); and the exemptions available.

Each scheme also outlines the application process and whether applicants can begin child-related work while their applications are pending. They also establish a number of offences for engaging in child-related work without a valid WWCC.

Assessing WWCCs

Each scheme sets out which types of information are considered to assess the level of risk applicants would pose to children if they were engaged in child-related work. This information gives an indication of applicants' suitability to engage in child-related work, but is not intended to provide a comprehensive assessment of the risk they pose to children.

All jurisdictions consider applicants' criminal history information, although the specific types of information vary (for example, juvenile records). Some jurisdictions also examine disciplinary information concerning acts against children.

Applications are usually assessed in one of three ways:

- Applicants are automatically authorised to engage in child-related work if initial checks return no criminal history and/or disciplinary information.
- Applicants' suitability to work with children is assessed if initial checks return certain criminal history and/or disciplinary information (for example, child welfare offences).
- Applicants are automatically refused WWCCs if initial checks return certain types of criminal records (for example, serious child sexual offences).

WWCC outcomes

The various WWCC schemes set out the different outcomes of WWCC applications.

Applicants found to be suitable to engage in child-related work, either automatically or following an assessment, are issued WWCCs. This means they are cleared to engage in child-related work for the specified period. In some jurisdictions, WWCCs can be limited to specific roles or subject to conditions (for example, supervised contact with children). Some jurisdictions issue different classes of WWCCs, depending on whether successful applicants are employees or volunteers.

Applicants found to be unsuitable for child-related work are not issued WWCCs and, as such, are not authorised to engage in such work. Most applicants can appeal.[22]

Holding WWCCs

All WWCC schemes identify the rights and obligations of WWCC cardholders and the organisations that employ them. For example, the various schemes specify the duration of checks – ranging between two and five years, depending on the jurisdiction – and whether and how WWCC cardholders' records are monitored.

Objectives

Child safety and wellbeing

Two key objectives of WWCCs are to help ensure institutions are safe for children and protect them against sexual (and other forms of) abuse.[23] WWCCs seek to do this by minimising the likelihood that children will be exposed regularly to people who pose a risk to their safety and wellbeing.[24] This objective is consistent with the *Convention on the Rights of the Child,* which requires the Australian Government to ensure:

- the best interests of children are a primary consideration in all actions concerning them
- children are afforded the protection and care that is necessary for their wellbeing
- institutions responsible for the care or protection of children conform with relevant standards, including on safety, the suitability of staff and supervision.[25]

A further, related objective of WWCCs is to help create and maintain child-safe institutions. WWCCs seek to meet this objective by prohibiting those who are determined to be unsuitable for child-related work from working for institutions that provide services to children. While difficult to measure, there is support for the view that WWCCs also have a deterrent effect in that they deter child sex abusers and people with a concerning history with children from seeking child-related work.[26]

Fair treatment and privacy

WWCCs seek to strike an appropriate balance by ensuring people are not unfairly prevented from engaging in child-related work where there is no identified risk to children.[27] The WWCC laws in each state and territory also aim to protect WWCC applicants' privacy.

Limitations

Although WWCCs can help to protect children against sexual abuse in institutional contexts, there are limits to what they can achieve as well as to their effectiveness. It is important that these limitations are understood, so they can be addressed, wherever possible, and 'the community is not misled about the effectiveness of strategies to reduce abuse dangers'.[28] In the absence of a range of measures being implemented to ensure the safety of children in organisations, WWCCs can provide false comfort to the community that organisations are child-safe.

Risk is assessed based only on known reports of child sexual abuse

Decisions about whether WWCC applicants are suitable to engage in child-related work are based on criminal history and, sometimes, disciplinary information. The existence of that information depends on abuse being reported to the appropriate authorities (such as police and disciplinary bodies). Yet, historically, many instances of sexual abuse have not been reported.[29] This means that screening agencies do not always have access to the information they need to make accurate risk assessments and may, consequently, issue WWCCs to people who have abused children in the past. Additionally, it is important to note that research has indicated that the majority of perpetrators have not been convicted of child abuse in the past, meaning that WWCCs would have limited effectiveness in protecting children against those people.[30]

Child-safe strategies are also needed

There are a number of steps institutions must take before they engage someone in child-related work. Ensuring preferred candidates have been assessed as suitable for child-related work and issued WWCCs is only one such step. Institutions are not absolved from their responsibility to assess or monitor the suitability of their staff members or volunteers just because they have WWCCs. They must also implement a broader suite of strategies that seek to ensure their organisations are child-safe. For instance, they must also verify the identity, qualifications and professional registration of job applicants, and conduct stringent and careful reference checks.

As noted in Chapter 1, we are also currently considering what makes organisations child-safe. Further discourse on complementary strategies will be provided in future reports on child-safe organisations more generally.

2.2 Current approaches

Types of pre-employment screening

Australia has three types of checks for child-related work:

- WWCCs
- WWVPs
- criminal history assessments.[31]

WWCCs

WWCCs involve checking a person's criminal history and, in most cases, disciplinary information to determine their suitability to engage in child-related work. Successful applicants are granted a clearance, which they can use to engage in child-related work for a specified period. The most common type of check in Australia, WWCCs are used in New South Wales, the Northern Territory, Queensland, Victoria and Western Australia.

WWVPs

WWVPs are similar to WWCCs, but assess people's suitability to work with vulnerable people in regulated activities. Under these schemes, children and disadvantaged adults (for example, adults with disability and adults who cannot communicate in English) are considered vulnerable people. The Australian Capital Territory and Tasmanian governments have both implemented WWVP schemes.

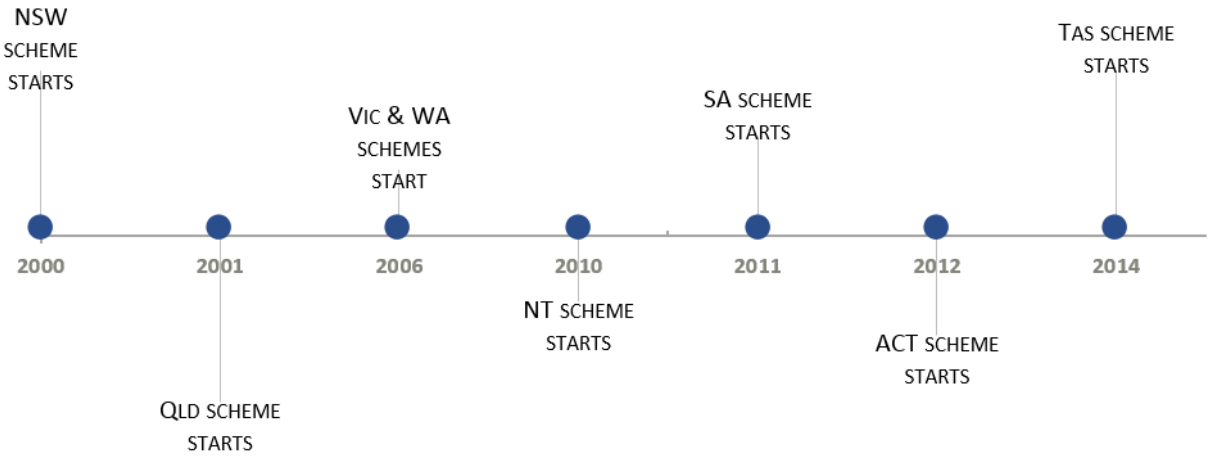
Criminal history assessments

South Australia is the only jurisdiction that uses criminal history assessments for child-related work. Under this type of check, certain organisations must ensure criminal history assessments are conducted before engaging people to work with children in 'prescribed positions'. Unlike other checks, criminal history assessments are a point-in-time check only. Criminal history records are therefore not monitored on an ongoing basis, and people must be screened each time they begin working with children in a prescribed position.

State and territory WWCC schemes

WWCCs are a relatively new child protection tool, with Australia's first WWCC scheme commencing in New South Wales in 2000. All other jurisdictions have since introduced schemes to screen people for child-related work. Tasmania was the last jurisdiction to do so, with its scheme commencing in 2014.

Table 1 – WWCC scheme commencement dates



The core elements of each WWCC scheme are broadly similar. Even so, each scheme has distinct requirements and operates in a particular way. An example is the varied requirements throughout Australia regarding who does and does not need to be screened.

A person wishing to engage in child-related work and/or an organisation where child-related work is undertaken must comply with the WWCC law in the state or territory in which they operate. For example, although there is no Commonwealth WWCC scheme, relevant personnel of Commonwealth Government departments, such as the Department of Immigration, must comply with the WWCC laws of the particular state or territory in which they work. Likewise, organisations like The Salvation Army that operate in multiple states and/or territories must comply with the WWCC laws in each of those jurisdictions.

This section provides an overview of each WWCC scheme, highlighting their key features, how they operate and some of the implications for protecting children against abuse.

New South Wales

New South Wales' WWCC scheme commenced in 2000 and was revised considerably in 2012 following several reviews.[32] The changes took effect in June 2013, and the revised scheme should be implemented fully by March 2018.

Law	*Child Protection (Working with Children) Act 2012* (NSW)
Screening agency	Office of the Children's Guardian
Applicant	The person wanting to engage in child-related work
Age exemption	People under 18 years of age
Portability	WWCCs are portable across roles and employers
Duration	Five years
Continuous monitoring	Criminal history and disciplinary information from New South Wales
Ability to work before application decision	Most applicants can begin child-related work before the outcome of their application is known

To engage in child-related work in New South Wales, a person must apply to the Office of the Children's Guardian for a WWCC. It accepts online applications, and employers can register their organisations – and verify WWCC applications and outcomes – online.

Applicants can begin child-related work while their application is pending.[33] However, the Children's Guardian can impose an 'interim bar' if they believe there is a likely risk to child safety if the applicant engages in child-related work during this time.

In New South Wales, authorities check national criminal history and disciplinary information. If an assessment trigger is identified (for example, certain offences against children), the Office of the Children's Guardian conducts a risk assessment to determine the applicant's suitability for child-related work.

Following a WWCC application, an applicant is granted a clearance or a bar.

- A clearance means the person can engage in any child-related work in New South Wales for a five-year period. A non-volunteer clearance authorises the holder to engage in paid and unpaid child-related work, while a volunteer clearance applies to unpaid child-related work only.[34]
- A bar means that the person must not engage in child-related work for five years.

Most people who have been identified as a disqualified person or issued a bar can appeal to the NSW Civil and Administrative Tribunal.

The Children's Guardian continuously monitors WWCC cardholders' criminal history and disciplinary information from New South Wales. This includes information obtained under the reportable conduct scheme, which requires public authorities and other designated agencies to notify the NSW Ombudsman of certain allegations and convictions against employees that involve children.[35] Further risk assessments are carried out when certain records are identified through ongoing monitoring, which could lead to clearances being revoked.

Victoria

Victoria's WWCC scheme commenced in 2006 and was fully operational by July 2011. It has been amended since, including in response to the 2013 parliamentary inquiry into the handling of child abuse by religious and other non-government organisations.[36]

Law	*Working with Children Act 2005* (Vic)
Screening agency	Working with Children Unit, Department of Justice and Regulation
Applicant	The person wanting to engage in child-related work
Age exemption	People under 18 years of age, unless they supervise children pursuant to the *Child Employment Act 2003* (Vic)[37]
Portability	WWCCs are portable across roles and employers, but volunteer WWCCs are not transferrable to paid child-related work
Duration	Five years
Continuous monitoring	Criminal history and certain disciplinary information from Victoria
Ability to work before application decision	Most applicants can begin child-related work before the outcome of their application is known

People wanting to engage in child-related work in Victoria must first apply to the Working with Children Unit. Applicants fill in their applications online and must verify their identity at an Australia Post outlet. WWCC cards and applications can be verified online.

Although it is an offence to engage in child-related work in Victoria without a valid WWCC, a person will have a defence to the charge if they can establish that they applied for a check and met other conditions (for example, did not withdraw their application). Applicants subject to certain orders and obligations under the various sex offender laws or who have been charged with, or convicted or found guilty of, a serious sexual, violent or drug-related offence are not permitted to begin such work while their applications are pending.

All applicants undergo a national criminal history check. In addition, disciplinary information involving children is checked for applicants seeking to engage in child-related work in certain professions (for example, teaching and OOHC).

WWCC applicants are granted an assessment notice or a negative notice.

- An assessment notice and a WWCC card are issued to people who pass a WWCC, authorising them for any child-related work for five years. Employee WWCC cards apply to paid or voluntary work, while volunteer cards can only be used for voluntary work.[38]
- A negative notice is issued to Category A applications (for example, applications from a sex offender subject to certain reporting obligations) and to applicants refused an assessment notice. They are barred from child-related work, even if they are otherwise exempt (for example, parent volunteers).

Certain decisions can be appealed to the Victorian Civil and Administrative Tribunal.

The Working with Children Unit continually monitors the information of WWCC cardholders. Following notification of a relevant change, it reassesses the person's eligibility to continue child-related work, which could result in their clearance being revoked.

Queensland

Queensland's WWCC scheme commenced in 2001, making it the second Australian jurisdiction to introduce such checks.

Law	*Working with Children (Risk Management and Screening) Act 2000* (Qld)
Screening agency	Blue Card Services, Public Safety Business Agency
Applicant	The employer or volunteer coordinator (on behalf of the person wanting to engage in child-related work)
Age exemption	Volunteers under 18 years of age
Portability	WWCCs are portable across roles and employers for employees, but volunteer WWCCs are not transferrable to paid child-related work
Duration	Three years
Continuous monitoring	Criminal history from Queensland
Ability to work before application decision	Employees can begin child-related work before the outcome of their application is known, but volunteers must first have a valid check

People wanting to work with children in Queensland must first obtain a WWCC card, also known as a blue card. Registered teachers and police officers do not need a WWCC card, but must apply for an exemption card. Applications must be submitted by employers or volunteer coordinators on behalf of applicants and then lodged with Blue Card Services. This means that applicants cannot apply for WWCCs before being employed in child-related work. Blue cards and exemption cards can be validated online.

In Queensland, employees are allowed to start child-related work before a final decision is made on their application, but volunteers are required to have a valid check before starting such work. It is the only jurisdiction to distinguish between employers and volunteers in this way.

WWCCs include a check of applicants' national criminal history. They also include a check of disciplinary information that certain professional registration bodies (such as those for health professionals and foster carers) hold about those applicants.

Applicants receive either a positive or negative notice.

- Applicants who pass a WWCC are issued a positive notice and blue card, which authorise them to engage in regulated child-related work for three years. Like some other jurisdictions, different clearances are issued to paid workers and volunteers.
- Applicants who do not pass a check receive a negative notice and are not authorised to engage in regulated child-related work.

Most applicants can appeal to the Queensland Civil and Administrative Tribunal against decisions to refuse or cancel a WWCC.

Cardholders' criminal history information is monitored on a daily basis. If records of concern are returned, a further risk assessment is undertaken, which may result in the cancellation of a WWCC.

Western Australia

Western Australia's WWCC scheme began in 2006. It has been amended several times since, including following a 2011 review of the scheme.[39]

Law	*Working with Children (Criminal Record Checking) Act 2004* (WA)
Screening agency	Working with Children Screening Unit, Department for Child Protection and Family Support
Applicant	The person wanting to engage in child-related work
Age exemption	Volunteers under 18 years of age
Portability	WWCCs are portable across roles and employers
Duration	Three years
Continuous monitoring	Criminal history from Western Australia
Ability to work before application decision	Most applicants can begin child-related work before the outcome of their application is known

People wishing to engage in child-related work in Western Australia must apply to the Working with Children Screening Unit by submitting a paper application for a WWCC. Before they can lodge the application at an Australian Post outlet, their employer, volunteer organisation or education provider must complete certain parts of the form, confirming that they are engaged in child-related work.

Like in Victoria, although it is an offence in Western Australia to engage in child-related work without a WWCC, it is a defence to the charge if the person can prove they applied for a check and did not withdraw their application. This defence does not apply to persons convicted of a Class 1 offence as an adult (for example, sexual offences against a child).

In most cases, only the person's criminal history is checked. Disciplinary or misconduct information is considered only if a positive criminal history result is returned.

Applicants either receive an assessment notice or a negative notice.

- An assessment notice and a WWCC card are given to applicants who pass the check successfully. The notice and card authorise the holder to engage in child-related work for three years and is portable across roles and employers.
- A negative notice prohibits a person from engaging in child-related work.

Applicants can appeal to the Western Australian State Administrative Tribunal against decisions to issue a negative notice, not to cancel a negative notice, and not to cancel a negative notice and substitute the correct notice.

WWCC cardholders' criminal history information is monitored continuously.

South Australia

South Australia's scheme commenced in 2011 and was fully operational by December 2013. It requires people to undergo criminal history assessments before they can engage in child-related work. The scheme has been under review since late 2013.

Law	*Children's Protection Act 1993* (SA)
Screening agency	DCSI Screening Unit, Department for Communities and Social Inclusion
Applicant	The person wanting to engage in child-related work applies to work with an organisation, which must ensure that a criminal history assessment is conducted before the person is engaged in a 'prescribed position'
Age exemption	Volunteers under 18 years of age

Portability	Clearances are not portable; a new criminal history assessment must be undertaken each time a person begins new child-related work
Duration	Employers must ensure that criminal history assessments are conducted on staff members and volunteers who work with children at least once every three years[40]
Continuous monitoring	No ongoing monitoring
Ability to work before application decision	People must have passed a criminal history assessment before they can be engaged in a prescribed position[41]

South Australia's scheme is employer-driven: certain employers must ensure criminal history assessments are conducted before engaging people to work in prescribed positions. The onus is on the employer, rather than the individual, to ensure assessments are undertaken. Employers can conduct assessments themselves[42] or request the screening agency to conduct them on their behalf. Employers are responsible for making a final decision about whether to employ someone, irrespective of who does the assessment.

People must pass their assessment before they can work in prescribed positions. While people can start work if there is an urgent need for them to do so, they cannot undertake prescribed functions until an assessment is completed satisfactorily.

South Australia's scheme involves an assessment of people's criminal history information and, in some cases, other relevant evidence (for example, child protection records). Where a person does have a criminal history of concern, the employer or screening agency conducts an assessment of the potential harm the person poses to children. People who pass an assessment receive a clearance to work with children in prescribed positions. A clearance can either be general in nature, allowing the person to work in any role or capacity, or role-specific, meaning the person may only work in a nominated role.

Applicants who dispute their assessment can seek to have it reviewed. The screening agency will reassess the same information collected for the initial assessment as well as any new or additional information provided to it by the applicant. Decisions may also be reviewed by the Australian Human Rights Commission or the South Australian Ombudsman, and applicants can apply to the Supreme Court of South Australia for a judicial review.

South Australia's scheme provides a point-in-time assessment of risk; people's records are not monitored continuously like in other jurisdictions. Employers must nevertheless ensure that assessments are conducted at least once every three years.

Australian Capital Territory

Australia's first WWVP scheme commenced in the Australian Capital Territory in 2012. The phase-in period for the scheme ends in late 2018, by which time all relevant people must have a valid WWVP.

Law	*Working with Vulnerable People (Background Checking) Act 2011* (ACT)
Screening agency	Office of Regulatory Services, Justice and Community Safety Directorate
Applicant	The person wanting to engage in child-related work
Age exemption	People under 16 years of age
Portability	WWVPs are usually portable across roles and employers for employees, but some may be role-based or subject to certain conditions
Duration	Three years
Continuous monitoring	Criminal history from the Australian Capital Territory
Ability to work before application decision	Most applicants can begin child-related work before the outcome of their application is known

People must apply to the Office of Regulatory Services for a WWVP to work with vulnerable people. Applicants must complete an online or paper application and lodge it at a Canberra Connect Shopfront or by posting it to the Office.

Most applicants can begin working with vulnerable people while their application is pending, but a person with a valid WWVP must always be present while the applicant engages in that work. Most kinship carers can begin working before the outcome of their application is known, without supervision.

The Office of Regulatory Services checks applicants' criminal history for relevant offences. It can also consider other information relevant to deciding whether applicants pose a risk of harm to vulnerable people. This includes information regarding disciplinary proceedings against applicants.

Applicants receive a positive or negative risk assessment.

- Applicants assessed as posing no, or an acceptable risk, of harm to vulnerable people are issued a positive risk assessment. They are then registered to work with vulnerable people in regulated activities and receive a registration card (which can be general, conditional or role-based).[43] Registration lasts for a maximum of three years.
- Applicants assessed as posing an unacceptable risk of harm to vulnerable people receive a negative risk assessment and are issued with a negative notice. This means they are not registered to work with vulnerable people.

Most people can appeal a 'reviewable decision' to the ACT Civil and Administrative Tribunal, including decisions to issue negative notices or impose conditions on their registration.

Registered people's criminal history information is monitored continuously. Certain records will trigger a further assessment.

Tasmania

In 2014, Tasmania became the second Australian state to introduce a WWVP scheme, which it modelled on the Australian Capital Territory scheme. The scheme is expected to be fully operational by 2017, following a three-year phase-in period. So far, it applies to the childcare sector.

Law	*Registration to Work with Vulnerable People Act 2013* (Tas)
Screening agency	Working with Children Unit, Department of Justice
Applicant	The person wanting to engage in child-related work
Age exemption	People under 16 years of age
Portability	WWVPs are usually portable across roles and employers for employees, but some may be role-based or subject to certain conditions
Duration	Three years
Continuous monitoring	Criminal history from Tasmania
Ability to work before application decision	People must have a valid check before beginning child-related work

The Tasmanian WWVP scheme requires people wanting to work with children to apply to the Working with Children Unit for a check. Applicants must complete an online application, and print and lodge it at a Service Tasmania shop. Employers and volunteer bodies must verify people's WWVP status online.

Valid checks are required before a person can commence child-related work in Tasmania. Thus, applicants cannot begin work while their application is pending, unlike in some other jurisdictions. Applications are usually processed within six weeks.

A national criminal history check is conducted for all applicants. Disciplinary and misconduct records held by the Tasmanian Child Care Regulator are also checked. The types of disciplinary information checked will expand as the scheme is phased in.

Risk assessments determine whether applicants pose a risk of harm to vulnerable persons.

- Applicants assessed as posing no risk, or an acceptable risk, receive a positive assessment. They are then registered to work with vulnerable people for three years and receive a registration card. Registration can be general, conditional or role-based.
- Applicants who are considered to pose an unacceptable risk receive a negative risk assessment. Those applicants are not registered and are given a negative notice.

Most applicants can appeal a 'reviewable decision' to the Magistrates Court (Administrative Appeals Division). This includes decisions not to register an applicant and decisions to suspend or cancel a person's registration.

WWVP cardholders' criminal history information is monitored continuously. Certain records will trigger a further risk assessment, which could lead to the cancellation of a person's registration.

Northern Territory

The Northern Territory's WWCC scheme commenced in September 2010.

Law	*Care and Protection of Children Act 2007* (NT)
Screening agency	Screening Assessment for Employment – Northern Territory (SAFE NT), Northern Territory Police
Applicant	The person wanting to engage in child-related work
Age exemption	People under 15 years of age
Portability	WWCCs are portable across roles and employers
Duration	Two years
Continuous monitoring	Criminal history from the Northern Territory
Ability to work before application decision	Most applicants can begin child-related work before the outcome of their application is known

People wanting to work with children in the Northern Territory must apply to SAFE NT for a WWCC clearance notice, also known as an Ochre Card. Applicants must complete an online or paper application, and WWCC cards and applications can be verified online.

The Department of Children and Families can grant exemptions that allow applicants to work for 90 days while their WWCC applications are processed. Employers must certify that child-safe strategies will be in place during that period.

National criminal history records and a range of other records, including disciplinary information, are checked as part of the WWCC assessment.

Applicants are assessed to determine whether they pose an unacceptable risk of harm or exploitation to children.

- Applicants assessed as not posing an unacceptable risk receive a clearance notice and an Ochre Card, and are authorised to engage in child-related work for two years.
- Applicants assessed as posing an unacceptable risk do not receive a clearance notice and, therefore, are not authorised to work with children.

Applicants can appeal to the Local Court of the Northern Territory against decisions not to issue, to revoke, or to place conditions on a clearance notice.

Cardholders' criminal history information is monitored continuously.

2.3 National developments

There has been longstanding recognition among the jurisdictions that a more nationally consistent approach to WWCCs is needed. Reasons for this include the recognition that:

- children receive different levels of protection vis-à-vis people in child-related work
- the variation between schemes makes it difficult to recognise checks when people move across borders
- the lack of cross-jurisdictional infrastructure means that changes to a person's suitability status cannot be communicated effectively and actioned across borders.[44]

The jurisdictions have made some progress in developing a more nationally consistent approach to WWCCs; however, it has been inadequate. Progress has included identifying actions and governance arrangements needed to facilitate consistency, agreeing to exchange an expanded range of criminal history information across jurisdictions, and trying to bring consistency to exemptions for interstate visitors.

We are concerned that, despite these efforts, action to improve consistency has been insufficient. We recognise that this is in part due to a lack of evidence upon which to base a best-practice approach to WWCCs, which has made it difficult for the jurisdictions to agree. It is also partly because it is only recently that some form of WWCC or criminal history checking has been implemented in *all* states and territories.

Part II will explore in more detail the progress by governments to achieve consistency, the issues arising from the inconsistencies across the schemes, and the actions we consider to be necessary to address the problems.

PART II
A NATIONAL APPROACH

3 A national WWCC scheme

As Chapter 2 explained, there is no national approach to WWCCs in Australia, but rather eight schemes operating independently of one another.

The schemes are similar in design, but there are important differences between the individual schemes, including regarding who is checked and how the checks are conducted. While some differences (such as application fees) are inconsequential, others could mean that some children are at a higher risk of sexual abuse in institutional contexts.

We are concerned that the existence of eight schemes and the differences between them:

- afford children different levels of protection against sexual abuse
- prevent WWCCs from being portable across jurisdictions
- create compliance challenges for people and institutions navigating multiple and/or complex WWCC laws
- create opportunities for perpetrators to forum shop for WWCCs in jurisdictions with less stringent screening processes, or where certain background records are less likely to be identified and assessed
- create barriers to the effective sharing of information across jurisdictions.

A broad range of government and non-government stakeholders also told us that they hold these concerns. It is clear that these concerns have been the motivation behind government action to achieve greater consistency across the WWCC schemes.

Chapter 3 summarises the steps governments have taken to address the concerns listed above, and details our view that those steps are inadequate. It outlines support for greater national consistency and makes recommendations for achieving a national approach to WWCCs. It ultimately concludes that there should be a national model for WWCCs, facilitated by the Commonwealth Government. To achieve this, we recommend that state and territory governments amend their schemes to bring them to a consistent standard. Further, we recommend that the Commonwealth Government establish a centralised database and improve continuous monitoring of national criminal records to better integrate the schemes and enhance information sharing.

3.1 Developments towards national consistency

Concerns about the lack of a consistent approach to WWCCs are not new, and have been recognised by all governments since at least 2005.[45]

In 2005, when only two jurisdictions had WWCC schemes, all governments identified WWCCs as a key element for ensuring organisations are child-safe.[46] Through a national framework aimed at creating child-safe environments, they:

- recognised the need for a more cohesive national approach to creating child-safe organisations
- established guidelines on excluding people from child-related work[47]
- sought to address the risk that inconsistent approaches could lead to people receiving different WWCC outcomes in different jurisdictions and encourage forum shopping.[48]

It is unclear what action governments took to implement the parts of the framework relating to the WWCC. Regardless, we are concerned that the capacity for forum shopping remains a problem today.

In 2009, governments reinforced their commitment to improving consistency across the WWCC schemes through the national children's framework.[49] They:

- agreed to develop a nationally consistent approach to WWCCs (despite four jurisdictions still not yet having established their own schemes)
- reiterated that such an approach is key to keeping children safe in organisations
- created governance arrangements to progress and oversee work towards consistency.

In 2011, governments again emphasised the need for greater consistency in a position paper on a nationally consistent approach to WWCCs, endorsed by the Council of Australian Governments (COAG). They identified that consistency was needed because:

> not all children receive the same level of protection from the organisations and systems designed to protect them. The variation between state and territory systems makes it difficult to recognise and accept safety checks of volunteers and workers who move across borders. In addition, the lack of cross jurisdictional infrastructure means that any change to the suitability status of the person cannot be effectively actioned and communicated to any relevant employers or organisations accessing that person's services.[50]

The need for greater consistency was reiterated by the Commonwealth Government in its submission on our WWCC issues paper, which stressed the need to address the gaps created by the disparate processes and eliminate the risk of forum shopping.[51]

The above concerns, recognised by governments, have prompted them to take steps to achieve greater consistency. A detailed overview of these developments is provided in Appendix B; however, the most notable include:

Criminal history information exchange	In 2009, the *National Exchange of Criminal History Information for People Working with Children* (ECHIPWC) was established. It provided for the exchange of expanded criminal history information across jurisdictions, to include spent convictions, non-conviction charges, pending charges, acquittals and information about the circumstances of an offence or a charge.[52] This information can only be accessed by screening agencies for the purposes of the WWCC.
Exemptions for visitors	In 2012, state and territory governments agreed on a standard exemption for interstate visitors; namely, that people could cross state borders for child-related work for up to 30 days in any 12-month period without the need to obtain a WWCC in the new location.[53]
Governance arrangements for progressing consistency	The National Operators' Forum, made up of representatives from each screening agency, was established to progress work towards national consistency. In addition, COAG established a WWCC subcommittee to agree on how to develop a nationally consistent approach to WWCCs. In 2011, the subcommittee endorsed a proposal by the Forum, which identified 10 action items for achieving consistency (see Appendix C).

We recognise the importance of these three actions, and we note that efforts to harmonise the schemes are a work in progress. Nevertheless, these developments have not been implemented fully and do not go far enough in addressing the problems they set out to fix. By way of illustration, we note the following:

- The ECHIPWC has facilitated access to a broader range of information and therefore helped ensure that WWCC decisions are better informed. However, access to this additional information is limited to when applications are assessed; there is no ongoing access to this information for the purposes of monitoring WWCC cardholders throughout the duration of their clearance. Additionally, the information available is limited by the different recording practices and police databases in each jurisdiction.
- Despite agreeing to introduce a standard exemption for interstate visitors, this standard has not been implemented fully or consistently. For example, there is no exemption for interstate visitors in South Australia and Queensland, in the Northern Territory it applies only to volunteers and for up to 14 days, up to 14 days in Western Australia, and for up to 28 days in Tasmania and the Australian Capital Territory.[54]
- The National Operators' Forum is a useful mechanism for screening agencies to discuss their schemes and identify opportunities for consistency. Even so, we note that there has been difficulty in reaching agreement on consistent measures because governments are reluctant to move away from their existing arrangements.

Despite governments' commitment to achieving greater consistency across the WWCC schemes, progress is slow and inadequate. Even where actions have been agreed on, the benefits sought have not been realised due to implementation challenges (for example, disagreement over the implementation approach and entrenched local practices and definitions). It is also apparent from information that jurisdictions provided to us that they are debilitated by concerns about a lack of evidence to inform best practice. Yet, there is no obvious effort to address evidence gaps and, as such, problems with the current approach remain.

3.2 The need for a national approach

There is overwhelming support among government and non-government stakeholders for a nationally consistent approach to WWCCs. The benefits of greater national consistency, which were also raised in submissions to the Royal Commission, include:

- a standard approach to WWCCs, including in respect of who should require a WWCC and how risk assessments are conducted
- enabling cardholders to move between jurisdictions and employment without needing a new WWCC
- facilitating compliance through a simplified and more efficient WWCC scheme
- eliminating the risk of forum shopping, as a bar on engaging in child-related work would apply in all jurisdictions, regardless of where it was issued
- ensuring information from all jurisdictions is readily available to inform WWCC decisions, including through a central database of WWCC outcomes.

We are of the view that the level of protection children receive from WWCCs will be equalised and enhanced across all jurisdictions if these benefits are realised and a nationally consistent approach is achieved, as explained in more detail below.

Creating a standard approach to WWCCs

A national approach would ensure key aspects of WWCCs are dealt with in the same way and allow standardised checking in all jurisdictions. This would be particularly beneficial because it would standardise who needs a WWCC, which records are checked and how records are checked. A system that checks the same people, assesses the same types of records and deals with those records in the same way will help to ensure that children are protected equally against the risk of sexual abuse, regardless of where they are located. This would eliminate the current problem whereby a person could need a WWCC in one jurisdiction but not another for the same type of work. Under the current approach, children interacting with the same services across Australia receive different levels of protection because some people providing those services have had a WWCC, while others have not.

Introducing portability

A national approach would enable people to move across borders and engage in child-related work without the need to apply for a new WWCC. It recognises and supports people's mobility[55] (including children travelling interstate), removes barriers (for example, time and cost) for people seeking to work in a new location, reduces the administrative burden on organisations providing services across jurisdictions, and helps to ensure the information used in WWCC decisions is assessed across all jurisdictions. A national approach would also address the current problem whereby a WWCC issued in one jurisdiction is not recognised by or transportable to another.

Understandably, those jurisdictions with more developed or rigorous schemes are currently reluctant to accept clearances from jurisdictions where checking is not as rigorous. For example, with the variation across the schemes as to who requires a WWCC, which records are assessed and how records are assessed, some jurisdictions that believe their approach is the most effective may be reluctant to accept clearances from jurisdictions that take a different approach. However, this report aims to address this variation by making recommendations to harmonise the schemes.

A further example that has been raised with us as a reason not to have portability is the existence of a reportable conduct scheme in New South Wales. This scheme requires some organisations to notify the Ombudsman of certain allegations and convictions against employees where children were involved in the misconduct. These records are checked by the Office of the Children's Guardian when assessing WWCC applications. Aside from Victoria, which is in the process of implementing a reportable conduct scheme, the other jurisdictions do not have such a scheme in place.

We have been told that if portability was introduced, the WWCC scheme in New South Wales would be weakened because it would be required to accept clearances from jurisdictions where checking is less rigorous and does not involve assessment of records from a reportable conduct scheme. While we recognise that not all jurisdictions have reportable conduct schemes and are therefore assessing WWCC applications based on a different range of disciplinary or misconduct records, we are of the view that introducing portability will not weaken the approach currently taken in New South Wales but, in fact, may strengthen it, as discussed below. This would also be the case for the other states and territories.

Importantly, unlike criminal history records, disciplinary records are not national – they are only available and checked within each individual state or territory, and there is no capacity for this information to be shared between jurisdictions. Under the current system, when a person applies for a fresh WWCC each time they move to a new state or territory, disciplinary records from their previous location are not available to be assessed by the new screening agency. However, if WWCCs from interstate were recognised, some comfort would be provided to the new jurisdiction that an assessment of the person's disciplinary record had been undertaken prior to them being issued with a WWCC.

With this in mind, portability would provide the following benefits:

- remove the unnecessary duplication that occurs when a person's national criminal history is rechecked
- provide assurances to the new jurisdiction that the person's disciplinary records were assessed by their previous jurisdiction
- remove the expense for people who need to apply for multiple WWCCs
- remove the administrative burden on screening agencies to recheck people who are already WWCC cardholders, particularly where this rechecking does not add additional value to the assessment of the person's suitability to work with children.

Under a national model, with portability and improved information sharing (see the discussion below), a person would be able to move to a new state or territory and register their WWCC from their previous jurisdiction. The screening agency could then check the person against its own disciplinary and misconduct records (including the reportable conduct scheme records for New South Wales) prior to accepting the interstate WWCC and allowing the person to engage in child-related work.

Facilitating compliance

A national approach to WWCCs would help to facilitate compliance with WWCC laws by streamlining and reducing the complexity of the current schemes, and making compliance simpler for people and institutions working with children across borders. As explained by the Anglican Church of Australia:

> This makes it difficult for a national organisation operating in more than one state or territory to institute a single consistent system. This is not optimal for the protection of the children with whom they work or for the confidence of their families. These inter-jurisdictional differences add to the administrative complexity and cost burden of relevant organisations. Consequently, steps may be overlooked or poorly performed. A national system would facilitate consistency and completeness of approach to the protection of children. This must improve the outcomes for child safety.

We appreciate these challenges, as we also found many aspects of the various schemes complex and difficult to interpret and understand.

Eliminating forum shopping

A driving force behind the widespread support for a nationally consistent approach is that it will eliminate the potential for people to slip through the net.[56] This is a concern currently, since a person with adverse records in one jurisdiction may be able to obtain a clearance in another jurisdiction because adverse information about them is not accessible by the screening agency in the new jurisdiction.[57] Further, with the varied approaches to who needs a check, a person could seek out a jurisdiction where a particular type of child-related work is not required to hold a WWCC.

Improving information sharing

A national approach would also help to address some of the main problems with the current approach to information sharing.

Continuous monitoring of criminal history	Each jurisdiction monitors WWCC cardholders' criminal history information. However, this is limited to the criminal records in the jurisdiction that issues the WWCC; it does not include national records. This creates a risk that a cardholder could continue to hold a WWCC and thus be eligible to work with children even if they commit offences (that warrant cancelling their WWCC) in another jurisdiction, because these charges would not be detected by the jurisdiction that issued the clearance.
Visibility of WWCC decisions from across all jurisdictions	Each jurisdiction maintains its own WWCC database; there is no central record that allows jurisdictions to see WWCC outcomes (for example, grants and refusals) from other jurisdictions. When people move across borders or apply for WWCCs in several jurisdictions, screening agencies have limited capacity to uncover prior WWCC decisions that may impact on their suitability. Further, changes to the suitability status of a person cannot be actioned effectively and communicated across borders.
Information considered during the assessment process	Each jurisdiction approaches the assessment of disciplinary or misconduct information differently, and there is no system to facilitate the sharing of this information across borders. This means a person could have adverse disciplinary records from one jurisdiction that may preclude them from working with children, but move to another jurisdiction where this information is not available and be cleared for a WWCC.

3.3 Achieving a national approach

We are of the view that the combined effect of the varied and complex schemes, the lack of portability of WWCCs, the capacity for people to forum shop for a less rigorous scheme, and the lack of infrastructure to support the effective sharing of information across borders weakens the protection that could otherwise be afforded to children by an effective, national WWCC. While the extent of these risks is difficult to measure due to limited evidence or data (for example, on the number of people in child-related work moving interstate, instances of forum shopping and the extent of non-compliance), the risks nevertheless exist and, if realised, have consequences for the safety of children. For these reasons, as well as the lack of progress made by the state and territory governments to harmonise the schemes to date, we have considered it necessary to make recommendations to achieve a national model for WWCCs.

We note that, although there is a consensus view that a more nationally consistent approach to

WWCC is required, there are differing views as to the best way to achieve this. Roughly two-thirds of the submissions on *Issues Paper No 1* supported establishing a single national WWCC scheme as the best means to achieve consistency. Support for this approach was strongest among non-government organisations such as religious organisations. Conversely, while governments supported the need for greater consistency, they considered that this would be best achieved by implementing consistent standards across the current schemes, rather than moving to a single national scheme.

Drawing on those options outlined in submissions and discussed during our roundtable meeting, we considered the following three approaches to achieve consistency:

- keep the current schemes as they are, but introduce portability
- amend the current schemes to incorporate consistent standards
- establish a single, centrally run scheme.

Separate schemes with portability

One option for achieving a more nationally consistent approach to WWCCs is to keep the existing schemes and require mutual recognition of checks issued by other jurisdictions.

Under this approach, a WWCC issued in one jurisdiction would be recognised in all other jurisdictions (that is, it would be portable). The cardholder would need to apply to the second jurisdiction to have their WWCC recognised, but that jurisdiction would not undertake a further WWCC assessment, except to check local disciplinary records if necessary. Similarly, a determination made by one jurisdiction to deny a person a WWCC would be upheld by all jurisdictions, which would, in turn, prevent that person from engaging in child-related work anywhere in Australia. This type of information would need to be available through a centralised database where WWCC decisions from across all states and territories were stored and made accessible to all jurisdictions.

Establishing a project to explore opportunities for mutual recognition was one of the actions proposed by the National Operators' Forum and endorsed by the WWCC subcommittee of COAG, to increase consistency across the WWCC schemes and ease movement across borders.[58] However, we understand that this project has not been implemented. It is apparent that the lack of progress is due to concerns held by some jurisdictions about introducing mutual recognition without first harmonising the WWCC schemes. That is, some jurisdictions will not agree to recognise WWCCs issued by jurisdictions with less stringent screening processes.[59] A related concern is that mutual recognition would create false assumptions that all people with WWCCs within a jurisdiction had been assessed in the same way.

Despite the fact that the states and territories have not been able to agree on a mutual recognition approach, we consider that such an approach does not go far enough to resolve the problems with WWCCs other than portability. We also recognise the legitimate concern held by some jurisdictions that harmonisation is required before clearances are made portable.

Separate schemes with consistent standards

Another option for achieving a more nationally consistent approach is to implement consistent standards across key aspects of the separate schemes. State and territory governments would continue operating their own schemes, identify and agree on consistent standards, and amend their WWCC laws to incorporate those standards.

Submissions to the Royal Commission showed there is support for this approach, particularly among government. We heard that some stakeholders support introducing consistent standards to the existing schemes because:

- it would create a consistent approach to key aspects of WWCCs
- standards are an achievable goal in the short to medium term and still allow progress towards a national WWCC scheme
- standards are a proportionate response to the challenges of operating multiple schemes
- it would cause no major disruptions to existing state and territory schemes
- governments have already supported the approach, including through the developments detailed above.

Others supported introducing consistent standards because of the challenges they see with implementing a single scheme.

We also considered additional concerns reported to us about this approach, including the continuation of eight schemes, the need for government agreement on standards and the legislative changes needed to incorporate the standards. We also note that this approach only deals with discrete aspects of the current schemes and would not provide consistency in all areas of WWCCs.

We have determined that, at a minimum, standards need to be introduced on key aspects of the WWCC schemes to increase consistency and address problems with the current approach. We note that governments have not yet implemented standards, despite recognising these problems and expressing support for this model.

A single national scheme

Another way to ensure WWCCs are nationally consistent is to replace the individual schemes with a centrally run national WWCC scheme.

This model would require the Commonwealth Government to assume responsibility for administering and implementing the scheme. It would need to enact a Commonwealth law on WWCCs, establish the necessary government machinery to operate and oversee WWCCs, and arrange ongoing funding for the scheme.[60] This model would also require state and territory governments to repeal their respective WWCC laws, refer power to the Commonwealth and stop implementing their own schemes. At the same time, they would need to provide relevant information (such as criminal history and jurisdiction-based disciplinary information) to the agency administering the central scheme.

There is support for establishing a single national WWCC scheme. As mentioned above, almost two-thirds of the submissions on *Issues Paper No 1* supported this model, with support being strongest among non-government organisations such as religious organisations.

According to stakeholders, a national scheme would bring the following benefits:

- WWCCs would be conducted consistently in all states and territories
- gaps and duplication in the existing schemes would be eliminated
- there would be a consolidated, simplified and strengthened WWCC law
- legal obligations related to WWCCs would be clear
- issues related to labour mobility across jurisdictional borders would be addressed
- access to information held by other jurisdictions would be improved
- efficiency would be improved, including for organisations delivering services to children in multiple jurisdictions
- the slow pace of reform would be overcome
- the likelihood of individuals 'slipping through the cracks' would be reduced.

While governments support the need for greater consistency, they do not consider this to be achievable in the short term or through a national scheme. They told us that:

- the states and territories have constitutional responsibility for child protection and crime – and, as such, a referral of power would be needed before the Commonwealth Government could enact a national WWCC scheme
- there is a lack of analysis and evidence upon which to base a single national scheme
- local schemes are needed to respond to differing demographics and laws, and to support other jurisdiction-based initiatives for creating child-safe organisations.

Instead of a single national scheme, governments consider introducing minimum consistent standards in each state and territory as a way of achieving a nationally consistent approach to WWCCs.

We also considered other concerns about introducing a single national scheme, including the cost and resources involved in establishing such a scheme, the potential for increased processing times and that WWCC decisions would be moved away from the local service delivery context.

With these issues in mind, we are of the view that a national model is necessary to improve information sharing, better integrate the schemes and, ultimately, enhance the level of protection afforded to children. However, we do not believe that a single national scheme is necessary to achieve this.

Conclusion and recommendations

In looking at the WWCC regime in Australia, we are surprised that Australia still does not have a national or uniform system for checking people seeking to engage in child-related work. Further, the schemes are inconsistent, there is no integration between them, and there is little capacity for sharing information or WWCC decisions across jurisdictions.

As we have outlined, the governments' lack of progress to address the problems arising from the current approach to WWCCs, which they

themselves have identified, is a failure that we aim to rectify through our recommendations.

In our federal system of government, there are times where taking individual approaches to common cross-jurisdictional issues creates differing perspectives and complexities that cause problems in and/or weaken certain systems or regimes. The WWCC is one of those areas where we see the impact of disparate schemes and, in this instance, the impact is compromising the protection children receive.

It is our view that the duplication, complexities and lack of integration of the current WWCC schemes cannot continue. Despite efforts to address some of these problems, governments' inability to introduce mechanisms to better integrate the systems and improve cooperation between them continues to undermine their effectiveness. In particular, we are concerned that, as a result of the current approach:

- children do not receive equal protection against abuse by people in child-related work, due to the different approaches to WWCCs and the varying stringency of the schemes
- clearances are not portable across jurisdictions, and it is difficult for those operating in multiple jurisdictions to comply with, and understand, the various regimes
- applicants can forum shop by applying for a WWCC in a jurisdiction with less stringent screening processes or where certain background records are less likely to be identified
- there is limited information sharing and capacity to monitor records across jurisdictions.

That these problems continue, several years after they have been recognised, says that a national approach to WWCCs is long overdue. We are of the view that implementing a combination of the models outlined above is needed to achieve an adequate national approach to WWCCs. This will harmonise the WWCC schemes, better integrate the eight schemes, improve information sharing, improve portability and enhance continuous monitoring.

To achieve this national model, we have recommended that state and territory governments amend their schemes to include consistent standards across key aspects of the schemes and allow WWCCs to be portable. Further, we have recommended that the Commonwealth Government facilitate and manage a national model for WWCCs by establishing and operating a centralised database; streamlining the recording of WWCC decisions, ensuring they are visible and accessible to all jurisdictions; and improving the continuous monitoring of WWCC cardholders' national criminal history.

We have identified those aspects of the WWCC that require consistent standards to be set. Recommendations about these standards are outlined in Part III of this report. In addition, we make the following recommendations to achieve a national model.

1. State and territory governments should:

    a. within 12 months of the publication of this report, amend their WWCC laws to implement the standards identified in this report

    b. once the standards are implemented, obtain agreement from COAG, or a relevant ministerial council, before deviating from or altering the standards in this report, adopting changes across all jurisdictions

    c. within 18 months of the publication of this report, amend their WWCC laws to enable clearances from other jurisdictions to be recognised and accepted.

2. The South Australian Government should, within 12 months of the publication of this report, replace its criminal history assessments with a WWCC scheme that incorporates the standards set out in this report.

3. The Commonwealth Government should, within 12 months of the publication of this report:

    a. facilitate a national model for WWCCs by:

        i. establishing a centralised database, operated by CrimTrac, that is readily accessible to all jurisdictions to record WWCC decisions

        ii. together with state and territory governments, identifying consistent terminology to capture key WWCC decisions (for example, refusal, cancellation, suspension and grant) for recording into the centralised database

        iii. enhancing CrimTrac's capacity to continuously monitor WWCC cardholders' national criminal history records

    b. explore avenues to make international records more accessible for the purposes of WWCCs

    c. identify and require all Commonwealth Government personnel, including contractors, undertaking child-related work, as defined by the child-related work standards set out in this report, to obtain WWCCs.

4. The Commonwealth, state and territory governments should, within 12 months of the publication of this report:

    a. agree on a set of standards or guidelines to enhance the accurate and timely recording of information by state and territory police into CrimTrac's system

b. review the information they have agreed to exchange under the National Exchange of Criminal History Information for People Working with Children (ECHIPWC), and establish a set of definitions for the key terms used to describe the different types of criminal history records so they are consistent across the jurisdictions (these key terms include pending charges, non-conviction charges and information about the circumstances of an offence)

c. take immediate action to record into CrimTrac's system historical criminal records that are in paper form or on microfilm and which are not currently identified by CrimTrac's initial database search

d. once these historical criminal history records are entered into CrimTrac's system by all jurisdictions, check all WWCC cardholders against them through the expanded continuous monitoring process.

PART III
STANDARDS

4 Needing a WWCC

In examining how to best protect children against sexual abuse in institutional contexts, we considered who should and should not be required to obtain a WWCC. We also considered the types of offences that should be included in WWCC schemes to guard against the risks to children arising from non-compliance with WWCC laws.

In the absence of strong evidence to inform a best-practice approach to who should or should not need a WWCC, we considered current definitions of child-related work, whether there is a consensus or majority position, and the approaches in jurisdictions with more developed schemes.

Chapter 4:

- identifies who is and who is not presently required to obtain WWCCs across the various schemes and provides an overview of some of the common offences related to engaging in child-related work without a valid WWCC
- makes recommendations for consistent standards on the definition of child-related work and offences for engaging in such work without a WWCC, to be introduced into WWCC laws.

4.1 Child-related work

Many people have contact with children through their work, but not all of them require a WWCC. People only need WWCCs if they will engage in child-related work, as defined by the WWCC law of the state or territory in which they work.

State and territory definitions of child-related work typically comprise four linked elements. With some exceptions, WWCCs are required if a person is engaged in prescribed types of work or roles that usually involve regular contact with children, and they are not exempt. If, however, a person has contact with children but is not engaged in prescribed types of work or roles, or is so engaged but does not have contact with children, they do not need a WWCC.

Elements of child-related work	Examples
Contact with children	Physical contact, making decisions affecting children
Engagement in work	Employee, volunteer, self-employed, student on placement
Work or roles that are child-related	School crossing services, youth residential centres
Exemptions	Interstate visitors, parent volunteers

Although the states and territories define child-related work similarly, there are important differences in how they define such work. For example, people providing photography services for children are considered to be engaged in child-related work if those services are provided in the Australian Capital Territory, the Northern Territory, Victoria and Tasmania, but not in other jurisdictions.[61] In a further example, all jurisdictions exempt children from the requirement to obtain a WWCC. However, the age below which children are exempt varies from 15 to 18 years, depending

on where in Australia the check is conducted and, in some cases, whether the child is engaged as an employee or volunteer.[62]

Concerned about the variations in the state and territory definitions of child-related work and what they mean for protecting children against sexual abuse in institutional contexts, we reviewed each definition in detail. Our review revealed that:

- despite broad similarities, the individual definitions of child-related work vary significantly
- the differences in individual definitions mean children are exposed to different levels of risk of sexual abuse by people in child-related work, and people wanting to engage in such work are subject to different legal requirements, based on where they are located
- the various definitions contain long, complex and often ambiguous descriptions of work and roles that are designated as child-related[63]
- there is no apparent evidence-based rationale or other explanation for many of the differences in state and territory definitions of child-related work.

We also heard from numerous stakeholders who shared their frustrations in understanding and applying the various definitions of child-related work.[64] We were told, for instance, that confusion surrounding the definition of child-related work means that, in order to understand who needs to be checked, some institutions divert time and resources from implementing broader child-safe strategies.[65] We also were told that the confusion has led to many organisations requiring people to complete unnecessary checks (for example, when their contact with children is only incidental).[66]

Notwithstanding that some governments have introduced reforms in an effort to clarify their definitions of child-related work,[67] we are of the view that a standardised and greatly simplified definition of child-related work is needed in all jurisdictions. To this end, all state and territory governments should amend their WWCC laws to incorporate a simplified definition of child-related work that is the same across all jurisdictions.

5. State and territory governments should amend their WWCC laws to incorporate a consistent and simplified definition of child-related work, in line with the recommendations below.

As part of our work on WWCCs, we considered how introducing a standard on child-related work could transform the various definitions, making them clearer and simpler to apply. We focused our inquiries and developed standards on the four core elements of the definition of child-related work:

1. contact with children
2. engagement in work
3. work or roles that are child-related
4. exemptions.

The standards, which are set out in the remainder of this section alongside an overview of current approaches to the core elements of the definition, are interrelated and need to be read and applied together.

We weighed up a number of factors when developing the standards, including:

- capturing work or roles that involve providing services to children, create opportunities to harm children, and attract people seeking to establish and abuse a relationship of trust with a child
- not preventing people from engaging in child-related work when there are no risks to children, or the risks can be managed through broader child-safe strategies
- ensuring the definition is flexible and responsive to changes in child-related work environments
- discouraging overreliance on WWCCs as a risk management tool
- ensuring that the cost and regulatory burden of WWCCs is appropriate.

Contact with children

Current approaches

To be considered 'child-related work', the work must involve *contact with children*.[68]

The person who must have contact with children and who therefore requires a WWCC varies across jurisdictions based on the person's age and, in some cases, employment status.

Contact with children	Jurisdiction
Contact between an adult and one or more children	NSW and Vic[69]
Contact between a person aged 16 years or older and one or more children	ACT and Tas[70]
Contact between a person aged 15 years or older and one or more children	NT[71]
Contact between adult volunteers or all employees (regardless of their age) and one or more children	SA and WA[72]

Contact with children is not a pre-condition in Queensland. Rather, to be designated as child-related, the work must involve providing services or activities to children.

WWCC laws identify the nature of the contact needed for work to be deemed child-related. The term 'contact' is defined differently throughout Australia. Excluding Queensland, all jurisdictions agree that the term includes physical contact[73] and face-to-face contact.[74] Most also agree that the term includes oral communication.[75] However, views differ as to whether it includes written communication,[76] dealing with a record relating to a child[77] or making a decision affecting a child.[78]

Except in New South Wales (and Queensland), WWCC laws also identify the amount of contact needed for work or roles to be considered child-related. The WWCC laws in the Australian Capital Territory, the Northern Territory, Tasmania, Victoria and Western Australia specify that contact with children must be a normal part of the work, although the language used to describe the requirement varies.[79] In the Australian Capital Territory, Tasmania and Victoria, contact must also be more than incidental to the work.[80] South Australia has a different approach, specifying the amount of contact needed through its definition of 'prescribed functions', which includes, among other things, 'regular contact with children or working in close proximity to children on a regular basis'.[81]

Most jurisdictions require people to get a WWCC irrespective of whether their contact with children will be supervised by another person. However, checks are only required in Victoria and South Australia if the contact will not be supervised.[82]

Standard

We consider that only those people who will have contact with children as part of their work or role should be required to obtain a WWCC. WWCCs were never intended to, nor in our view should they, apply to people who will have only incidental interaction, and who do not work, with children.[83] For instance, a school cleaner working after hours and who has no contact with children should not be required to obtain a WWCC. However, a doctor or nurse who provides health services for children should be required to obtain a WWCC, as children are the main focus of their work.

Considering the inconsistent definitions of contact with children, we have determined that a standard approach is needed for determining when contact with children will be classified as child-related work. More specifically, consistency is needed in relation to four aspects of contact with children.

Who	To whom should the phrase 'contact with children' apply?
Nature	Which kinds of contact with children should be covered by WWCC schemes?
Amount	How much contact with children is required?
Supervision	Should WWCCs be required for supervised and unsupervised contact with children, or unsupervised contact only?

Who

We take the view that, to be child-related, the work must involve contact between an adult and one or more children.

In reaching this conclusion, we considered the views of some stakeholders that older children (for example, those who are 16 or 17 years of age) should be subject to WWCCs because they:

- are capable of establishing and abusing relationships of trust with other children
- could have similar levels of access to other children, and responsibilities in respect of those children, as adults engaged in child-related work.

It is clear to us that further measures are needed to protect children against sexual abuse by other children, including those children engaged in child-related work. However, we are not convinced that WWCCs are the most appropriate tool to manage the potential risk posed by children in child-related work, particularly since:

- children make-up a small proportion of the workforce
- as a group, children are less likely than adults to have records that would be assessed as part of a WWCC that would not be picked up through a standard police check
- the available evidence suggests that requiring children to obtain WWCCs may have only limited effectiveness in protecting children against sexual abuse in institutional contexts. For instance, one government informed the Royal Commission that only three children had been refused a WWCC over a period of approximately five years. Conversely, the New South Wales and Victorian governments did not identify any significant child safety issues arising as a result of them exempting children from the requirement to obtain checks.

We consider that child-to-child sexual abuse requires a more holistic and proportionate response than requiring WWCCs for children. Taking into account child-safe frameworks[84], this response needs to be based on broader child-safe strategies and risk management safeguards that include appropriate supervision and rigorous recruitment and selection processes, such as screening through detailed interviews, reference checking and obtaining a national criminal history check.

6. State and territory governments should amend their WWCC laws to provide that work must involve contact between an adult and one or more children to qualify as child-related work.

Nature

We consider that, to be regarded as child-related work, the contact with children must involve:

- physical contact
- face-to-face contact
- oral communication
- written communication
- electronic communication (for example, email, instant messaging, social media and video chats).

We do not support WWCCs where the contact with children only involves dealing with a record relating to a child or making a decision affecting a child.

In forming this view about the nature of the contact required for work to be deemed child-related, we took into account:

- that certain kinds of contact (for example, physical) could create higher levels of risk of sexual abuse compared to other kinds (for instance, dealing with a record), due to factors such as proximity to children and the environment in which that kind of contact typically occurs

- the widespread agreement among governments that physical contact, face-to-face contact and oral communication should be covered by WWCCs
- the growing use of technology and the opportunities these technologies afford to groom children and facilitate child sexual abuse, as seen in the our case study on the YMCA NSW, which highlighted how one perpetrator used his mobile phone at work to groom children[85]
- the role of broader child-safe strategies in protecting children against sexual abuse when contact with children is usually limited.

We acknowledge the potential for confusion regarding whether certain interactions with children would fall within the recommended kinds of contact. We also recognise the potential for expansive interpretations. However, we believe the state and territory governments can address these concerns by agreeing on standard definitions for each of the recommended kinds of contact and amending their WWCC laws to incorporate those definitions.

7. State and territory governments should:

    a. amend their WWCC laws to provide that the phrase 'contact with children' refers to physical contact, face-to-face contact, oral communication, written communication or electronic communication

    b. through COAG, or a relevant ministerial council, agree on standard definitions for each kind of contact and amend their WWCC laws to incorporate those definitions.

Amount

We are of the view that, to be considered child-related work, the contact with children must be a usual part of, and more than incidental, to the work. For example, a childcare worker has regular contact with children and should be subject to WWCCs, whereas a person sending a bulk mail out to children would not require a check as the amount of contact is limited.

Restricting WWCC schemes in this way is important to ensure that WWCCs:

- target those people who, as part of their work, interact with children regularly, and not those whose contact with children is incidental
- target those types of work or roles that create the greatest opportunities to establish and abuse a relationship of trust with a child
- do not impose an unacceptable burden on institutions or people wishing to engage in child-related work, or undermine the provision of services and activities to children.

While we acknowledge concerns that sexual abuse can result from only occasional contact with children, we consider that the risks to children arising from such contact can be dealt with better through other child-safe strategies, including national criminal history checks. However, a balance is needed to ensure that WWCCs capture contact that provides an opportunity to develop and abuse a relationship of trust with children or to groom children.

We are keen to limit any potential confusion that could arise in determining whether or not contact with children is a normal part of, and more than incidental to, particular work. State and territory governments should therefore agree on standard definitions of key phrases (such as 'usual part of' and 'more than incidental to') and amend their WWCC laws to incorporate those definitions.

8. State and territory governments should:

    a. amend their WWCC laws to provide that contact with children must be a usual part of, and more than incidental to, the child-related work

    b. through COAG, or a relevant ministerial council, agree on standard definitions for the phrases 'usual part of work' and 'more than incidental to the work', and amend their WWCC laws to incorporate those definitions.

Supervision

We believe WWCCs should be required irrespective of whether or not the contact with children is supervised. We have heard repeatedly, including through our case studies[86] and private sessions, that perpetrators can groom children in the presence of other people. We are therefore concerned with ensuring that WWCCs are required not only when contact with children is unsupervised, but also when it is supervised. It is also significant that most states and territories do not consider supervision to be a relevant factor in determining screening requirements for child-related work.[87]

9. State and territory governments should amend their WWCC laws to specify that it is irrelevant whether the contact with children is supervised or unsupervised.

Type of engagement

Current approaches

As well as having contact with children, people must be *engaged* in child-related work to fall within the scope of WWCC laws. Engagement is defined in various ways.

Table 2 – Type of engagement

Approaches	Jurisdictions
Broad definition	The ACT and Tas require WWCCs to take part in regulated activities: • in any capacity • whether for reward or not, or under an arrangement with another person or otherwise.[88] Both list examples of the types of engagement covered in their laws.
Specific engagement types identified	NSW, Qld, SA, Vic and WA specify the types of engagement covered by their WWCC laws.[89]
Hybrid approach	The NT adopts a hybrid approach. It provides that work is child-related if it is carried out under a contract of employment, or any other contract or arrangement (whether written or not and for reward or not), and outlines the different types of engagement covered.[90]

Regardless of the approach chosen, WWCC laws capture many types of engagement, including (to a greater or lesser extent) agents, apprentices, consultants, contractors and subcontractors, employees, management committees of unincorporated bodies or associations, ministers of religion, people carrying out work for a sentence (for example, community service orders), self-employed people, supervisors, volunteers and work experience students.

People engaged in child-related work under an arrangement for a personal or domestic purpose are sometimes not required to get a WWCC in New South Wales,[91] the Northern Territory,[92] Victoria[93] and Western Australia.[94] For example, Victoria has a blanket exclusion for 'unpaid work engaged in for a private or domestic purpose'.[95] The laws in the Australian Capital Territory and Queensland expressly limit certain types of child-related work (such as child minding) to work provided on a commercial basis. Thus, checks are not needed in those jurisdictions when those types of work are carried out under an arrangement for a personal or domestic purpose.[96]

Standard

We consider that there must be a standard approach to the types of engagement that are designated as child-related work. Consistency is required in two areas:

- types of engagement other than those undertaken under an arrangement for a personal or domestic purpose
- work undertaken under an arrangement for a personal or domestic purpose.

We are of the view that people 'engage' in child-related work if they do so in any capacity and whether or not for reward. Based on our work, we believe the primary consideration is whether adults will have contact with children that is a usual part of, and more than incidental to, their child-related work. The manner in which adults are engaged (for example, as an employee or self-employed) and whether or not they are paid should not, in our view, be considered when classifying work as child-related.

We do not support many jurisdictions' current approach of outlining the specific types of engagement covered by WWCCs in their WWCC laws. This is because:

- it shifts the focus of the definition of child-related work away from contact with children to the manner in which people are engaged, which has little bearing on child safety
- it adds unnecessary complexity to the definition of child-related work
- the different types of engagement covered by certain WWCC laws, but not others, do not appear to be based on evidence or learnings from practice
- there are inconsistencies resulting from the inclusion of different types of engagement in the various WWCC laws, such that an individual might need to obtain a WWCC if they are engaged in work with children in one capacity but not in another, even though the risk of abuse to children is the same or similar.

We acknowledge that there could be value in incorporating into the various WWCC laws a list of selected examples of the types of engagement covered by the standard on child-related work. Such a list could provide clarity on types of engagement that have caused confusion in the past – for instance, people who are self-employed or who are ministers or other personnel of a religious organisation. Regarding the latter, we note that Victoria amended its law to clarify that work engaged in as a minister of religion is child-related, unless the contact with children is only occasional and incidental to the work.[97] The change followed a parliamentary inquiry that recommended clarifying how WWCCs apply to ministers of religion[98] due to the 'broad and unspecified nature of their work which involves some contact with children'.[99]

10. State and territory governments should amend their WWCC laws to provide that a person is engaged in child-related work if they are engaged in the work in any capacity and whether or not for reward.

We consider that work carried out under an arrangement entered into for a personal or domestic purpose, whether or not for reward, should not be designated as child-related for the purposes of WWCC laws. For instance, a family friend who babysits for their neighbour, or parents who take their son's friend away on a weekend camping trip. Requiring WWCCs for such work would pose an unacceptable burden on the community as well as families and people carrying out such work. It would also create unnecessary difficulties in monitoring compliance with the law, and is an area where parents (or guardians) can and should exercise parental responsibility to ensure the safety of their children (or wards).

Our position is that work carried out under an arrangement for personal or domestic purposes should be excluded through a single statutory provision in WWCC laws. We do not support the approach adopted in some jurisdictions of excluding such work in relation to specific categories of child-related work. Our view is that such an approach makes the definition of child-related work unnecessarily complex and places inappropriate emphasis on the manner in which people are engaging in work.

11. State and territory governments should amend their WWCC laws to provide that work that is undertaken under an arrangement for a personal or domestic purpose is not child-related, even if it would otherwise be so considered.

Categories of work or roles

Current approaches

People who interact with children regularly as part of their work only need a WWCC if they are engaged in *child-related* work. WWCC laws are intended to capture only those people whose work is focused on or directed towards children; WWCCs were never 'intended for people who, as a normal part of their working day, may see a child or be in a place with a child but who do not work with the children'.[100]

Most jurisdictions identify specific categories of work or roles that they designate as child-related for the purpose of WWCCs. The categories of work or roles that are identified vary across the WWCC schemes, but commonly include work or roles in areas such as:

- accommodation or residential services for children
- child protection services
- clubs and associations with a significant membership of, or involvement by, children
- coaching or tuition services for children
- commercial childcare services
- counselling or support services for children
- education and care services for children
- entertainment or party services for children
- hospital wards where children are usually treated
- out-of-home care
- overnight camps for children
- school crossing services.

In addition, New South Wales' WWCC law sets out specified child-related roles that require a WWCC (for example, authorised carer) regardless of the setting or service in which they take place.[101] It requires WWCCs in certain other situations as well, even though they do not involve work with children (for example, adults residing in an authorised carer's home and prospective adoptive parents).[102]

In contrast, South Australia's approach differs to that of the other schemes. It requires a criminal history assessment before a person is engaged in a 'prescribed position'.[103] A prescribed position is defined as:

- a position that requires, or involves the performance of, one or more prescribed functions
- a position, or class of position, in a government organisation that is designated as a prescribed position by the authority responsible for the government organisation.[104]

South Australian law defines the term 'prescribed functions' broadly and, among other things, includes regular contact with children or working in close proximity to children on a regular basis, unless the contact or work is supervised.[105] It does not articulate which specific categories of work or roles require or involve those functions.

Standard

We are concerned that WWCC laws contain long, complex and often ambiguous descriptions of work and roles that are designated as child-related. Time and again, we heard about difficulties in understanding, applying and complying with the various definitions of child-related work, because it is often unclear whether particular people or classes of people need WWCCs. Our own experience in reviewing the laws underpinning the state and territory schemes reinforces what we've heard about the complexities of navigating and interpreting the various definitions of child-related work.

Furthermore, we are concerned that children are being afforded different levels of protection, and are therefore exposed to different levels of risk of sexual abuse by people in child-related work, due to differences in the categories of work and roles covered by the various WWCC schemes. For example, four jurisdictions expressly require people who provide gym or play facilities for children to obtain WWCCs.[106] However, there is no similar express requirement in other jurisdictions, despite the fact that the risk of child sexual abuse may be comparable.

Even where there is broad consensus that a particular category of work or role should require a WWCC, understanding of what that work or role entails can vary greatly.

The approach presently favoured by most jurisdictions unduly emphasises the category of work or role in which a person will engage. While the category may be indicative of whether the work or role is child-related, we do not think it should be a determining factor. Rather, the nature and amount of contact with children should be the key factor in determining who needs a WWCC. This is because the risk of sexual abuse in institutional contexts derives mainly from the manner in which adults interact with children and the opportunities their specific work or role affords to access children. We do acknowledge that certain work and roles provide greater opportunities for offending (for example, providing services to children with disabilities that involve close, personal contact, such as bathing or dressing) and can, therefore, see the value of listing certain categories of work and roles.

Lastly, we are concerned that prescribing certain work and roles as child-related runs the risk of excluding work and roles that involve regular contact with children but which fall outside those prescribed by law. There is also a risk that this approach will contribute to a static definition of child-related work that may be unresponsive to changes in work or roles with children.

Taking these concerns into account, we have determined that, rather than limiting WWCCs to people engaged in work or roles that have been designated as child-related, WWCC laws should:

- clarify that the key factor that determines the need for a WWCC is whether the work or role involves contact with children that is a usual part of, and more than incidental to, the work or role
- include a standard and simplified list of the categories of work or roles that are indicative of child-related work
- include in the list a general category for other work or roles that traditionally are not considered to be child-related but still involve the required amount of contact with children
- include a clear and precise definition of the specific types of work and roles that fall within each of the child-related work categories, to be agreed upon by state and territory governments.

We reviewed all WWCC laws to determine what to include in the standardised list of categories of work or roles that are indicative of child-related work. Our review was informed by several key questions:

- Will contact with children be a usual part of, and more than incidental to, the work or role? Are there other compelling reasons that would justify needing a WWCC (for example, particular vulnerability of children, or opportunities to develop and abuse a relationship of trust)?
- To what extent would requiring WWCCs for specific categories of work or roles help to protect children against sexual abuse in institutional contexts? Are there other tools, such as national police checks, that would be better suited to pre-employment screening for that work or role?

- What would be the likely impact on the administration and effectiveness of WWCCs if that category of work or role was included or excluded from WWCC laws?

As part of the review, we sought to:

- identify the categories of work and roles that state and territory governments currently designate as child-related, including any consensus or majority positions regarding particular work or roles
- identify the core categories of work and roles that make up the child-related work sector
- identify a streamlined list that would be simple for people and institutions to understand and apply, and – in turn – aid compliance with WWCC laws
- omit work or roles that usually only involve incidental contact with children or that would not otherwise satisfy the required amount of contact with children (for example, labourers in schools whose contact with children is incidental)
- omit roles that do not involve 'work' with children (for example, prospective adoptive parents) and for which screening is, in our view, better dealt with as part of the relevant regulatory regimes (for example, adoption regimes).

We also sought to clarify that activities or services of ministers of religion, and activities or services provided by religious organisations for children (such as Sunday schools), are considered to be child-related work for the purposes of WWCC laws. In addition, we considered how to best discourage organisations from relying on WWCCs as their main risk mitigation tool.

We ultimately concluded that the standardised and simplified list should comprise work and roles in the following areas:

- accommodation and residential services for children, including overnight excursions or stays
- activities or services provided by religious leaders, officers or personnel of religious organisations
- childcare or minding services
- child protection services, including OOHC
- clubs and associations with a significant membership of, or involvement by, children
- coaching or tuition services for children
- commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions
- disability services for children
- education services for children
- health services for children
- justice and detention services for children, including immigration detention facilities where children are regularly detained
- transport services for children, including school crossing services.

We further concluded that the list should make provision for:

- other work or roles that involve contact with children that is a usual part of, and more than incidental to, the work or roles
- adult persons residing in the homes of authorised carers of children.

Regarding the last category, we acknowledge that adults residing in the homes of authorised carers are not engaged to work with children. Nevertheless, we feel strongly that they should be required to obtain WWCCs due to the particular vulnerability of children in OOHC, the high-risk environment in which OOHC takes place, and the duty of care owed by the state or territory to children in OOHC. Moreover, we are not convinced that other risk minimisation strategies, such as national police checks, adequately mitigate the considerable risks to children in OOHC.

We also acknowledge the risks that visitors to OOHC settings can pose to children. However, we do not consider that WWCCs are a practical tool for managing this risk effectively.

We are of the view that all existing categories of work that do not fall within one of the categories listed above should be removed from state and territory WWCC laws. That does not, however, preclude state and territory governments from later agreeing to reintroduce a particular category, by all of them amending their WWCC laws to include that category in their definition of child-related work.

We believe state and territory governments are best placed to define which specific categories of work or roles fall under each area listed above. Once agreed on, state and territory governments should amend their WWCC laws to incorporate the standard definitions. To ensure a national model is maintained over time, any changes to the definition of child-related work will need to be agreed to by COAG, or a relevant ministerial council, and adopted across all jurisdictions.

12. State and territory governments should amend their WWCC laws to:

    a. define the following as child-related work:

        i. accommodation and residential services for children, including overnight excursions or stays

        ii. activities or services provided by religious leaders, officers or personnel of religious organisations

        iii. childcare or minding services

        iv. child protection services, including OOHC

        v. clubs and associations with a significant membership of, or involvement by, children

        vi. coaching or tuition services for children

        vii. commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions

        viii. disability services for children

        ix. education services for children

        x. health services for children

        xi. justice and detention services for children, including immigration detention facilities where children are regularly detained

        xii. transport services for children, including school crossing services

        xiii. other work or roles that involve contact with children that is a usual part of, and more than incidental to, the work or roles

    b. require WWCCs for adults residing in the homes of authorised carers of children

    c. remove all other remaining categories of work or roles.

13. State and territory governments, through COAG, or a relevant ministerial council, should agree on standard definitions for each category of child-related work and amend their WWCC laws to incorporate those definitions.

Exemptions and exclusions

Current approaches

All WWCC laws contain *exemptions*, and some *exclude* certain work from the definition of child-related work. The effect of exemptions and exclusions is the same: people affected by them do not need to obtain a WWCC.

Exemptions and exclusions limit the scope of the various WWCC schemes so that WWCCs are required only when they are appropriate, are likely to be effective in managing risks to child safety, are not unduly burdensome or intrusive, and do not duplicate comparable or more rigorous screening practices.[107]

There are a large number of exemptions and exclusions available in each jurisdiction, and they vary considerably. Common exemptions and exclusions include:

- children, although the age below which they are exempt varies between 15 and 18 years and, in some cases, on the basis of their employment status (for example, employee or volunteer)
- employers and/or supervisors of children engaged in a workplace that is not child-related
- engaging in child-related work for short periods
- engaging in an activity or service in the same capacity as a child (for example, work colleagues and sporting team members)
- interstate visitors engaging in child-related work
- parent volunteers
- police officers
- students undertaking placements for an educational or vocational course
- teachers.

In Victoria, a person who has previously been denied a WWCC cannot later engage in child-related work on the basis that they fall within one of the exemption categories.[108] South Australian law also limits the availability of its exemptions, but in cases where the services or duties involve providing certain childcare or babysitting services[109], residential or overnight care for children, or disability services, or in cases where the services or duties are related to the administration of the juvenile justice system or child protection services.[110]

In New South Wales, employers are allowed to require an exempt worker to make a statutory declaration that they have not been convicted of an offence that would disqualify them from working with children.[111]

Standards

We acknowledge the important role of exemptions and exclusions in restricting the scope of WWCCs. However, we are concerned that the effectiveness of WWCCs as a tool to protect children against sexual abuse in institutional contexts is being undermined by:

- the large number of exemptions and exclusions in some WWCC laws
- inconsistencies in the availability and scope of exemptions and exclusions across the various WWCC schemes
- complexity arising from the use in WWCC laws of both exemptions and exclusions simultaneously.

We believe a streamlined, consistent and simplified approach is needed for identifying

exemptions from needing a WWCC. We are therefore of the view that the standard on child-related work should include a single list of exemptions (and no exclusions).

We reviewed all the exemptions and exclusions presently available across the various WWCC schemes to determine which to include in the list. In conducting the review, we considered two key questions:

- What is the impact of a particular exemption or exclusion on protecting children against sexual abuse in institutional contexts?
- What would be the likely impact on the administration and effectiveness of WWCCs if it was included or excluded from the list of exemptions?

As part of the review, we also sought to:

- remove overlap and duplication (for example, an exemption for short periods of child-related work renders an exemption for emergency OOHC placements unnecessary)
- omit exemptions and exclusions that do not meet the definition of child-related work, (for example, because they relate to incidental contact with children)
- avoid situations where people would require WWCCs (that is, they are not exempt) even though it is unlikely WWCCs would effectively manage the risks to children, or the risks can be managed more effectively through child-safe strategies or risk management safeguards.

The existence of comparable and more robust screening practices and their role in protecting children against sexual abuse in institutional contexts were further considerations in our review.

We ultimately concluded that the list of exemptions should comprise the following.

1.	**Children** All children (under the age of 18 years) should be exempt, regardless of their employment status. We are concerned with ensuring children are protected against sexual abuse by other children who are engaged in child-related work. However, as explained earlier, we found that requiring children to get WWCCs is neither necessary nor likely to be effective for achieving this goal, particularly since: • they make up a small proportion of the workforce • as a group, they are less likely than adults to have records that would be assessed as part of a WWCC that would not be picked up through a police check • few children are denied WWCCs.
2.	**Employers and supervisors of children engaging in a workplace that is not child-related** An employer or supervisor of a child should be exempt from needing a WWCC, provided the work is not child-related. While we acknowledge the inherent risks in the employment relationship, we note that: • industrial relations and anti-discrimination laws help to mitigate these risks • supervisors and/or employers in a workplace that is not child-related do not currently require WWCCs in most jurisdictions.[112]
3.	**Engaging in child-related work for seven days or fewer in a calendar year** People who engage in child-related work for short periods should be exempt. We note: • that the risks to children are comparatively low, as the short-term nature of the contact means there are fewer opportunities to establish and abuse a relationship of trust • the need to accommodate emergency situations requiring urgent work with children. While the specific period of time may benefit from discussion among the state and territory governments,[113] we feel that a period of seven days or fewer in a calendar year would strike an appropriate balance between child safety and other concerns. The exemption should not apply to child-related work in connection with overnight excursions, due to the heightened risks to child safety inherent in this work.

4.	**Engaging in an activity or service in the same capacity as the child** People who engage in child-related work in the same capacity as a child (for example, as a work colleague) should be exempt. We note that most jurisdictions currently exempt people engaging in child-related work in the same capacity as a child.[114] We also acknowledge that it is inappropriate to require people to obtain WWCCs if they have not sought to work with children and will not engage in child-related work. Moreover, we note that a workplace does not become a child-related service simply because children are engaged in work.
5.	**Police officers** Police officers, including Australian Federal Police members, should be exempt. We note that police are already subject to rigorous screening practices in all states and territories, and most jurisdictions already exempt police officers.[115] Further discussion is needed among the state and territory governments as to whether this exemption should be limited to work in an official capacity as a police officer.
6.	**Parent volunteers** Parents or guardians who volunteer for services or activities usually provided to their children should be exempt in respect of that activity. While acknowledging that parents can use their own children to access and groom potential victims, we note that: • participating in activities or services for their children is intrinsic to being a parent and should be encouraged • requiring parent volunteers to get WWCCs would intrude unnecessarily on children's development and family life, and prove overly burdensome • parents already interact with children in a wide variety of settings • there are many other strategies that are critical to making organisations child-safe, including family and community involvement, supervision and adequate child protection policies. The exemption should not apply to: • parents who volunteer on overnight excursions • parents who volunteer in providing services to children with disabilities, where the services involve close, personal contact with those children (for example, bathing) • close relatives of a child (in any event, under the proposed recommendations, a close relative would not be engaged in child-related work if contact with the related child occurs during an arrangement for a personal or domestic purpose).

We are confident that any risks to children arising from the exemptions identified above can be managed appropriately through broader child-safe strategies and risk management safeguards, as well as exercising parental responsibility for children.

We are of the view that all remaining exemptions and exclusions should be removed from state and territory WWCC laws. While space does not permit us to detail our reasoning in respect of all of them, we make the following brief observations:

- The current exemption in some jurisdictions for interstate volunteers should not be included in the child-related work standard. While we recognise this exemption was introduced to achieve greater consistency across the WWCC schemes, it will no longer be needed under the recommended national model, as portability will mean that WWCCs are recognised in all states and territories.
- The current exemption for students on placement as part of an educational or vocational course should not be included in the child-related work standard. The recommended exemption for children will capture any students under the age of 18 years undertaking placements involving child-related work. Adult students should be treated in the same way as other adults and therefore require WWCCs.
- The current exemption in three jurisdictions[116] for teachers should not be included in the child-related work standard. While we understand teachers in those jurisdictions are exempted because they already undergo rigorous pre-employment screening[117], teachers in all jurisdictions are not subject to the same level of screening and, in any event, WWCCs assess additional records and therefore enhance protection for children. Given teachers' prominent roles in children's lives, which includes daily unsupervised contact, the risk of abuse must be taken seriously, and teachers in all jurisdictions must be subject to rigorous screening. We acknowledge that requiring teachers to obtain WWCCs will increase the number of WWCC applications in jurisdictions where they are currently exempt, but do not find this a compelling reason in and of itself to exempt all teachers under a national model.

In addition to including a streamlined, consistent and simplified list of exemptions, we believe the standard on child-related work should expressly prohibit people from relying on any exemption if they have previously been denied, and subsequently not been given, a WWCC. It is unacceptable that someone who has been assessed as a risk to children and denied a WWCC on this basis should still be able to engage in child-related work.

We recommend that state and territory governments, through COAG, or a relevant ministerial council, agree on standard definitions for each exemption category and amend their WWCC laws to incorporate those definitions.

14. State and territory governments should amend their WWCC laws to:

    a. exempt:

        i. children under 18 years of age, regardless of their employment status

        ii. employers and supervisors of children in a workplace, unless the work is child-related

        iii. people who engage in child-related work for seven days or fewer in a calendar year, except in respect of overnight excursions or stays

        iv. people who engage in child-related work in the same capacity as the child

        v. police officers, including members of the Australian Federal Police

        vi. parents or guardians who volunteer for services or activities that are usually provided to their children, in respect of that activity, except in respect of:

            a) overnight excursions or stays

            b) providing services to children with disabilities, where the services involve close, personal contact with those children

    b. remove all other exemptions and exclusions

    c. prohibit people who have been denied a WWCC, and subsequently not granted one, from relying on any exemption.

15. State and territory governments, through COAG, or a relevant ministerial council, should agree on standard definitions for each exemption category and amend their WWCC laws to incorporate those definitions.

4.2 Offences for engaging in child-related work without a WWCC

Current approaches

There are similarities across the various WWCC schemes regarding what offences apply for non-compliance with WWCC laws. For example, subject to certain exceptions, it is generally an offence in all jurisdictions:

- to engage in child-related work without a valid WWCC[118]
- to employ a person in child-related work who does not hold a valid WWCC[119]
- for a person to provide false or misleading information on a WWCC application
- for screening and/or employing agencies to disclose unauthorised information in connection with WWCCs.

Despite these broad similarities, there are key differences in the range of offences included in jurisdictions' WWCC laws. For example, it is an offence some jurisdictions but not others to:

- apply for a WWCC if previously convicted of certain sex offences[120]
- fail to notify screening agencies and/or employers of a relevant change in circumstances, including new criminal charges or convictions[121]
- fail to notify screening agencies of a change in employment, name or contact details[122]
- fail to surrender WWCC cards upon suspension or cancellation[123]
- fail to apply for a replacement WWCC card within the specified timeframe if lost or stolen.[124]

Appendix D provides further details about the range of range of offences included in state and territory WWCC laws.

Standards

We are concerned that the high number of offences in some jurisdictions and inconsistencies in their nature and scope are creating unnecessary complexity across the various WWCC schemes. This complexity not only makes it difficult for people and employers to understand and comply with their obligations under WWCC laws, but also to understand the consequences of non-compliance.

In order to improve clarity, ensure consistency and build a national approach, we are of the view that all jurisdictions need to streamline the offences currently included in their WWCC laws. We believe state and territory governments are best placed to determine the specific offences and related penalties for non-compliance. However, we are concerned with ensuring that offences are limited to the following core categories:

- engaging in child-related work without holding, or having applied for, a WWCC
- employing a person in child-related work without them holding, or having applied for, a WWCC
- providing false or misleading information in connection with a WWCC application
- unauthorised disclosure of information gathered in the course of conducting WWCCs

- failing to notify relevant authorities of relevant changes in circumstances (for example, new criminal charges or convictions and a change of employment).

We are of the view that all existing offences that do not fall within one of the above categories should be removed from state and territory WWCC laws. This does not, however, preclude state and territory governments from later agreeing to reintroduce a particular offence into all of their respective WWCC laws.

Moreover, establishing a national system for continuously monitoring WWCC cardholders' criminal history information and a national database of WWCC decisions may eliminate the need for complex notification obligations and corresponding offences with respect to changes in a WWCC cardholder's circumstances. Notwithstanding this, we are of the view that there should be an obligation on both WWCC cardholders and those engaging people in child-related work to notify the relevant screening agency when a person commences or ceases child-related work. This will ensure screening agencies are aware of where WWCC cardholders are engaged in child-related work at any given time, in case there is a change in the person's cardholder status.

16. State and territory governments should amend their WWCC laws to incorporate a consistent and simplified list of offences, including:

    a. engaging in child-related work without holding, or having applied for, a WWCC

    b. engaging a person in child-related work without them holding, or having applied for, a WWCC

    c. providing false or misleading information in connection with a WWCC application

    d. applicants and/or WWCC cardholders failing to notify screening agencies of relevant changes in circumstances, including new criminal charges and a change of employer

    e. unauthorised disclosure of information gathered during the course of a WWCC.

5 Assessing WWCCs

In examining how to best protect children against sexual abuse in institutional contexts, we considered which types of information should be included in WWCCs and how this information should be assessed. We also considered whether people should be able to engage in child-related work while their WWCC applications are pending.

In the absence of strong evidence to inform a best-practice approach to assessing WWCCs, we considered the current approaches taken, whether there is a consensus or majority position, and the approaches in jurisdictions with more developed schemes.

Chapter 5:

- identifies which types of information are checked under the various WWCC schemes and how records of concern identified through this initial checking process are dealt with
- sets out the categories of criminal offences that commonly result in the automatic refusal of a WWCC or a risk assessment to determine suitability for a WWCC
- outlines the assessment criteria screening agencies currently rely on to assess relevant information and determine the level of risk a person may pose to children
- recommends standards on which types of information should be checked as part of WWCCs and how information indicating risks to children should be assessed.

5.1 Types of information checked

State and territory WWCC laws set out which types of information are checked as part of WWCCs. These types of information are believed to indicate the risks WWCC applicants may pose to children if permitted to engage in child-related work.

All jurisdictions check WWCC applicants' national criminal records and, while there are differences, generally also consider disciplinary information involving children (for example, findings of misconduct and disciplinary action). Some check additional information, such as child protection orders or police investigative information. See Appendix E for further information.

This section addresses issues relating to two categories of information – namely, criminal history, disciplinary or misconduct information. It also makes recommendations for standards on the types of information checked.

At the outset, we note the limited evidence base from which to draw conclusions about best practice in this area. This raises a number of challenges, including for developing standards. For instance, the limited evidence makes it difficult to identify which:

- types of records provide the strongest and most reliable indicators of potential risks posed to children by WWCC applicants
- assessment approaches are most effective in protecting children against sexual abuse.

In developing our recommendations, we therefore considered which types of information state and territory governments check and how they assess adverse records. As well as examining current approaches, including whether there is a consensus or majority position, we considered related policy frameworks endorsed by state and territory governments.

Criminal history information

Current approaches

All WWCC laws require applicants' criminal history records to be checked. These records are the main sources of information screening agencies rely on to identify risks to children. Governments have adopted different approaches to defining criminal history.

Table 3 – Approaches to defining criminal history in WWCC laws

Broad definition	The NT[125], Qld[126], SA[127] and WA[128] define criminal history broadly to encompass convictions, findings of guilt, and charges (whatever the outcome) for all offences from any jurisdiction. NSW also adopts an expansive approach. However, as it does not expressly define criminal history[129], several provisions of its WWCC law need to be drawn upon to identify which criminal records are checked.
Relevant offences identified	The ACT[130] and Tas[131] limit their definitions to particular offences or categories of offences and define which are relevant to WWCC decisions.
Certain non-conviction information excluded	Vic conducts 'police record checks'. It does not define this term expressly, but restricts the records assessed to pending charges, convictions and other findings of guilt. Non-conviction charges are not considered.[132]

Under the National Exchange of Criminal HIstory Information for People Working with Children (ECHIPWC), the national records available to jurisdictions at the initial stage of a WWCC comprise:[133]

- convictions, whether spent or unspent[134]
- pending charges[135]
- non-conviction charges (except in Victoria)[136]
- information about the circumstances of an offence (for example, if it involved a child).[137]

To achieve effective national exchange of information under the ECHIPWC, governments had to streamline and largely harmonise their approaches to criminal history. This in turn brought greater consistency to the types of records checked as part of WWCC assessments.

Nevertheless, it is clear to us that key limitations remain. One limitation is the different treatment of conviction and non-conviction information. For instance, unlike the other jurisdictions, Victoria does

not share non-conviction charges because this information is not checked under its scheme.[138] This means that non-conviction charges for Victorian offences are unavailable for WWCC assessments in all other jurisdictions.[139]

Another limitation relates to whether or not criminal history covers all offences, or is limited only to a subset of offences considered relevant for WWCC purposes. For example, the NSW Children's Guardian reviews applicants' full, unfiltered criminal records for all offences to identify whether there are any automatic barring offences or risk assessment triggers.[140] By contrast, Victoria only considers charges, convictions and findings of guilt for serious sexual, violent and drug offences.[141]

Standard

The ECHIPWC better aligned approaches to checking criminal records. However, we are concerned that definitions of criminal history in WWCC laws:

- still vary significantly
- are overly complex
- do not adequately reflect the scope of records available under the ECHIPWC.

Stakeholders have told us that it is often unclear to them what information is assessed as part of a WWCC application. Our own experience in interpreting definitions of criminal history reinforces what we've heard in this regard. Moreover, we are concerned that different jurisdictions are basing their WWCC decisions on different considerations due to the varying definitions.

We therefore believe that the current approaches to assessing information must be simplified, so that each jurisdiction checks the same types of criminal records for all WWCC applicants. We are of the view that a standard and simplified definition of criminal history is needed in all jurisdictions, and that this definition should be consistent with the scope of records available under the ECHIPWC. This definition must be the single reference point in WWCC laws for determining which criminal history records are examined.

The standard definition should make explicit that the types of records covered apply to *all* offences, not just a smaller subset of offences. We believe applicants' complete and unabridged criminal history information, including offences from when they were under 18 years of age[142], should be available for review by screening agencies so they can identify offences, if any, relevant to WWCC decisions. This will help ensure that:

- any risks to children that may arise from offences that appear to be unrelated to children are identified and assessed
- offences that appear to pose a risk to children, but where the actual circumstances suggest otherwise, are identified and assessed.

We believe screening agencies are best placed to review criminal records to identify offences relevant to WWCCs. This is because they administer the schemes and have appropriate child protection expertise. As such, we are concerned with ensuring that records are not filtered before screening agencies receive them (for example, by police services), as this may compound existing problems.

However, we do not believe that all offences in a person's criminal history will necessarily

require further assessment (for example, traffic infringements). Rather, ensuring screening agencies can access an applicant's complete history equips them with the broadest possible range of information to identify potential risks to children, which may warrant further assessment.

17. State and territory governments should amend their WWCC laws to include a standard definition of criminal history, for WWCC purposes, comprised of:

    a. convictions, whether or not spent

    b. findings of guilt that did not result in a conviction being recorded

    c. charges, regardless of status or outcome, including:

        i. pending charges – that is, charges laid but not finalised

        ii. charges disposed of by a court, or otherwise, other than by way of conviction (for example, withdrawn, set aside or dismissed)

        iii. charges that led to acquittals or convictions that were quashed or otherwise overturned on appeal

    for all offences, irrespective of whether or not they concern the person's history as an adult or a child and/or relate to offences outside Australia.

18. State and territory governments should amend their WWCC laws to require police services to provide screening agencies with records that meet the definition of criminal history records for WWCC purposes and any other available information relating to the circumstances of such offences.

Disciplinary or misconduct information

Current approaches

After criminal history, disciplinary or misconduct information is the most common type of information checked as part of WWCCs. However, the types of disciplinary or misconduct information checked vary considerably, partly because each jurisdiction has their own employment-related disciplinary regimes. In addition, New South Wales is the only jurisdiction with a reportable conduct scheme[143], although Victoria is implementing one.[144]

Screening agencies must consider disciplinary or misconduct information at the initial stage of a WWCC in New South Wales[145], Victoria[146] and Queensland.[147] These three states have put notification mechanisms in place to alert screening agencies to relevant information.

- New South Wales' law requires certain employing bodies to report findings of sexual misconduct or serious physical assault against children to their screening agency.[148] Further, the NSW Ombudsman may notify the Children's Guardian of concerns that, on the basis of information obtained through its reportable conduct functions, a person may pose a risk to children's safety.[149]
- Queensland's screening agency must consider certain disciplinary information provided by professional or regulatory organisations associated with teachers, childcare providers, foster carers and health practitioners.[150]
- Victoria's screening agency checks relevant findings concerning teachers and foster carers and, for some categories of applications, determinations by the Victorian Civil and Administrative Tribunal relating to health practitioners.[151]

Except in Western Australia, screening agencies in the remaining jurisdictions have the discretion to seek disciplinary or misconduct information during a WWCC. The law in Western Australia does not appear to permit information other than criminal history to be taken into account at the initial checking stage; rather, its screening agency can only consider disciplinary or misconduct information if a positive criminal history result is returned.[152] The effect of this is that people who do not have a criminal history will be issued a WWCC even if they have adverse disciplinary or misconduct records that could indicate a risk to children.

Standard

We believe all screening agencies should check disciplinary or misconduct information where the conduct was against, or involved, a child (as well as criminal history). We believe it is important to check this information, as it allows conduct that falls short of criminal charges, but that nevertheless indicates risks to children, to be taken into account. This is crucial for ensuring the safety of children in institutions. Anecdotally, we are aware that some WWCC applications, albeit a small number, are refused based on disciplinary or misconduct information alone.

Differences in employment regimes across the jurisdictions mean that, unlike criminal history, there is not a national approach to the types or sources of disciplinary or misconduct records checked. It has therefore not been possible to identify a uniform list of the types of records (and sources) that should be checked. What is important, though, is that all jurisdictions check available and relevant disciplinary or misconduct information concerning conduct against, or involving, a child, regardless of the source or specific record type.

As discussed earlier in this report, we also recognise that these differences may present challenges for making WWCCs portable between the states and territories. For example, there is a risk that a person with adverse disciplinary records in one jurisdiction could receive a clearance by applying for a WWCC in another jurisdiction, where adverse records are not available. One of the main reasons this report does not resolve these challenges is that these systems, while integral to WWCCs, are much broader in scope and therefore have implications that go far beyond child-related work. However, to counteract

this risk, establishing a centralised database will alert jurisdictions to adverse disciplinary or misconduct records that have lead to a WWCC refusal in another jurisdiction.

In any event, we reiterate that WWCCs are only one component of a range of strategies that contribute to safe environments for children and were never intended to ensure a risk-free environment. For this reason, we reached the conclusion that some WWCC schemes checking a wider range of disciplinary or misconduct information than that required by recommendation 19 does not pose a barrier to achieving portability. We are also of the view that, once schemes are harmonised through the standards set out in this report, portability will not weaken the current systems operating in each jurisdiction.

To that end, we believe state and territory governments, through COAG or a relevant ministerial council, are best placed to establish the mechanisms to support portability in such circumstances. For example, one mechanism could include provisions in WWCC laws that require WWCC cardholders to register in the state or territory in which they intend to engage in child-related work, and for the screening agency to check their own disciplinary or misconduct systems before the person can start work. It is noted that, under the current approach of requiring people to apply for a new WWCC in each state or territory in which they intend to work, there is no capacity or process for the screening agency to assess disciplinary records from other jurisdictions. However, if a WWCC cardholder is able to engage in child-related work in a new state or territory because their WWCC from their previous jurisdiction is accepted, the screening agency in the new state or territory will have some assurance that relevant disciplinary records were taken into account in granting the WWCC. This would not be the case if they applied for a new WWCC, because cross-jurisdictional access to disciplinary records is not available.

We further recognise that – in addition to applicants' criminal history, disciplinary or misconduct information – some jurisdictions routinely check other kinds of information, such as:

- child protection records[153]
- information arising from police investigations into certain alleged offences against children[154]
- domestic violence orders[155]
- reporting obligations or orders under various sex offender laws.[156]

Acknowledging that these records are likely to indicate risks to children, the recommended standard on assessing information does not exclude them from being used in WWCCs. This is partly due to the lack of evidence from which to identify the information types that represent the strongest and most reliable indicators of risk to children.

Another issue arising from the fact that jurisdictions have no capacity to consider applicants' disciplinary or misconduct information from another state or territory, unlike with criminal history information, is that an applicant can be refused a WWCC in one jurisdiction on the basis of adverse disciplinary records but not in another, where those record types are not checked. Once a national centralised database is in place, as recommended in this report, a WWCC refusal based on a disciplinary record in one jurisdiction would be recorded in the database and could trigger the assessing jurisdiction to obtain and examine this information.

19. State and territory governments should amend their WWCC laws to:

    a. require that relevant disciplinary and/or misconduct information is checked for all WWCC applicants

    b. include a standard definition of disciplinary and/or misconduct information that encompasses disciplinary action and/or findings of misconduct where the conduct was against, or involved, a child, irrespective of whether this information arises from reportable conduct schemes or other systems or bodies responsible for disciplinary or misconduct proceedings

    c. require the bodies responsible for the relevant disciplinary and/or misconduct information to notify their respective screening agencies of relevant disciplinary and/or misconduct information that meets the definition.

5.2 Responses to returned records

Current approaches

All jurisdictions grant WWCCs to applicants who return no records following an initial check. However, how they respond when relevant records are returned varies.

NSW, NT & WA	NSW[157], the NT[158] and WA[159] laws require screening agencies to automatically refuse a WWCC for applicants with certain serious offences in their criminal history; there is no discretion to assess risk or consider the circumstances of the offence.[160]
Qld & Vic	Qld[161] and Vic[162] laws similarly require agencies to automatically refuse a WWCC on the basis of certain criminal offences, but give them the discretion to issue a WWCC if satisfied that exceptional circumstances exist and children won't be exposed to risk of harm.
Tas	Tas' screening agency must issue a proposed refusal notice to applicants with certain prescribed offences in their criminal history, thereby providing them with an opportunity to request a review before the decision is finalised.[163]
ACT & SA	The ACT[164] and SA[165] laws do not provide for automatic refusals, so all applicants for whom relevant records are returned after an initial check are subject to a risk assessment.

All jurisdictions with the capacity for automatic refusals specify which offences trigger the refusal. While the offences specified vary across the jurisdictions[166], they commonly include the following broad categories of offences:

- murder[167]
- manslaughter[168]
- sexual assault or rape[169]
- incest[170]
- child pornography[171]
- child abduction or kidnapping.[172]

The variation in the offences triggering automatic refusals is largely due to the lack of uniformity in criminal laws between the jurisdictions. The differences arise mainly from the language used to describe offences, rather than the underlying conduct to which the offence relates.

The types of applicants who receive automatic refusals also vary between jurisdictions. For instance, such refusals are generally only imposed on applicants who have convictions or, sometimes, current charges for serious prescribed offences, if they were an adult and the victim was a child at the time of the offence.

Most WWCC laws also stipulate the types of records that, although not meeting the threshold for an automatic refusal, still indicate a risk to children and therefore trigger the need for a comprehensive risk assessment. Risk assessment triggers generally include:

- juvenile records for automatic refusal offences
- non-conviction charges for automatic refusal offences
- records for automatic refusal offences where the victim or alleged victim was an adult
- serious criminal offences other than those requiring automatic refusal
- relevant disciplinary or misconduct records.

Standard

We are concerned that the different responses to returned records create confusion about which records trigger automatic refusals or risk assessments. We are further concerned about the risk of jurisdictions reaching different outcomes in situations where risks to children are the same or comparable, notwithstanding a review conducted by the National Operators' Forum, which found that screening decisions are 'essentially the same'.[173]

We are of the view that state and territory governments should streamline and harmonise how they respond to returned records, so that:

- applicants are granted a WWCC automatically if initial checks return no relevant criminal history, disciplinary or misconduct information
- applicants are refused a WWCC automatically if initial checks return criminal records within certain categories
- applicants undergo a risk assessment if initial checks return criminal and/or disciplinary records within certain categories.

We believe state and territory governments, through COAG or a relevant ministerial council, are best placed to identify the specific criminal or other records that fall under each of the areas above. Once agreed on, state and territory governments should amend their WWCC laws in line with the agreed records.

In our view, adult convictions or pending charges for the following broad categories of criminal offences should lead to an automatic WWCC refusal in all jurisdictions:

- murder of a child
- manslaughter of a child
- indecent or sexual assault of a child
- child pornography–related offences
- incest where the victim was a child
- abduction or kidnapping of a child

Some jurisdictions will need to significantly expand the range of criminal offences that trigger an automatic refusal and/or ensure that pending charges for these offences also lead to an automatic refusal. We accept that a situation where an applicant is automatically refused a WWCC on the basis of a pending charge and is later found not guilty would present challenges. However, the paramount consideration must be the best interests of children, including protecting them against sexual abuse in institutional contexts. Additionally, we note that there is nothing preventing an applicant who is denied a clearance in such circumstances from reapplying after court proceedings are finalised.

We don't believe screening agencies should have the discretion to conduct further assessments if there is an offence triggering an automatic refusal. Therefore, we call for this discretion to be removed from WWCC laws. While we considered some stakeholders' views that exceptional circumstances could exist that warrant conducting a risk assessment, ultimately we concluded that the seriousness of the offence identified as requiring automatic refusal means that the risk of abuse must take precedence over considerations regarding unfairness to applicants. Furthermore, the risk of unfairly excluding applicants (including where there may be exceptional circumstances) is mitigated, as applicants can appeal against an automatic refusal.

Apart from those criminal records that lead to an automatic WWCC refusal, we believe risk assessments should be conducted for applicants who return any other relevant criminal history, disciplinary or misconduct information. We believe the following record types are relevant to assessing the risks applicants may pose to children:

- juvenile records and/or non-conviction charges relating to automatic refusal offences
- sexual offences, regardless of whether the (alleged) victim was a child and including offences not already covered in the automatic refusal categories (for example, indecent assault)
- violent offences, including assaults, arson and other fire-related offences, regardless of whether the (alleged) victim was a child and including offences not already covered in the automatic refusal categories (for example, intentional wounding)
- child welfare offences (for example, neglect)
- offences involving cruelty to animals
- drug offences
- disciplinary or misconduct information as described above.

20. State and territory governments should amend their WWCC laws to respond to records in the same way, specifically that:

    a. the absence of any relevant criminal history, disciplinary or misconduct information in an applicant's history leads to an automatic grant of a WWCC

    b. any conviction and/or pending charge in an applicant's criminal history for the following categories of offence leads to an automatic WWCC refusal, provided the applicant was at least 18 years of age at the time of the offence:

        i. murder of a child
        ii. manslaughter of a child
        iii. indecent or sexual assault of a child
        iv. child pornography–related offences
        v. incest where the victim was a child
        vi. abduction or kidnapping of a child
        vii. animal-related sexual offences

    c. all other relevant criminal history, disciplinary or misconduct information should trigger an assessment of the person's suitability for a WWCC (consistent with the risk assessment factors set out below).

21. State and territory governments should amend their WWCC laws to specify that relevant criminal records for the purposes of recommendation 20(c) include but are not limited to the following:

    a. juvenile records and/or non-conviction charges for the offence categories specified in recommendation 20(b)
    b. sexual offences, regardless of whether the victim was a child and including offences not already covered in recommendation 20(b)
    c. violent offences, including assaults, arson and other fire-related offences, regardless of whether the victim was a child and including offences not already covered in recommendation 20(b)
    d. child welfare offences
    e. offences involving cruelty to animals
    f. drug offences.

22. The Commonwealth Government, through COAG, or a relevant ministerial council, should take a lead role in identifying the specific criminal offences that fall within the categories specified in recommendations 20(b) and 21.

5.3 Criteria for assessing risk

Current approaches

A WWCC risk assessment forms one aspect of evaluating of a person's suitability to engage in child-related work. While it is not possible to predict with certainty what any person will do in the future, the rationale for assessing risk is based on the connection between past behaviour and future behaviour.

Depending on what records are returned initially, each jurisdiction can conduct risk assessments on:

- applicants, to further consider the level of risk they may pose to children
- existing WWCC cardholders, when new records are identified during the validity period of their clearance, which can lead to clearances being revoked if the screening agency determines there is a risk to child safety as a result of the assessment.

All WWCC laws specify the factors that must be considered when undertaking risk assessments. These factors are broadly similar and include:

- the nature and circumstances of the offence (for example, its seriousness, the length of time since it occurred, its relevance to child-related work, and the age and vulnerability of the victim)
- the applicant's characteristics at the time of the offence and since (for example, their age at the time of the offence, their conduct following the offence and the patterns in their criminal history overall)
- the risk of recurrence (for example, the likelihood that the offending conduct will be repeated and the likely impact on children if the conduct is repeated).

Nevertheless, certain factors are included in only some jurisdictions' WWCC laws, including:

- the severity of any penalty imposed by a court[174]
- the reasons for any court decision not to impose a prison sentence[175]
- reports concerning an applicant's mental health[176]
- changes in an applicant's circumstances since the offence was committed[177]
- the applicant's attitude to their offending behaviour[178]
- the findings of assessment reports after the applicant's attendance at treatment or intervention programs[179]
- any escalation in offending behaviours[180]
- whether the conduct constituted an offence overseas but not in Australia.[181]

The laws in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland and Victoria also specify factors that should be taken into account when considering sources of information other than criminal history in a risk assessment. The Australian Capital Territory has the most detailed statutory requirements, including, for example, how the information was obtained; its relevance, truthfulness, completeness and reliability; and any submissions made by the applicant.[182]

Standard

We take the view that standardised risk assessment criteria needs to be reflected in all WWCC laws to ensure assessments are based on the same factors. We also agree with those stakeholders who told us that risk assessments should be based on evidence about risks to children; applicants should not be precluded from child-related work arbitrarily because of offences that do not indicate such risks.

We believe the standardised criteria should be consistent with those set out in the risk assessment guide; endorsed by the Commonwealth, state and territory governments to bring consistency and rigour to risk assessments; and applied to criminal history, disciplinary and misconduct information.[183] Thus, the criteria should include:

- the nature, gravity and circumstances of the offence and/or misconduct, and how this is relevant to children or child-related work
- the length of time that has passed since the offence and/or misconduct occurred
- the age of the child
- the age difference between the person and the child
- the person's criminal and/or disciplinary history, including whether there is a pattern of concerning conduct
- all other relevant circumstances in respect of their offending and/or misconduct history, and the impact on their suitability to be engaged in child-related work.

In our view, risk assessments should not take account of an offence that has been decriminalised or is an offence overseas but not in Australia, which is currently included in the risk assessment guide. We agree with the views of some stakeholders that there is no basis upon which to assess information relating to decriminalised matters. For instance, people convicted of offences in relation to consensual homosexual intercourse (which have now been decriminalised) should not be subject to risk assessments as part of a WWCC.[184]

23. State and territory governments should amend their WWCC laws to specify that the criteria for assessing risks to children include:

    a. the nature, gravity and circumstances of the offence and/or misconduct, and how this is relevant to children or child-related work

    b. the length of time that has passed since the offence and/or misconduct occurred

    c. the age of the child

    d. the age difference between the person and the child

    e. the person's criminal and/or disciplinary history, including whether there is a pattern of concerning conduct

    f. all other relevant circumstances in respect of their history and the impact on their suitability to be engaged in child-related work.

24. State and territory governments should amend their WWCC laws to expressly provide that, in weighing up the risk assessment criteria, the paramount consideration must always be the best interests of children, having regard to their safety and protection.

5.4 Eligibility to work while an application is assessed

WWCC laws specify whether applicants can begin child-related work after submitting a WWCC application but before a decision is made on their suitability to work with children. We considered two key questions regarding the eligibility requirement: whether WWCC applicants should be able to engage in child-related work before a final decision is reached on their application, and, if so, what limitations, if any, should be placed on their work.

We weighed up several factors when considering these questions, including ensuring that:

- children are protected adequately against the risk of abuse by people who are not yet determined to be suitable to engage in child-related work
- institutions that provide services to children can engage people in a timely manner, so they are resourced appropriately to meet the needs of children
- people are not unfairly prevented from accessing job opportunities, particularly where risks to child safety are low and/or can be minimised through appropriate safeguards, such as broader child-safe strategies.

Risk management strategies and average application processing times were also taken into account.[185] The number of applicants authorised to work with children was also considered.

Current approaches

The WWCC laws in the Australian Capital Territory[186], New South Wales[187] and the Northern Territory[188] expressly allow WWCC applicants to begin child-related work before the final outcome of their application is known. The laws in Victoria[189] and Western Australia[190] also allow applicants to begin work, by providing that it is a defence to a charge of engaging in child-related work without a valid check by proving that they applied for a check and met other conditions (for example, did not withdraw their application). In Queensland, employees are allowed to start child-related work before a final decision is made on their application, but volunteers are required to undergo a valid check before starting such work.[191] In South Australia[192] and Tasmania[193], valid checks are required before a person can begin child-related work.

Table 4 – Eligibility to engage in child-related work while a WWCC application is pending

NSW	Vic	Qld	WA	SA	ACT	Tas	NT
✓	✓	Employees ✓ Volunteers ✗	✓	✗	✓	✗	✓

Most jurisdictions that allow applicants to begin child-related work limit their engagement in that work until the outcome of their application is known. Some jurisdictions:

- impose an interim bar on people who are determined to pose a risk to children[194]
- prohibit certain people from working without a check[195] (for example, those convicted of relevant offences)
- require WWCC applicants to have supervised contact with children.[196]

The time typically taken to process WWCC applications ranges from one day to 12 weeks, depending on the jurisdiction. However, it can take considerably longer – even several months – if criminal record, disciplinary or misconduct information is identified during the application process. New South Wales' processing times stand apart from the other jurisdictions. The Office of the Children's Guardian processed 420,499 WWCC applications during the 2013–14 financial year. Of those applications, it processed 89 per cent within two working days and, of those, 85 per cent within one working day. Of the 420,499 applications processed, 50,051 returned non-relevant records (that is, records that didn't require a risk assessment), and 75 per cent of these were cleared within 24 hours.[197]

The approaches described above are broadly similar. Still, there are key differences in:

- when applicants in different jurisdictions can start child-related work
- when employee and volunteer applicants can begin child-related work in Queensland
- the limitations on engaging in child-related work while WWCC applications are assessed
- processing times for WWCC applications.

Children consequently receive different levels of protection throughout Australia and, depending on their location, could be at a greater or lesser risk of sexual abuse by people who do not yet have a valid WWCC but who are nevertheless engaged in child-related work.

At the same time, WWCC applicants have different legal rights to start child-related work depending on where they are located. These rights differ even in situations where people's level of risk to children is assessed to be same or of a similar nature. This can, in turn, affect an applicant's ability to earn a living from that work if the risks associated with allowing them to work with children for short periods while their application is pending can be managed appropriately through broader child-safe strategies.

Individuals and institutions operating in more than one jurisdiction can, like in other areas, face compliance challenges when navigating the varied eligibility requirements. Moreover, it was suggested to us that institutions operating in those jurisdictions that prohibit people from starting child-related work while their application is pending may face greater resourcing challenges than those in jurisdictions without the same requirement, although there appears to be little data to support this claim.

Standard

We believe people should be allowed to start child-related work while their WWCC application is pending, provided appropriate safeguards are put in place to protect children.

In reaching this conclusion, we considered the view of some stakeholders that allowing WWCC applicants to engage in child-related work before the final outcome of their application is known puts children at risk of sexual abuse in institutional contexts.

Protecting children against the risk of abuse is our key concern. However, we note that there are other strategies available to manage this risk and, further, that most WWCC applicants are ultimately authorised to work with children, suggesting that the risks associated with allowing applicants to begin child-related work are low. By way of illustration, between April 2006 and June 2014, the Victorian Government issued 939,000 WWCC cards and 1,835 negative notices.[198]

Although the risk resulting from allowing applicants to work while their applications are pending is low, we nevertheless believe this risk must be managed appropriately so that children receive adequate protection against abuse. Rather than denying applicants the right to work, we believe a proportionate response is to manage this risk through introducing appropriate safeguards and broader child-safe strategies.

This can achieved by WWCC laws providing that, to be eligible to begin child-related work, people must:

- submit a WWCC application
- provide an application receipt to their employer
- not previously have been denied a WWCC, or convicted of sexual offences against children.

Additional safeguards that would help in managing risks to children include requiring:

- employers to cite application receipts, record application numbers and verify applications with the relevant screening agency
- interim bars to be imposed on applicants where records are identified that may indicate the applicant poses a risk to children
- contact between applicants and children to be supervised by a person with a WWCC.

Implementing broader strategies to ensure organisations are child-safe will further assist in reducing any risks to children from allowing WWCC applicants to begin child-related work while their applications are pending. Employers can also elect not to allow applicants to begin work until the outcome of their application is known.

Furthermore, we believe risks to child safety can be minimised by shortening average application processing times. A more consistent and streamlined WWCC regime, in line with the standards recommended in this report, will likely help to reduce these times. However, those jurisdictions with longer application processing times will also need to review their application and decision-making processes to identify further ways of expediting the application process. We are of the view that the state and territories that do not currently have online processing systems need to invest in such systems. This will help reduce processing times, facilitate the establishment of the centralised national WWCC database, and allow for timely identification of records relevant to an application that may indicate a risk and warrant an interim bar.

In summary, based on our view that there are other strategies to manage the short-term risks to child safety, we believe applicants should be permitted to start child-related work while their application is pending. To provide otherwise would be unnecessary from a child protection perspective, unfair to WWCC applicants and potentially create unnecessary resourcing barriers for institutions that provide services to children.

25. State and territory governments should amend their WWCC laws to permit WWCC applicants to begin child-related work before the outcome of their application is determined, provided the safeguards listed below are introduced.

Applicants

a. applicants must submit a WWCC application to the appropriate screening agency before beginning child-related work and not withdraw the application while engaging in child-related work

b. applicants must provide a WWCC application receipt to their employers before beginning child-related work

Other safeguards

c. employers must cite application receipts, record application numbers and verify applications with the relevant screening agency

d. there must be capacity to impose interim bars on applicants where records are identified that may indicate a risk and require further assessment.

26. State and territory governments that do not have an online WWCC processing system should establish one.

27. State and territory governments should process WWCC applications within five working days, and no longer than 21 working days for more complex cases.

6 WWCC outcomes

6.1 Clearance types

Current approaches

There are only two possible outcomes for WWCC applications in New South Wales, Victoria, Queensland and Western Australia – a WWCC is either issued or it is not. In the remaining jurisdictions, WWCCs can be limited to specific roles or subject to conditions. Such conditions are generally based on situational or organisational aspects of the environment in which applicants seek to work, such as:

- the ages or vulnerability of the children
- whether the person will have unsupervised face-to-face contact with children
- the nature of the duties to be performed.

As seen in table 5 below, imposing conditions on a WWCC limits its portability across child-related roles and/or employers within the jurisdiction that issued the clearance. For instance, WWCCs in South Australia are attached to a particular job or employer, meaning that a new clearance must be sought each time a person commences a child-related role. In the Australian Capital Territory and Tasmania, clearances may be role-based or specific to the activity permitted to be undertaken.

Table 5 – Portability of WWCCs across roles and employers

NSW	WWCCs are portable across roles and employers
Vic	WWCCs are portable across roles and employers, but volunteer WWCCs are not transferrable to paid child-related work
Qld	WWCCs are portable across roles and employers for employees, but volunteer WWCCs are not transferrable to paid child-related work
WA	WWCCs are portable across roles and employers
SA	Clearances are not portable, meaning that a criminal history assessment must be undertaken each time a person starts new child-related work
ACT	WWVPs are generally portable across roles and employers for employees, but some may be role-based or subject to certain conditions
Tas	WWVPs are generally portable across roles and employers for employees, but some may be role-based or subject to certain conditions
NT	WWCCs are portable across roles and employers

Standard

We are of the view that situational or organisational factors should not form part of an assessment of a person's suitability for a WWCC. Instead, applicants should be assessed either as suitable to work with children or not, regardless of the situation or organisation. That is, a WWCC should be connected only to the individual seeking the clearance and not to their employer, or the role or organisation in which they are seeking to work.

We are concerned that conditions placed upon clearances:

- rely on the conditions and situational and organisational factors being static and applied consistently
- create challenges for monitoring and enforcing compliance, as it can be difficult to know whether the conditions are being adhered to or if the situational or organisational factors have changed
- create barriers to portability across child-related roles and employers.

To address these issues, we believe the only possible outcomes for WWCCs across all jurisdictions should be that a clearance is issued or it is not. Those jurisdictions that currently grant conditional clearances, or issue different classes of clearance depending on employment status (for example, volunteer or employee), will need to amend their WWCC laws accordingly.

28. All state and territory governments should amend their WWCC laws to specify that:

    a. WWCC decisions are based on the circumstances of the individual and are detached from the employer the person is seeking to work for, or the role or organisation the person is seeking to work in

    b. the outcome of a WWCC is either that a clearance is issued or it is not; there should be no conditional or different types of clearances

    c. volunteers and employees are issued with the same type of clearance.

6.2 Appeals

Current approaches

An independent external appeals mechanism allows people affected by adverse decisions to have their case reviewed by a body independent of the original decision-maker. Appeals mechanisms enable errors to be corrected, improve the quality of decisions, ensure transparency and engender public confidence in the integrity of government administration.[199]

Adverse decisions made under WWCC laws, for which independent appeals process are available, include:

- cancellation or revocation of a WWCC
- suspension
- an automatic WWCC refusal decision where the legislation provides for a mandatory refusal on the basis of certain serious criminal history records
- refusal decisions where the screening agency has assessed the application and determined the person should not be granted a WWCC.

Appealing an adverse WWCC decision usually involves an independent body assessing the merits of the decision under appeal (ie a merits review). This involves consideration of the evidence, relevant facts, discretionary factors and the application of relevant law and policy.[200]

All Australian states and territories have mechanisms for externally reviewing WWCC decisions and allow most, if not all, people to appeal against adverse decisions (see table 6 below). The main point of difference between the jurisdictions is that three states – namely, New South Wales, Victoria and Queensland – exclude or significantly limit people from appealing against adverse WWCC decisions if they have been convicted of, or are awaiting trial for, certain serious criminal offences against children.

Table 6 – Appeals against WWCC decisions

NSW	People – except those convicted of child murder or charged with an offence not yet finally determined – may appeal to the NSW Civil and Administrative Tribunal against decisions to: • refuse a WWCC[201] • cancel a WWCC[202] • issue an interim bar, but only if it has been in force for more than six months.[203]
Vic	Any person may appeal to the Victorian Civil and Administrative Tribunal against a decision to refuse a WWCC. However, if the basis for refusing the clearance is because they are a registered sex offender or subject to certain supervision orders, their right of appeal is restricted to grounds of mistaken identity.[204]
Qld	People – except those 'disqualified' due to convictions for certain serious offences (for example, child sex offences) – may lodge an appeal with the Queensland Civil and Administrative Tribunal against decisions to[205]: • refuse a WWCC • cancel a WWCC.
WA	Any person may appeal to the Western Australian State Administrative Tribunal against decisions to[206]: • issue a negative notice • not cancel a negative notice • not cancel a negative notice and substitute the correct notice.
SA	In the first instance, a person may request an internal review of a decision by the Department for Communities and Social Inclusion (DSCI) Screening Unit. If unsatisfied with the outcome of the internal review, they may apply to have the decision reviewed externally by the Ombudsman or the Human Rights Commission.[207]
ACT	Any person may appeal to the ACT Civil and Administrative Tribunal against a decision to: • refuse a registration to work with children[208] • place conditions on a registration to work with children[209] • refuse to amend a conditional registration to work with children[210] • suspend or cancel a registration to work with children.[211]
Tas	Any person may appeal to the Magistrates Court (Administrative Appeals Division) against a decision to: • refuse a registration to work with children[212] • place conditions on a registration to work with children[213] • refuse to amend a conditional registration to work with children[214] • suspend or cancel a registration to work with children[215] • refuse an extension to a registration.[216]
NT	Any person may appeal to the Local Court against a decision to[217]: • refuse a WWCC • revoke a WWCC • place conditions on a WWCC.

Standard

Submissions on *Issues paper No 1* were supportive of appeal rights in connection with adverse WWCC decisions. However, some stakeholders expressed support for limiting appeal rights in certain circumstances, as is the case in New South Wales, Victoria and Queensland. They believe it would be inappropriate for people convicted of certain serious criminal offences to be able to appeal against a decision to refuse or cancel a WWCC. The assumption is that a person convicted of a serious offence against children will always pose an unacceptable risk to children.

We are cognisant of the need to not unfairly restrict people's right to work. However, with the best interests of children being paramount, we agree with the position of some stakeholders and the approach taken in New South Wales, Victoria and Queensland. Certain offenders, by virtue of the seriousness of their past conduct, should be denied any right of appeal.

Notwithstanding this, we also recognise the potential for unintended consequences to arise in our attempt to identify those who should be excluded from accessing appeals processes. While we are of the view that appeal rights should be restricted for people convicted of certain serious offences, it is difficult for us to identify all of the offences that should exclude a right of appeal. This is because each state and territory will describe the relevant offences, particularly sexual assault, in different ways.

We accordingly recommend that jurisdictions should provide a right of appeal for people affected by adverse WWCC decisions unless those people have been convicted of one of a group of offences and received a sentence of full time custody or by reason of the conviction are subject to an order controlling their movement or employment. However, to prevent the wrong people being excluded from appeal processes, states and territories, when legislating the recommended change, should refer to the specific offences and orders that fall within the categories we have set out in our recommendation below.

29. All state and territory governments should ensure that any person the subject of an adverse WWCC decision can appeal to a body independent of the WWCC screening agency, but within the same jurisdiction, for a review of the decision, except persons who have been convicted of one of the following categories of offences:

- murder of a child
- indecent or sexual assault of a child
- child pornography-related offences
- incest where the victim was a child

and

a. received a sentence of full time custody for the conviction, such persons being permanently excluded from an appeal

or

b. by virtue of that conviction, the person is subject to an order that imposes any control on the person's conduct or movement, or excludes the person from working with children, such persons being excluded from an appeal for the duration of that order.

Notwithstanding the above any person may bring an appeal in which they allege that offences have been mistakenly recorded as applying to that person.

7 Holding WWCCs

7.1 Portability

Current approaches

As discussed in Chapter 3, WWCCs are not currently portable between the states and territories. As a result, people must apply for a new WWCC each time they relocate to another jurisdiction and seek to engage in child-related work.

Standard

In Australia, more than 300,000 people move across jurisdictional borders each year, and this figure does not include temporary movements to other states or territories.[218] A recent Productivity Commission report reinforced the need for government policies to support geographic labour mobility, as it is an important factor in a well-functioning labour market.[219] The current approach to WWCCs does not support this.

In addition, given the significant complexities arising from the operation of eight different WWCC schemes, we are concerned that the lack of portability makes it difficult for people and institutions to understand and comply with obligations under WWCC laws, particularly if they operate across multiple jurisdictions.

We recognise the legitimate concerns held by some stakeholders that, in the absence of a harmonised approach to WWCCs, it is problematic for those jurisdictions with more developed or rigorous WWCC schemes to accept clearances from other jurisdictions, as this may weaken the protection afforded to children. Establishing a national approach to WWCCs would overcome this issue and consequently eliminate the impediments that presently stand in the way of WWCCs being recognised by, or transportable to, other jurisdictions.

We believe WWCCs should be portable across all jurisdictions, subject to the implementation of the standards recommended in this report. This will enable people to move between jurisdictions and engage in child-related work without having to apply for a new WWCC each time. State and territory governments will need to ensure that their schemes accommodate portability.

30. Subject to the implementation of the standards set out in this report, all state and territory governments should amend their WWCC laws to enable WWCCs from other jurisdictions to be recognised and accepted.

7.2 Duration and continuous monitoring

Current approaches

WWCCs in each state and territory are granted for a set period of time, ranging from two years in the Northern Territory to five years in New South Wales and Victoria. After this time has lapsed, people who wish to continue in child-related work must apply to have their WWCC renewed.

Table 7 – Length of time that WWCCs remain valid

NSW[220]	Vic[221]	Qld[222]	WA[223]	SA[224]	ACT[225]	Tas[226]	NT[227]
Five years	Five years	Three years	Three years	Three years	Three years	Three years	Two years

The question of how long WWCCs should last is linked inextricably to screening agencies' capacity to identify and monitor new relevant records, as they arise. The validity period of WWCCs also has implications for:

- application fees and the operational costs of WWCC schemes
- the currency of information held by screening agencies
- how often people need to renew their WWCC
- how often a person's suitability to work with children is assessed.

To varying degrees, each state and territory currently monitors WWWC cardholders on an ongoing basis to identify relevant changes in their circumstances and, if necessary, reassess risks to children. Known as continuous monitoring, this generally involves state and territory screening agencies accessing criminal records from their respective police services on a daily or weekly basis, generally through arrangements facilitated by CrimTrac. However, we note that there are variations to this approach.

These arrangements do not currently enable agencies to access cardholders' national criminal records, meaning that continuous monitoring is restricted to records arising in the jurisdiction that issued the WWCC. The practical effect of this is that a cardholder could commit an offence in another jurisdiction that remains undetected until their WWCC is due for renewal, which, if known, would result in the cancellation of their WWCC.

Many submissions on *Issues Paper No 1* noted that WWCC renewals are needed at regular intervals until continuous monitoring is expanded to include national criminal records, so that new relevant records are identified and assessed. For example, Victoria reported that, since their WWCC scheme commenced in 2006, approximately 54 per cent of all negative notices were issued to existing cardholders, demonstrating the value of this type of monitoring.[228]

In March 2015, the Commonwealth Government and CrimTrac advised the Royal Commission that CrimTrac had reviewed its continuous monitoring processes and was in the process of identifying technical solutions that would enable screening agencies in all jurisdictions to access national criminal history records.

In addition to continuous monitoring of criminal records, the WWCC schemes in New South Wales and Queensland also include reporting mechanisms that alert screening agencies to relevant cardholder disciplinary or misconduct information. Further to this, a number of jurisdictions also impose statutory obligations on cardholders to notify their respective screening agency if they are charged with a criminal offence.[229]

Standard

Stakeholders told us that the predominant reason for limiting WWCC validity periods to three years or less in the majority of states and territories is because there is not currently a national system for alerting screening agencies to relevant changes in WWCC cardholders' criminal history information. As a result, WWCC renewals are needed at regular intervals to ensure new criminal records from all jurisdictions are available for assessment.

We believe it is appropriate to grant WWCCs for longer periods of time provided that there are reliable systems in place for:

- promptly identifying and assessing changes that may affect a person's risk to children
- alerting employers and other relevant bodies to any resulting changes in a person's WWCC clearance status.

Conversely, we believe the absence, or ineffective operation, of such mechanisms should result in WWCCs being granted for shorter periods, to ensure new information about the risks people engaged in child-related work pose to children are identified and assessed.

We acknowledge that there is a lack of evidence on the frequency with which WWCC cardholders commit criminal offences in jurisdictions other than the one that issued their WWCC. Yet, we know that there is a high level of mobility in Australia. For example, as explained in section 7.1 above, on average, more than 300,000 people relocate to another state or territory each year.[230] This does not include the number of people who cross borders on a short-term or temporary basis.

We have reached the view that, unless and until continuous monitoring includes national criminal records, there is a real risk that a person could hold a WWCC in one jurisdiction despite undetected criminal records in another, which, if known, would result in the cancellation of their WWCC. Moreover, we believe obligations in WWCC laws that require WWCC cardholders to self-report relevant changes in their criminal history are not, on their own, sufficient to overcome this risk.

Some stakeholders stressed that, even if a national system of alerts for new criminal records was developed, it would nevertheless be preferable for WWCC renewals to occur regularly so that the expense and intrusion of monitoring for new records is appropriately targeted to only those individuals who continue to engage in child-related work. However, we are not convinced that this is a sufficiently compelling reason for introducing a shorter validity period. We also note that, in

most jurisdictions, the regulatory burden and costs associated with continuously monitoring people who are no longer engaged in child-related work will be offset by the savings gained from not having to process applications for WWCC renewals so frequently. Furthermore, as discussed earlier, we are of the view that there should be an obligation on both people engaged in child-related work and those engaging people in child-related work (for example, the employer) to inform the relevant screening agency when a person commences or ceases the specific child-related work. This will ensure that the screening agency is able to alert employers to the cancellation or suspension of a WWCC.

We have therefore determined that, once continuous monitoring of national criminal history records is in place, WWCCs in all states and territories should be valid for five years before cardholders are required to lodge an application for renewal.

31. Subject to the commencement of continuous monitoring of national criminal history records, state and territory governments should amend their WWCC laws to specify that:

    a. WWCCs are valid for five years

    b. employers and WWCC cardholders engaged in child-related work must inform the screening agency when a person commences or ceases being engaged in specific child-related work

    c. screening agencies are required to notify a person's employer of any change in the person's WWCC status.

7.3 Monitoring compliance

Current approaches

WWCC laws in three states expressly require the relevant authorities to monitor whether institutions and people are complying with their WWCC obligations.

The NSW Children's Guardian is required to monitor and audit compliance with New South Wales' WWCC law. To support this function, it has the power to compel a wide range of agencies to produce this information.[231]

The Public Safety Business Agency is required to monitor and audit compliance with the requirements of Queensland's WWCC law, and may provide the relevant Minister with a report relating to the administration of the law.[232]

The Department for Child Protection and Family Support in Western Australia has the power to obtain information from certain employers and/or other bodies to confirm compliance with Western Australia's WWCC law.[233]

Schemes in the remaining states and territories do not presently confer power on screening agencies or other relevant bodies to monitor compliance with WWCC laws. However, we understand that at least one such jurisdiction has established a compliance team within its screening agency to educate service providers about their WWCC obligations, and detect and remedy non-compliance.

In addition, WWCC laws in some jurisdictions include provisions for evaluating or reviewing their respective WWCC schemes, either on a one-off or regular basis. For example, in Victoria, the Commissioner for Children and Young People must conduct an annual review of the administration of Victoria's WWCC law.[234]

Standard

We are of the view that WWCC schemes in all jurisdictions should include a statutory provision for screening agencies (or other suitable bodies) to monitor compliance with WWCC laws on an ongoing basis, particularly given the range of non-compliance offences that exist under these laws.

We consider it critical that, irrespective of which agency is ultimately tasked with undertaking this kind of monitoring, WWCC laws in each of the jurisdictions also include legislative powers to support this work, including the power to compel a wide range of sources to produce relevant information.

Once the necessary legislative amendments are in place to facilitate ongoing compliance monitoring, we consider it important that state and territory governments develop a common framework that, among other things, sets out which data or evidence relating to non-compliance should be gathered, assessed and responded to, and how that should occur.

32. All state and territory governments should grant screening agencies, or another suitable regulatory body, the statutory power to monitor compliance with WWCC laws.

33. All state and territory governments should ensure their WWCC laws include powers to compel the production of relevant information for the purposes of compliance monitoring.

PART IV
BENEFITS, IMPACTS AND IMPLEMENTATION

8 Benefits and impacts

As part of our examination of WWCCs, we weighed up the potential benefits and impacts that could flow from any reforms recommended. The recommendations outlined in this report were made because we ultimately determined that:

- they are necessary to strengthen WWCCs and the resulting protection for children against sexual abuse in institutional contexts
- the benefits likely to be derived from their implementation outweigh any adverse impacts, including any costs that are likely to be incurred by the Commonwealth, state and territory governments.

We acknowledge that the specific benefits and impacts are sometimes different, depending on whether the recommendations, and the changes jurisdictions need to make, concern the introduction of consistent standards or the reforms necessary for establishing a national model.

Chapter 8 sets out some of the main benefits and impacts that we considered in developing recommendations on WWCCs. These include benefits for, and impacts on, a diverse range of stakeholders, including government, institutions providing activities or services to children and the children who partake in them, people in child-related work and the broader community.

8.1 Benefits

We identified a range of legal, economic and socio-cultural benefits that could be gained from implementing the recommendations in this report.

Legal	A standard approach to WWCCs (whether achieved through standards or a national model) will: • mean children are afforded equal legal protection against abuse by people in child-related work, regardless of where they are located • greatly simplify legal requirements for pre-employment screening for child-related work • help clarify the legal rights and responsibilities of people who wish to engage in child-related work and the institutions that wish to employ them • help to ensure compliance with WWCC laws • address gaps and eliminate duplication in WWCC laws, and thereby strengthen the protection they afford children.

Economic	In the 2013–14 financial year, WWCCs cost state and territory governments around $72 million to administer (just over half of which is returned to government through revenue generated from application fees).[235] While difficult to quantify, a standard approach to WWCCs (whether achieved through standards or a national model) will, in our view, deliver a range of economic savings, including: • reduced expenditure over time, by eliminating duplication and unnecessary costs • reduced administrative burden on screening agencies, as portability will eliminate the need to reassess people with WWCCs from other jurisdictions • fewer unnecessary applications resulting from confusion generated by complex and multiple WWCC laws • lower application processing costs in most jurisdictions due to longer WWCC validity periods • ensuring the most efficient and effective expenditure of public money in administering WWCCs. Governments have already made a significant investment in trying to streamline WWCCs. Our recommendations address many of the outstanding issues they have been grappling with for some time and should therefore minimise costs that would have otherwise been incurred to achieve greater national consistency.
Socio-cultural	The recommendations in this report provide significant opportunities to strengthen the effectiveness of WWCCs as a tool to protect children by: • assisting people and organisations to comply with WWCC laws, by reducing unnecessary complexity and streamlining legal requirements • ensuring WWCC decisions are better informed, through improved access to information • reducing the risk of forum shopping • creating efficiencies through portability • improving information sharing between jurisdictions. Strengthening WWCCs in this way will better assist governments to meet community expectations that adequate strategies are in place to reduce dangers to children. Moreover, a stronger WWCC scheme is likely to have a greater deterrent effect on perpetrators or potential perpetrators.

8.2 Impact

We also weighed up the benefits listed above against the likely impacts of our recommendations to ensure they strike the right balance. In considering the resulting impacts, it is apparent that the greatest impact will be on state and territory governments, followed by other stakeholders (for example, people engaging in child-related work and the institutions who employ them).

State and territory governments

The recommendations will require an investment from state and territory governments to:

- secure agreement on the specific language of the standards (including definitions of key terms)
- amend their existing WWCC laws to incorporate all the standards
- educate the community about the changes to their WWCC schemes
- update any WWCC resources or information, including screening agencies' websites
- contribute to the development of a centralised database of WWCC outcomes, and record information about individual outcomes into the database
- facilitate continuous monitoring of national police records
- change their systems and processes to ensure their schemes are compatible with the new approach (for example, that they accommodate portability of checks, reflect terminology arising from the standards in their forms and databases, and support the operation of a centralised WWCC database).

It is difficult to pinpoint the cost of implementing the recommendations, as:

- the costs will vary between the states and territories, commensurate with the extent of the changes required in each jurisdiction
- it is difficult to predict the economic costs accurately, as some recommendations will increase administrative burden for some aspects of WWCCs but decrease it in others (for example, the standard to limit WWCCs to adults should reduce the number of applications received each year in all jurisdictions, except New South Wales and Victoria, which already exclude all children from the requirement to obtain a WWCC)
- any increase in administration costs could be offset by recommendations, such as portability and improved mechanisms for information sharing
- the lack of data about WWCCs means comprehensive financial modelling on the exact costs arising from these changes is not feasible.

Regardless, we are of the view that these costs are necessary to strengthen WWCCs and the protection they afford children against abuse. Moreover, as explained above, the benefits likely to be derived from implementing the recommendations outweigh the costs likely to be incurred by government.

Other stakeholders

We note that there will likely be some adverse impacts for other stakeholders, including:

- the need for institutions and people engaging in child-related work to understand and comply with the new laws
- the need for institutions to invest time and resources in educating their staff members and volunteers about the new law
- some people will now require a WWCC who didn't previously and will therefore need to apply and pay the fee
- some people might be refused a WWCC and denied the capacity to participate in work now classified as child-related
- risks arising from the expanded access to personal information through improved information sharing across jurisdictions.

As with new changes to any scheme, there will be a period of adjustment and transition. The impacts for these other stakeholders are likely to be addressed through the passage of time, as they familiarise themselves with the requirements of the new approach and the changes are embedded into standard practice.

Recognising the aforementioned impacts to all government and other stakeholders, the protection of children was the ultimate factor in determining the recommendations made.

9 Implementation of recommendations

We have recommended introducing consistent standards into existing WWCC laws to harmonise the schemes and remove complexity. We have also recommended that, once these standards are in place, a national model should be implemented by establishing a centralised database that allows portability and provides continuous monitoring of WWCC cardholders' national criminal history information.

To assist with implementing the recommendations, and in recognition of the work involved, we have identified timeframes and governance arrangements, which are set out in this chapter.

9.1 Timeframes

We recognise that the recommendations in this report will take time to implement. We further recognise that some changes will need to be implemented before action can be taken to implement others. That said, we have identified timeframes to guide the implementation of the recommendations in this report, to avoid further delays in achieving greater national consistency in WWCC schemes.

We believe state and territory governments should take immediate action to amend their respective WWCC laws to incorporate the recommended standards. We are of the view that state and territory governments should complete this within 12 months of the publication of this report.

Once the WWCC schemes have been amended, we believe WWCCs should be portable within six months of the standards being implemented – that is, within 18 months of the publication of this report.

A centralised database should be established, and CrimTrac's capacity and effectiveness improved, within 12 months of the publication of this report.

9.2 Governance

The governance arrangements established through the *National Framework for Protecting Australia's Children* provide a structure to progress a national approach to WWCCs. We understand that the Law, Crime and Community Safety Council (LCCSC) established by COAG has been assigned responsibility for improving the WWCC laws, including taking account of the Royal Commission's recommendations.

The main objective of our recommendations is to improve the protection provided to children by achieving a more integrated and unified WWCC regime. However, we are concerned that, without a mechanism to hold jurisdictions to account in implementing the recommendations and monitor progress, consistency may be eroded as jurisdictions continue to amend their individual schemes without an eye for consistency across all jurisdictions.

Given the governance arrangements already established through the national framework, and in order to solidify and strengthen a national approach to WWCCs, we make the following recommendations in respect of governance arrangements.

34. The Commonwealth, state and territory governments should:

    a. through COAG, or a relevant ministerial council, adopt the standards and set a timeframe within which all jurisdictions must report back to COAG, or a relevant ministerial council, on implementation

    b. establish a process whereby changes to the standards or to state and territory schemes need to be agreed to by COAG, or a relevant ministerial council, and must be adopted across all jurisdictions.

35. The Commonwealth, state and territory governments should provide an annual report to COAG, or a relevant ministerial council, for three years following the publication of this report, to be tabled in the parliaments of all nine jurisdictions, detailing their progress in implementing the recommendations in this report and achieving a nationally consistent approach to WWCCs.

36. COAG, or a relevant ministerial council, should ensure a review is made after three years of the publication of this report, of state and territory governments' progress in achieving consistency across the WWCC schemes, with a view to assessing whether they have implemented the Royal Commission's recommendations.

Our recommendations will require a significant transformational shift in how governments operate their WWCC schemes and work together, to build a unified and integrated approach. Such transformational change will include working together to reach agreement quickly, focusing on making cross-jurisdictional changes to improve the protection of children. Jurisdictions will need to move away from being driven by commitments to local schemes and instead take a proactive and integrated approach to resolving problems or barriers in a timely manner.

Although we have identified the standards for implementation, there are some aspects that will require further consideration and agreement by governments. Governments must achieve this in a timely manner and avoid protracted negotiations.

Once the states and territories have amended their schemes to include the standards set out in this report, including portability, governments will need to produce new guidance and other materials to communicate the changes, ensuring these materials are consistent, clear and accessible.

We have not made any specific recommendations aimed at improving the evidence base for WWCCs, including on the effectiveness of WWCCs and best practice. However, it is noted that governments commonly cite this is as a barrier to effecting change. We note that, under the national framework, the National Research Agenda is focused on enhancing the evidence base.[236] In particular, it has identified the WWCC as an area that requires further consideration to understand its role in preventing child abuse.[237] We were unable to determine what progress has been made on this part of the National Research Agenda. However, we urge governments to build the evidence base and continue to move forward in a united way to improve the regime over time, including by identifying best practice.

Appendix A – Letters Patent

Letters Patent

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,
Mr Robert Atkinson,
The Honourable Justice Jennifer Ann Coate,
Mr Robert William Fitzgerald AM,
Dr Helen Mary Milroy, and
Mr Andrew James Marshall Murray

GREETING

WHEREAS all children deserve a safe and happy childhood.

AND Australia has undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.

AND all forms of child sexual abuse are a gross violation of a child's right to this protection and a crime under Australian law and may be accompanied by other unlawful or improper treatment of children, including physical assault, exploitation, deprivation and neglect.

AND child sexual abuse and other related unlawful or improper treatment of children have a long-term cost to individuals, the economy and society.

AND public and private institutions, including child-care, cultural, educational, religious, sporting and other institutions, provide important services and support for children and their families that are beneficial to children's development.

AND it is important that claims of systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful or improper treatment of children be fully explored, and that best practice is identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims.

AND it is important that those sexually abused as a child in an Australian institution can share their experiences to assist with healing and to inform the development of strategies and reforms that your inquiry will seek to identify.

AND noting that, without diminishing its criminality or seriousness, your inquiry will not specifically examine the issue of child sexual abuse and related matters outside institutional contexts, but that any recommendations you make are likely to improve the response to all forms of child sexual abuse in all contexts.

AND all Australian Governments have expressed their support for, and undertaken to cooperate with, your inquiry.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Counsel and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters, and in particular, without limiting the scope of your inquiry, the following matters:

a. what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;

b. what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;

c. what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse;

d. what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

e. the experience of people directly or indirectly affected by child sexual abuse and related matters in institutional contexts, and the provision of opportunities for them

to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs;

f. the need to focus your inquiry and recommendations on systemic issues, recognising nevertheless that you will be informed by individual cases and may need to make referrals to appropriate authorities in individual cases;

g. the adequacy and appropriateness of the responses by institutions, and their officials, to reports and information about allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;

h. changes to laws, policies, practices and systems that have improved over time the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

i. the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the *Royal Commissions Act 1902* or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;

j. the need to establish investigation units to support your inquiry;

k. the need to ensure that evidence that may be received by you that identifies particular individuals as having been involved in child sexual abuse or related matters is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;

l. the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to witnesses;

m. the need to ensure that institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archived material.

AND We appoint you, the Honourable Justice Peter David McClellan AM, to be the Chair of the Commission.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902.*

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We declare that in these Our Letters Patent:

child means a child within the meaning of the Convention on the Rights of the Child of 20 November 1989.

government means the Government of the Commonwealth or of a State or Territory, and includes any non-government institution that undertakes, or has undertaken, activities on behalf of a government.

institution means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), and however described, and:

i. includes, for example, an entity or group of entities (including an entity or group of entities that no longer exists) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families; and

ii. does not include the family.

institutional context: child sexual abuse happens in an ***institutional context*** if, for example:

i. it happens on premises of an institution, where activities of an institution take place, or in connection with the activities of an institution; or

ii. it is engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where you consider that the

institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or

iii. it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with children.

law means a law of the Commonwealth or of a State or Territory.

official, of an institution, includes:

i. any representative (however described) of the institution or a related entity; and

ii. any member, officer, employee, associate, contractor or volunteer (however described) of the institution or a related entity; and

iii. any person, or any member, officer, employee, associate, contractor or volunteer (however described) of a body or other entity, who provides services to, or for, the institution or a related entity; and

iv. any other person who you consider is, or should be treated as if the person were, an official of the institution.

related matters means any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse.

AND We:

n. require you to begin your inquiry as soon as practicable, and

o. require you to make your inquiry as expeditiously as possible; and

p. require you to submit to Our Governor-General:

i. first and as soon as possible, and in any event not later than 30 June 2014 (or such later date as Our Prime Minister may, by notice in the *Gazette*, fix on your recommendation), an initial report of the results of your inquiry, the recommendations for early consideration you may consider appropriate to make in this initial report, and your recommendation for the date, not later than 31 December 2015, to be fixed for the submission of your final report; and

ii. then and as soon as possible, and in any event not later than the date Our Prime Minister may, by notice in the *Gazette*, fix on your recommendation, your final report of the results of your inquiry and your recommendations; and

q. authorise you to submit to Our Governor-General any additional interim reports that you consider appropriate.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS Quentin Bryce, Governor-General of the Commonwealth of Australia.

Dated 11th January 2013

Governor-General

By Her Excellency's Command

Prime Minister

Appendix A – Letters Patent

Appendix B – Developments towards a nationally consistent approach to WWCCs

Date	Development
2005	The Community and Disability Services Ministers' Conference adopted *Creating Safe Environments for Children – Organisations, Employees and Volunteers.*[238] This national framework expressed the Ministers' commitment to a national approach to increase children's safety in their dealings with community service organisations and recognised WWCCs as an essential component of this. Two schedules provided guidance on how to bring consistency and standards to WWCC decisions: • *An Evidence-based Guide for Risk Assessment and Decision-making when Undertaking Background Checking*[239] • *Guidelines for Exclusion of Persons from Employment/Volunteering in Child-Related Areas.*[240]
2007	COAG agreed in principle to a framework for exchanging criminal history information between all Australian governments for WWCCs. Known as the *National Exchange of Criminal History Information for People Working with Children* (ECHIPWC), it aimed to facilitate the sharing of a greater range of criminal history information across jurisdictions.
2008	COAG agreed to establish the ECHIPWC.
2009	A 12-month trial of the ECHIPWC began on 30 November 2009.
2009	COAG adopted *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009–2020*[241], which outlines the roles all organisations must play to reduce child abuse in Australia and seeks to improve coordination and reduce duplication across multiple systems. The framework is supported by rolling three-year action plans to identify specific actions, responsibilities and timeframes for implementation.[242]
2009–2012	COAG adopted the first three-year action plan to implement the national framework.[243] Regarding WWCCs, it stated that, by December 2009[244], it aimed to: • implement a national framework for the inter-jurisdictional exchange of criminal history information for people working with children • develop a nationally consistent approach to WWCCs. The first objective was delivered through the ECHIPWC, which began before the framework was adopted. The second objective involves a range of strategies that have not been implemented fully. The Commonwealth Government told the Royal Commission that some progress has been made in implementing this objective.[245]
2010	The National Operators' Forum (a voluntary network of the national screening agencies) identified 10 actions to progress national consistency on WWCCs. In June 2010, it reported that two actions had been achieved: • it had commenced a 12-month trial of the ECHIPWC • it had made an ongoing commitment to explore opportunities to increase consistency across jurisdictions.

2011	A WWCC subcommittee was established (consisting of members of the forum) under the national framework to progress a nationally consistent approach to WWCCs. In October 2011, it developed a position paper called *Towards a Nationally Consistent Approach to Working with Children Checks.*[246] The Standing Council (responsible for implementing the national framework) endorsed this position paper. Among other things, the paper noted that: • the group supported progress towards a nationally consistent approach to WWCCs, but did not consider a national scheme to be the answer • the group endorsed the approach proposed by the forum through its 10 actions to progress national consistency • the forum was working towards a nationally consistent framework to guide decision-making for WWCC applicants with a positive criminal history[247] • the forum had identified three key elements of a nationally consistent risk management framework – namely, strong and reliable screening and decision-making processes; strong community support and understanding on the part of organisations of their roles and obligations to reduce risks to children by providing safe environments; and ongoing criminal history checking, compliance checking and reporting.[248]
2012	The standing council agreed to address the various exemptions for interstate visitors.[249] As a result, state and territory governments are now in different stages of implementing national exemption arrangements for workers and volunteers who cross jurisdictional borders for work-related purposes for up to 30 days in any 12-month period.[250]
2012–2015	COAG adopted the second three-year action plan to implement the national framework.[251] Among other things, it aims to continue to improve the effectiveness of WWCCs. The Commonwealth Government advised the Royal Commission that the standing council had agreed to identify and scope a project for this purpose by the end of 2013; however, no further details are known.[252]

Appendix C – Action items identified by the National Operators' Forum and endorsed by COAG's WWCC subcommittee

1. Commence 12-month pilot of the *National Exchange of Criminal History Information for People Working with Children* (ECHIPWC).

2. Ongoing commitment by the National Operators' Forum (NOF) to explore opportunities to increase consistency across jurisdictions.

3. Ongoing enhancement of existing Working with Children Check legislation, which is increasingly making the checks more consistent.

4. Develop common communication initiatives (to be shown on each jurisdictions' website) to raise awareness of existing provisions that allow volunteers to work across borders.

5. Develop broad-level principles that focus on the Working with Children Check systems.

6. Align the criteria that enable individuals to cross jurisdictional borders to participate in national and inter-jurisdictional activities on a short-term basis without the need to be screened.

7. Explore opportunities to embed risk management strategies as best practice in organisations providing services primarily targeted to children – this could be achieved through mechanisms such as legislation, licensing, registration and funding requirements, or skills development and education.

8. Implement continuous checking of criminal history information.

9. Establish a consistent framework for assessing the effectiveness of screening and risk management outcomes.

10. Explore opportunities for mutual recognition across jurisdictions.

Appendix D – Offences under WWCC laws

NSW	It is an offence: • to engage in child-related work without holding, or having applied for, a WWCC[253] • to engage in child-related work if subject to an interim bar[254] • for an adult person to reside at the home of an authorised carer, or at a home where an education and care service or family day care service is provided, without having a WWCC[255] • to disclose unauthorised information, unless an exception applies, or collect information dishonestly.[256] It is an offence for an organisation to: • employ, or continue to employ, a person if there is reasonable cause to believe that they do not have a WWCC and have not applied for one, or are subject to an interim bar[257] • fail to ensure that an adult person residing at the home of an authorised carer, or at a home where an education and care service or family day care service is provided, obtains a WWCC.[258]
Vic	It is an offence for an individual to: • apply for or engage in child-related work without a WWCC (note that it is a defence if the person made an application, but it was not finalised, before commencing work)[259] • falsify a WWCC[260] • use a volunteer clearance for paid work[261] • provide false or misleading information to the screening agency[262] • apply for a WWCC if they are a convicted sex offender[263] • fail to notify the screening agency and their employer of relevant charges and convictions, and the screening agency of a change in employer[264] • in the case of teachers or police officers, fail to notify the screening agency and employer of dismissal from employment.[265] It is an offence for an employer to: • engage a person in child-related work without a valid WWCC[266] • engage a person in paid child-related work if that person holds a volunteer clearance[267] • disclose information acquired during the WWCC process, except in limited circumstances permitted under the Act.[268]

Qld	It is an offence for an individual to apply for, start or continue child-related work: • without holding a valid WWCC[269] • if they have been charged with a disqualifying offence[270] • if they are the respondent in unfinalised proceedings for an offender prohibition order, or subject to a temporary offender prohibition order or interim sexual offender order[271] It is also an offence for an individual: • who has withdrawn consent for employment screening to start or continue in child-related work[272] • to make a false or misleading statement to the screening agency or a proposed employer.[273] In relation to organisations: • it is an office to employ a person in child-related work if the employer is aware that a current negative notice has been issued; has been given notice that an employee's clearance has been cancelled; has been given notice that an employee is a disqualified person and unable to perform child-related work; or has been given notice that, due to a change in an employee's police information, they are no longer able to perform child-related work[274] • upon disclosure of any change in an employee's police information, it is an offence to employ or continue to employ the person in child-related work without notifying the screening agency[275] • it is an offence to employ a person in child-related work if they have lodged an application for WWCC but are notified by the screening agency that the applicant has withdrawn consent for a check.[276]

WA	It is an offence for a person to: • fail to comply with a notice from the screening agency that requires them to apply for a WWCC[277] • carry out child-related work without a valid WWCC[278] • carry out child-related work with a negative notice or interim negative notice[279] • fail to notify the screening agency and their employer of a relevant change in their criminal records[280] • provide false or misleading information to an employer, screening agency or, in the case of a student, education provider[281] • fail to notify the screening agency of a relevant change in criminal history information[282] • start or continue child-related work if they are convicted of a class 1 offence[283] • fail to return an assessment notice to the screening agency in certain cases[284] • disclose or use information obtained in the course of performing functions under the Act. It is an offence for an organisation to: • employ certain people in child-related work[285] • fail to notify the Chief Executive Officer of the screening agency of a relevant change in an employee's criminal history information[286] • disclose or use information obtained for the purpose of a WWCC unless authorised by the Act[287] • if it is an education provider, procure employment for certain students in child-related work[288] • fail to provide specified information and documents to the screening agency.[289]
SA	It is an offence for a registered sex offender to apply for child-related work.[290] It is an offence for an employing organisation to: • fail to ensure that a person's relevant history is assessed before engaging them in child-related work[291] • disclose information obtained during the screening process without authorisation.[292] It is also an offence for an authorised screening unit to undertake screening other than for child-related employment.[293]

ACT	It is an offence for an individual to: • engage in a regulated activity for which they are not registered[294] • fail to disclose a charge, conviction or finding of guilt for a relevant offence[295] • breach a condition of registration[296] • fail to produce a registration card[297] • fail to return a registration card if registration is suspended, cancelled or surrendered[298] • fail to disclose a change of name or address.[299] It is an offence for an organisation to: • engage a person in a regulated activity for which the person is not registered[300] • use or divulge protected information unless authorised by the Act or other laws.[301]
Tas	It is an offence for an individual to: • engage in a regulated activity without appropriate registration (except in certain supervised circumstances)[302] • provide false or misleading information to the screening agency[303] • fail to disclose charges or convictions for relevant offences to the screening agency[304] • breach a condition of registration[305] • fail to notify the screening agency of a change of name or address.[306] It is an offence for an organisation to: • engage a person in a regulated activity if the person is not registered[307] • use or divulge protected information unless the Act or another law permits it, or the person consents.[308]
NT	It is an offence for an individual to: • engage in child-related work without a valid WWCC[309] • fail to notify the screening agency or their employer of a relevant change in their circumstances[310] • contravene conditions imposed on a WWCC, unless there is a reasonable excuse.[311] It is an offence for an organisation to: • engage an individual in child-related work without a valid WWCC[312] • disclose or use confidential information acquired for the purpose of a WWCC, unless authorised by the Act.[313]

Appendix E – Types of information checked for WWCCs

NSW	For all applicants, the screening agency checks: • national criminal records[314] • findings by prescribed reporting bodies of sexual misconduct or serious physical assault against children[315] • notifications of concern from the NSW Ombudsman identified through the reportable conduct scheme.[316] Depending on the records that are returned, the screening agency may also obtain information from any other relevant source, including government and non-government agencies, courts and the Director of Public Prosecutions.[317]
Vic	For all applicants, the screening agency checks: • national criminal records, excluding certain non-conviction information[318] • disciplinary findings by the Victorian Institute of Teaching and Out-of Home Care Suitability Panel[319] • determinations by the Victorian Civil and Administrative Tribunal relating to certain health professionals.[320] Depending on the records that are returned from the initial check, the screening agency may also obtain information from any other relevant source, including government agencies such as Corrections Victoria or child protection records from the Department of Human Services.[321]
Qld	For all applicants, the screening agency checks: • national criminal records[322] • whether the person is subject to a child protection prohibition order[323] • whether the person is subject to reporting obligations under various sex offender laws[324] • whether the person is subject to a disqualification order that prohibits them from applying for a WWCC • disciplinary information from professional organisations associated with teachers, childcare service providers, foster carers and certain health practitioners[325] • information that the Police Commissioner may provide in relation to police investigations into allegations of serious child-related sexual offences, even if no charges were laid.[326] The screening agency may also obtain further information from any other relevant source, including mental health information relevant to a conviction or charge.[327]
WA	All applicants are subject to a national criminal record check. Depending on the records that are returned, the screening agency may also obtain relevant information from authorised bodies in WA (and similar authorities in other jurisdictions) such as the WA Police, the Director of Public Prosecutions, the Department of Corrective Services, the Department of the Attorney General and courts.[328]

SA	All applicants are subject to a national criminal record check.[329] Additional information may be sought and considered depending on whether the applicant's prospective employer elects to conduct the WWCC itself or requests an authorised screening agency undertake the check on their behalf. Standards developed by South Australia: • generally require screening agencies to obtain further information from a range of government and non-government organisations, including courts, child protection, education and health services, and professional registration bodies[330] • only require employers to consider other information that has been self-disclosed by an applicant.[331]
ACT	All applicants are subject to a national criminal record check. The screening agency may obtain and consider other relevant information, including but not limited to: • apprehended violence orders • care and protection orders • professional disciplinary proceedings against the person.[332]
Tas	All applicants are subject to a national criminal record check. The screening agency may obtain and consider other relevant information, including but not limited to: • apprehended violence orders[333] • care and protection orders[334] • findings by prescribed entities that an applicant has engaged in sexual misconduct with or the serious physical assault of a child[335] • any other disciplinary action taken against the person for workplace misconduct.[336]
NT	All applicants are subject to a national criminal record check. The screening agency may also obtain and consider other information from relevant bodies about[337]: • employment and/or disciplinary proceedings • experience working with children • child protection records • domestic violence records • history of drug or alcohol abuse and any treatment undertaken • mental health history information that has resulted in criminal charges being discontinued • any identifiable attempts to change behaviours or underlying triggers.

Endnotes

1 *Letters Patent* (Cth), 11 January 2013, para (a).

2 Australian Children's Commissioners and Guardians, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 3: Child safe institutions*, released 8 August 2013, p 2.

3 See, for example, submissions to our *Issues Paper No 1: Working with children check*, released 17 June 2013, http://childabuseroyalcommission.gov.au/submissions/307/issues-paper-1,-working-with-children-check- (viewed 11 May 2015).

4 See generally, S South, A Shlonsky & R Mildon, *Scoping review: Evaluations of pre-employment screening practices for child-related work that aim to prevent child sexual abuse*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2015, pp 27–28, 32–36; W Budiselik, F Crawford & J Squelch, 'The limits of working with children checks in protecting children', *Australian Social Work*, vol 62, no 3, 2009, pp 339–352, p 340.

5 See, for example, Victoria, Legislative Council, *Parliamentary Debates*, 26 June 2014, p 2146.

6 See, for example, *Protecting children is everyone's business: National framework for protecting Australia's children 2009–2020*, Council of Australian Governments, Canberra, 2009; The Australian Children's Commissioners and Guardians, *Principles for Child Safety in Organisations*, 2013.

7 South, Shlonsky & Mildon, above note 4, p 6.

8 *Working With Vulnerable People (Background Checking) Act 2011* (ACT) s 7 (defining the term 'vulnerable person' as 'a child' or 'an adult who is disadvantaged and accessing a regulated activity in relation to the disadvantage'); *Registration to Work with Vulnerable People Act 2013* (Tas) s 4 (defining the term 'vulnerable person' as 'a child' or 'an adult who is accessing a regulated activity').

9 See, for example, L Guest, *Review of the Working with Children (Criminal Record Checking) Act 2004 (WA)*, Perth, 2012; Auditor-General, *Working with Children Check: NSW Commission for Children and Young People*, Audit Office of New South Wales, Sydney, 2010; Victorian Auditor-General, *Working with Children*, East Melbourne, 2008.

10 Royal Commission into Institutional Responses to Child Sexual Abuse, *Submissions for Issues Paper 1, Working with Children Check*, http://childabuseroyalcommission.gov.au/submissions/307/issues-paper-1,-working-with-children-check- (viewed 11 May 2015).

11 Royal Commission into Institutional Responses to Child Sexual Abuse, *Roundtable, June 2014, Canberra*, http://childabuseroyalcommission.gov.au/policy-and-research/roundtables/roundtable,-june-2014,-canberra (viewed 11 May 2015).

12 Royal Commission into Institutional Responses to Child Sexual Abuse, *Submissions for Issues Paper 3, Child safe institutions*, http://childabuseroyalcommission.gov.au/submissions/309/issues-paper-3,-child-safe-institutions (viewed 11 May 2015).

13 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of institutions to the conduct of Steven Larkins*, Sydney, 2014, pp 4–7, 25–30.

14 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 9: The response of institutions to allegations of child sexual abuse at St Ann's Special School*, Sydney, 2014.

15 South, Shlonsky & Mildon, above note 4.

16 Data from New South Wales was not analysed because it is no longer current, as its scheme changed in 2013. At the time of the review, the Australian Capital Territory, South Australia and Tasmania did not have WWCC schemes in place.

17 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 1.

18 *Letters Patent*, 11 January 2013 (defining the term 'child').

19 The definition of 'child sexual abuse' is based on a discussion of the meaning of child sexual abuse in R Price-Robertson, *What is child abuse and neglect*, Australian Institute of Family Studies, Melbourne, updated June 2012, http://www.aifs.gov.au/cfca/pubs/factsheets/a142091/index.html (viewed 11 May 2015); LM Bromfield, *Chronic child maltreatment in an Australian statutory child protection sample*, unpublished doctoral dissertation, Deakin University, Geelong, 2005; A Broadbent & R Bentley, *Child abuse and neglect: Australia 1995–96*, Child Welfare Series no 17, Australian Institute of Health and Welfare, Canberra, 1997; US National Research Council, *Understanding child abuse and neglect,* National Academy Press, Washington DC, 1993.

20 *Letters Patent* (Cth), 11 January 2013.

21 See generally, South, Shlonsky & Mildon, above note 4.

22 See Part III below.

23 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) title; *Child Protection (Working with Children) Act 2012* (NSW) ss 3–4; *Care and Protection of Children Act 2007* (NT) ss 4(a)(i), 4(c); *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 5, 6; *Children's Protection Act 1993* (SA) ss 3(a), 4(1), 4(3); *Registration to Work with Vulnerable People Act 2013* (Tas) title; *Working with Children Act 2005* (Vic) ss (1)(1), 1A, 8(1); *Working with Children (Criminal Record Checking) Act 2004* (WA) title.

24 M Irenyi et al., 'Child maltreatment in organisations: Risk factors and strategies for prevention', *Child Abuse Prevention Issues*, no 25, 2006, p 16.

25 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 3.

26 C Tilbury, 'Working with children checks: Time to step back?', *Australian Journal of Social Issues*, vol 49, no 1, 2014, pp 87–100, p 92. See also South, Shlonsky & Mildon, above note 7, pp 43, 50; Budiselik, Crawford & Squelch, above note 4, p 341.

27 See generally B Naylor, M Paterson & M Pittard, 'In the shadow of a criminal record: Proposing a just model of criminal record employment checks', *Melbourne University Law Review*, vol 32, 2008, pp 171–198 (describing some of the consequences of the indiscriminate use of criminal history checks).

28 Budiselik, Crawford & Squelch, above note 4, p 339.

29 Irenyi et al., above note 24, p 17.

30 Irenyi et al., ibid. See also C Tilbury, above note 26.

31 D Scott, 'Pre-employment screening: Working with children checks and police checks', *CFCA Resource Sheet*, Australian Institute of Family, updated October 2014, https://www3.aifs.gov.au/cfca/publications/pre-employment-screening-working-children-checks-and-p.

32 See, for example, Auditor-General, *Working with Children Check: NSW Commission for Children and Young People*, Audit Office of New South Wales, Sydney, 2010.

33 The Royal Commission notes that the law regarding eligibility to begin child-related work while a WWCC application is pending has changed in New South Wales since Jonathan Lord was employed by the YMCA NSW. See Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 2: YMCA NSW's response to the conduct of Jonathan Lord*, Sydney, 2014, pp 39–42.

34 A volunteer clearance can be changed to an employee clearance by updating the relevant details online and paying the employee fee; a new WWCC application is not needed.

35 The Ombudsman has responsibility for overseeing agency investigations into such allegations, and for ensuring that relevant findings are reported to the Children's Guardian for consideration as part of the ongoing monitoring of people with WWCCs.

36 Family and Community Development Committee, *Betrayal of Trust: Inquiry into the handling of child abuse by religious and other non-government organisations*, Parliament of Victoria, Melbourne, 2013.

37 Additionally, adults who have not yet reached 20 years of age and who are students at an educational institution are exempt from the requirement to obtain a WWCC in respect of volunteer work under an arrangement entered into by that institution: *Working with Children Act 2005* (Vic) s 29(2).

38 People with volunteer clearances must lodge new applications and pay the fee for employee clearances if they wish to engage in paid work.

39 Guest, above note 9.

40 See Families SA, *Child safe environments: Standards for dealing with information obtained about the criminal history of employees and volunteers who work with children*, Government of South Australia, 2012, pp 19–22.

41 People can start work in South Australia if there is an urgent need for them to do so, but cannot undertake 'prescribed functions' until an assessment is completed satisfactorily. Families SA, above note 40, pp 19–20.

42 The Department for Education and Child Development has issued standards to guide employers who conduct their own assessments. Families SA, above note 40.

43 General clearances authorise holders to move between regulated activities. Conditional clearances impose certain conditions (for example, no unsupervised contact) on the clearance holder to address identified risks. Role-based clearances limit the clearance holder's engagement to stated regulated activities for a stated employer.

44 WWCC subcommittee, *Position paper: Towards a nationally consistent approach to working with children checks*, 2011, p 3, http://www.dss.gov.au/sites/default/files/documents/position_paper.pdf.

45 See, for example, *National Framework: Creating Safe Environments for Children – Organisations, Employees and Volunteers* and related schedules, Council of Australian Governments, 2005.

46 *National Framework: Creating Safe Environments for Children – Organisations, Employees and Volunteers, Schedule: Guidelines for Exclusion of Persons from Employment/Volunteering in Child-Related Areas*, Council of Australian Governments, 2005.

47 Ibid.

48 Ibid, p 1.

49 *Protecting Children is Everyone's Business*, above note 6.

50 Commonwealth Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working with Children Check*, released 17 June 2013, p 8, and WWCC Subcommittee, above note 44, p 3.

51 Commonwealth Government, above note 50, p 11.

52 Ibid, p 3, and WWCC Subcommittee, above note 44, p 2.

53 WWCC subcommittee, above note 44, p 7.

54 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 12(2)(c); *Child Protection (Working with Children) Regulation 2013* (NSW) r 20(1)(n); *Care and Protection of Children Act 2007* (NT) s 186(c); *Care and Protection of Children (Screening) Regulations 2010* (NT) r 4; *Registration to Work with Vulnerable People Act 2013* (Tas) s 15(3)(d); *Working with Children Act 2005* (Vic) s 32(2); *Working with Children (Criminal Record Checking) Regulations 2005* (WA) Sch 1, cl 12.

55 'During 2012–13, it was estimated that 333,300 people moved interstate, a decrease of 1.8% from the number of people who moved in the previous year. In 2011–12 there were 339,500 people who moved interstate, an increase of 0.3% from the number of people who moved in 2010-11 (338,400 persons)': Australian Bureau of Statistics, *Migration, Australia, 2011–12 and 2012–13*, cat no 3412.0, ABS, Canberra, 2013.

56 See, for example, Institute of Child Protection Studies, Australian Catholic University, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working with Children Check*, released 17 June 2013, p 3.

57 Commonwealth Government, above note 50, p 11.

58 WWCC subcommittee, above note 44, pp 6, 17.

59 Australian Human Rights Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working with Children Check*, released 17 June 2013, p 6; Queensland Commission for Children and Young People and Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working with Children Check*, released 17 June 2013, pp 28–29.

60 Parliamentary Counsel's Committee, *Protocol on Drafting National Uniform Legislation*, 4th ed., 10 July 2014, p 4, http://www.pcc.gov.au/uniform/Uniform-drafting-protocol-4th-edition.pdf (viewed 2 September 2014) (noting that '[l]egislation of the States referring legislative power to the Commonwealth follows a relatively standard pattern that has been settled over the years. The legislation can either confer general authority to legislate with respect to a general matter described in the referral legislation (eg meat inspection legislation) or confer specific authority to legislate in the terms set out in the referral legislation (eg mutual recognition legislation)').

61 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) Sch 1, cl 1.7; *Care and Protection of Children Act 2007* (NT) s 185(2)(p)(ii); *Working with Children Act 2005* (Vic) s 9(3)(s). For Tasmania, see Building Standards and Occupational Licensing, *A guide to the 3-year phased in approach for child-related sectors*, Department of Justice, Tasmania, undated, p 5, http://www.justice.tas.gov.au/__data/assets/pdf_file/0009/284364/A_guide_to_the_3-year_phased_in_approach_for_child-related_sectors.pdf (viewed 11 May 2015).

62 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 12(2)(a); *Child Protection (Working with Children) Regulation 2013* (NSW) r 20(1)(g); *Care and Protection of Children Act 2007* (NT) s 186(b); *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 160; *Children's Protection Regulations 2010* (SA) r 14(1)(c); *Registration to Work with Vulnerable People Act 2013* (Tas) s 15(3)(a); *Working with Children Act 2005* (Vic) ss 3, 29; *Working with Children (Criminal Record Checking) Act 2004* (WA) ss 4, 6(3)(a).

63 This same concern has been expressed in other inquiries that have considered WWCCs and have been the basis of some reforms in this area. See, for example, Victoria, Legislative Council, *Parliamentary Debates*, 26 June 2014, p 2146.

64 See, for example, The Smith Family, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working with Children Check*, released 17 June 2013, p 4; Tzedek, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working with Children Check*, released 17 June 2013, p 4.

65 Tzedek, above note 64, p 5. See also Guest, above note 9, p 16.

66 Relevantly, in 2005, a New South Wales review found that more than 22 per cent of the applications in a sample of WWCC applications were unnecessary as they did not concern child-related work. Each check reportedly cost a minimum of $20.60 to access criminal records. A 2010 audit found that a number of unnecessary checks still proceed in New South Wales, even though steps had been taken to reduce them. See Auditor-General, *Working with Children Check: NSW Commission for Children and Young People*, Audit Office of New South Wales, Sydney, 2010, p 11. See also Guest, above note 9, p 17.

67 See, for example, *Working with Children Amendment (Ministers of Religions and other Matters) Act 2014* (Vic) (which aimed to, *inter alia*, clarify the definition of child-related work in the *Working with Children Act 2005* (Vic)).

68 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) ss 9(a), 10; *Child Protection (Working with Children) Act 2012* (NSW) ss 6(1)(a), 6(4); *Care and Protection of Children Act 2007* (NT) ss 13, 185(2); *Children's Protection Act 1993* (SA) ss 8B(1), 8B(8); *Registration to Work with Vulnerable People Act 2013* (Tas) ss 5(1)(a), 6; *Working with Children Act 2005* (Vic) ss 3(1), 9(1)(b); *Working with Children (Criminal Record Checking) Act 2004* (WA) ss 4, 6(1).

69 *Child Protection (Working with Children) Regulation 2013* (NSW) r 20(1)(g); *Working with Children Act 2005* (Vic) ss 3, 29.

70 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) ss 9(a), 10, 12(2)(a); *Registration to Work with Vulnerable People Act 2013* (Tas) ss 5(1)(a), 6, 15(3)(a).

71 *Care and Protection of Children Act 2007* (NT) ss 13, 185(2), 186(b).

72 *Children's Protection Act 1993* (SA) ss 8B(1), 8B(8); *Children's Protection Regulations 2010* (SA) r 14(1)(c); *Working with Children (Criminal Record Checking) Act 2004* (WA) ss 4, 6(1), 6(3)(a).

73 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 10(c)(i); *Child Protection (Working with Children) Act 2012* (NSW) s 6(4)(a); *Care and Protection of Children Act 2007* (NT) s 13; *Children's Protection Act 1993* (SA) s 8B(8); *Registration to Work with Vulnerable People Act 2013* (Tas) s 6(c)(i); *Working with Children Act 2005* (Vic) s 3(1); *Working with Children (Criminal Record Checking) Act 2004* (WA) s 4.

74 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 10(c)(ii); *Child Protection (Working with Children) Act 2012* (NSW) s 6(4)(b); *Care and Protection of Children Act 2007* (NT) s 13; *Children's Protection Act 1993* (SA) s 8B(8); *Registration to Work with Vulnerable People Act 2013* (Tas) s 6(c)(ii); *Working with Children Act 2005* (Vic) s 3(1) (face-to-face oral communication only); *Working with Children (Criminal Record Checking) Act 2004* (WA) s 4.

75 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 10(c)(ii); *Care and Protection of Children Act 2007* (NT) s 13; *Children's Protection Act 1993* (SA) s 8B(8); *Registration to Work with Vulnerable People Act 2013* (Tas) s 6(c)(ii); *Working with Children Act 2005* (Vic) s 3(1) (face-to-face oral communication only); *Working with Children (Criminal Record Checking) Act 2004* (WA) s 4.

76 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 10(c)(iii); *Care and Protection of Children Act 2007* (NT) s 13; *Registration to Work with Vulnerable People Act 2013* (Tas) s 6(c)(iii); *Working with Children (Criminal Record Checking) Act 2004* (WA) s 4.

77 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 10(c)(iii)(B); *Children's Protection Act 1993* (SA) s 8B(8); *Registration to Work with Vulnerable People Act 2013* (Tas) s 6(c)(iv); *Child Protection (Working with Children) Act 2012* (NSW) s 7 (providing that an employer may require a paid worker in a non–child related role to obtain a WWCC if they have access to confidential records or information about children, the employer notified them in writing of the need to get a WWCC, and the Children's Guardian approved the application).

78 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 10(c)(iv); *Registration to Work with Vulnerable People Act 2013* (Tas) s 6(c)(v).

79 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 10(a) (providing that must reasonably be expected as a normal part of engaging in the activity); *Care and Protection of Children Act 2007* (NT) s 185(2) (providing that the work must involve, or potentially involve, contact with children); *Registration to Work with Vulnerable People Act 2013* (Tas) s 6(a) (providing that contact must reasonably be expected as a normal part of taking part in the regulated activity); *Working with Children Act 2005* (Vic) s 9(1)(b) (providing that the work must usually involve direct contact with a child); *Working with Children (Criminal Record Checking) Act 2004* (WA) s 6(1)(a) (providing that the usual duties of the work must involve, or be likely to involve, contact with children).

80 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 10(b); *Registration to Work with Vulnerable People Act 2013* (Tas) s 6(b); *Working with Children Act 2005* (Vic) s 9(1A).

81 *Children's Protection Act 1993* (SA) s 8B(8).

82 *Working with Children Act 2005* (Vic) s 9(1)(b); *Child Protection Act 1993* (SA) s 8B(8). In Victoria, direct supervision 'requires immediate and personal supervision but does not require constant physical presence': *Working with Children Act 2005* (Vic) s 9(2).

83 New South Wales, Legislative Assembly, *Parliamentary Debates*, 13 June 2012, p 12766. See also, Victoria, Legislative Assembly, *Parliamentary Debates,* 21 July 2005, p 1998; Western Australia, Legislative Assembly, *Parliamentary Debates*, 20 October 2004, p 6946; Guest, above note 9, p 15.

84 See, for example, *Protecting children is everyone's business,* above note 6. Australian Children's Commissioners and Guardians, above note 6.

85 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 2,* above note 33, p 66 (finding that the YMCA NSW 'failed to ensure that all YMCA Caringbah staff members understood the policies relating to photography, mobile phones and other electronic devices', and that '[t]his contributed to Jonathan Lord not being reported for conduct that was contrary to these policies').

86 See, for example, Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 6: The response of a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes*, Sydney, 2014, pp 13, 27, 36; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 2: YMCA NSW's response to the conduct of Jonathan Lord*, Sydney, 2014.

87 But see *Working with Children Check 2005* (Vic) s 9(1)(b); *Child Protection Act 1993* (SA) s 8B(8).

88 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 9(b); *Registration to Work with Vulnerable People Act 2013* (Tas) s 5(1)(b).

89 *Child Protection (Working with Children) Act 2012* (NSW) ss 5(1), 6(1); *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 161–164, Sch 1, ss 14(1), 14(2), Sch 7; *Children's Protection Act 1993* (SA) s 8B(1); *Working with Children Act 2005* (Vic) ss 3(1), 9(1), 9(3); *Working with Children (Criminal Record Checking) Act 2004* (WA) ss 4, 6(1)(a). In South Australia, the person must be 'appointed to, or engaged to act in, a prescribed position': *Children's Protection Act 1993* (SA) s 8B(1).

90 *Care and Protection of Children Act 2007* (NT) ss 185(3), 185(5).

91 In New South Wales, people carrying out child-related work 'in the course of an informal domestic arrangement' and not 'on a professional or commercial basis' are exempt from WWCCs: *Child Protection (Working with Children) Regulation 2013* (NSW) r 20(1)(c). Also, people providing babysitting services under a private arrangement (whether or not for reward) are excluded from the definition of child-related work: *Child Protection (Working with Children) Regulation 2013* (NSW) r 9(2).

92 The Northern Territory exempts individuals engaged to provide child minding services other than as part of a commercial enterprise: *Care and Protection of Children (Screening) Regulations 2010* (NT) r 5(a)(i).

93 Victoria's WWCC law includes a blanket exclusion for 'unpaid work engaged in for a private or domestic purpose': *Working with Children Act 2005* (Vic) s 3(1) (defining the term 'work').

94 Western Australia excludes informal arrangements entered into for private or domestic purposes in certain areas of child-related work (for example, babysitting or child minding services, informal accommodation or care arrangements made by a child's parent): *Working with Children (Criminal Record Checking) Act 2004* (WA) ss 6(1)(a)(iv), 6(1)(a)(v), 6(1)(a)(xii), 6(1)(a)(xiv).

95 *Working with Children Act 2005* (Vic) s 3(1) (defining the term 'work').

96 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) Sch 1, ss 1.3 (childcare services), 1.21 (coaching or tuition); *Working with Children (Risk Management and Screening) Act 2000* (Qld) Sch 1, ss 4(3)(a) (providing education and care to children in the course of a commercial service), 4A(a) (providing childcare in the course of a commercial service), 7 (prescribed teaching on a commercial basis), 17 (teaching, coaching or tutoring on a commercial basis), 18 (commercial service that includes providing education and care to children), 18A (commercial service that includes providing childcare).

97 *Working with Children Act 2005* (Vic) s 9(4). See also s 3(1). Prior to the reform, ministers of religion were only considered to be engaging in child-related work in Victoria if their contact with children was direct, regular and unsupervised.

98 Family and Community Development Committee, above note 36, p 246.

99 Ibid, p 241.

100 See, for example, New South Wales, Legislative Assembly, *Parliamentary Debates*, 13 June 2012, p 12766.

101 *Child Protection (Working with Children) Act 2012* (NSW) s 6(3).

102 *Child Protection (Working with Children) Act 2012* (NSW) ss 10–11A.

103 *Children's Protection Act 1993* (SA) s 8B(1).

104 *Children's Protection Act 1993* (SA) s 8B(8).

105 *Children's Protection Act 1993* (SA) s 8B(8). The phrase 'prescribed functions' means regular contact with children or working in close proximity to children on a regular basis, unless the contact or work is directly supervised at all times; supervision or management of persons in positions requiring or involving regular contact with children or working in close proximity to children on a regular basis; access to records of a kind prescribed by regulations relating to children; or functions of a type prescribed by regulations.

106 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) Sch 1, s 1.7; *Care and Protection of Children Act 2007* (NT) s 185(2)(p)(i); *Working with Children Act 2005* (Vic) s 9(3)(r). For Tasmania, see Building Standards and Occupational Licensing, above note 61, p 7.

107 See Guest, above note 9, p 15. See also the following submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse on *Issues Paper No 1: Working with Children Check:* WA Government, p 11; Queensland Commission for Children and Young People and Child Guardian, p 40; NSW Office of the Children's Guardian , pp 9–10; NSW Government, p 5.

108 *Working with Children Act 2005* (Vic) s 32A.

109 Child care or babysitting services for which an approval (however described) is required under the Children's Services Act 1985 or the Education and Early Childhood Services (Registration and Standards) Act 2011

110 *Children's Protection Regulations 2010* (SA) r 14(2).

111 *Child Protection (Working with Children) Act 2012* (NSW) s 40A. Under this 'opt-in' scheme, the Children's Guardian can audit the accuracy of these declarations.

112 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 12(2)(h); *Child Protection (Working with Children) Regulation 2013* (NSW) r 20(1)(j); *Working with Children (Risk Management and Screening) Act 2000* (Qld) Sch 1, cl 29; *Children's Protection Regulations 2010* (SA) r 14(1)(h); *Registration to Work with Vulnerable People Act 2013* (Tas) s 15(3)(i); *Working with Children Act 2005* (Vic) s 9(8)(b); *Working with Children (Criminal Record Checking) Act 2004* (WA) s 4. The exemption ceases to apply in the Australian Capital Territory, Queensland and Tasmania if the work is child-related. The exclusion of supervisors in Victoria applies to supervisors of children undertaking practical training under Part 5.4 of the *Education and Training Reform Act 2006* (Vic). The note to section 9 of the *Working with Children Act 2005* (Vic) clarifies that section 19A of the *Child Employment Act 2003* (Vic) extends the application of the *Working with Children Act 2005* (Vic) 'to the supervision of a child in employment that requires a permit under that Act as if the supervision were child-related work under this Act'.

113 Consumer Advocacy and Quality Service, Policy and Organisational Services and ACT Department of Disability, Housing and Community Services, *A working with vulnerable people checking system for the ACT: Consultation paper*, 2010, pp 12-13; Office of the Deputy Secretary, Human Services, *A working with children and other vulnerable people checking system for Tasmania: Consultation report*, 2010, pp 26-27.

114 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 12(2)(f); *Child Protection (Working with Children) Regulation 2013* (NSW) r 20(1)(j); *Children's Protection Regulations 2010* (SA) r 14(1)(h); *Registration to Work with Vulnerable People Act 2013* (Tas) s 15(3)(g); *Working with Children Act 2005* (Vic) s 9(8)(a); *Working with Children (Criminal Record Checking) Act 2004* (WA) s 6(2)(b). The Royal Commission understands that the Northern Territory and Queensland governments do not require people who engage in an activity or service in the same capacity as a child to obtain WWCCs, although there is no specific exemption in those jurisdictions that covers such a situation.

115 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) ss 12(2)(i)(i), 12(2)(i)(ii); *Child Protection (Working with Children) Regulation 2013* (NSW) r 20(1)(h); *Working with Children (Risk Management and Screening) Act 2000* (Qld) Sch 1, cl 26; *Children's Protection Regulations 2010* (SA) r 14(1)(e); *Registration to Work with Vulnerable People Act 2013* (Tas) ss 15(3)(j)(i), 15(3)(j)(ii); *Working with Children Act 2005* (Vic) ss 31, 31A; *Working with Children (Criminal Record Checking) Regulations 2005* (WA) Sch 1, cl 12a.

116 *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 284; *Children's Protection Regulations 2010* (SA) r 14(1)(f); *Working with Children Act 2005* (Vic) s 30.

117 See, for example, Department of Justice, Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working with Children Check*, released 17 June 2013, p 7; Victoria, Legislative Assembly, *Parliamentary Debates*, 21 July 2005, p 1999.

118 As discussed in section 5.4, a number of jurisdictions allow people to engage in child-related work before their WWCC application is finalised, provided that certain conditions are met.

119 As discussed in section 5.4, a number of jurisdictions allow people to engage in child-related work before their WWCC application is finalised, provided that certain conditions are met.

120 For example, see *Child Sex Offenders Registration Act 2006* (SA) s 65(1).

121 For example, see *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 230, 323(2).

122 For example, see *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 179(2), 348(2), 349(3).

123 For example, see *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 240(5), 246(2).

124 For example, see *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 347(1).

125 The *Care and Protection of Children Act 2007* (NT) defines criminal history as a 'criminal record', which is in turn defined in section 3(1) of the *Criminal Records (Spent Convictions) Act 1992* (NT). That Act defines a criminal record to include a conviction; a finding that an offence was proved without proceeding to conviction; a quashed conviction or pardon; disciplinary action while a person is in custody; and records of interstate convictions and equivalent findings and orders. The definition does not differentiate between spent and unspent convictions or specifically refer to juvenile records.

126 The *Working with Children (Risk Management and Screening) Act 2000* (Qld) refers to a check of police information, which is defined to include criminal history. Criminal history is separately defined to mean every relevant conviction and charge against a person for an offence in Queensland or elsewhere. The Act also defines the term conviction and includes an explanation for charges dealt with other than by way of conviction, but does not make express reference to juvenile records or spent convictions: *Working with Children (Risk Management and Screening) Act 2000* (Qld) Sch 7.

127 Section 8B(8) of the *Children's Protection Act 1993* (SA) defines 'relevant history' to mean charges and findings of guilt for offences committed by the person in South Australia or elsewhere. It also includes information relating to such charges or findings of guilt. The definition does not make express reference to spent convictions or juvenile records.

128 The *Working with Children (Criminal Record Checking) Act 2004* (WA) defines 'criminal record' to mean every conviction or charge against a person for an office in Western Australia or another jurisdiction. A conviction is defined to include any finding of guilt, guilty plea or acquittal following a finding of not guilty due to unsoundness of mind. The definition includes express reference to spent convictions, but not juvenile records. See *Working with Children (Criminal Record Checking) Act 2004* (WA) ss 4, 8 and Sch 1, 2.

129 The *Child Protection (Working with Children) Act 2012* (NSW) does not expressly define criminal history or similar. Various elements that determine the scope of records examined for WWCCS are found throughout the Act. For example, records that lead to an automatic bar or a risk assessment are defined by reference to convictions (also defined) or the commencement of proceedings for certain offences. See *Child Protection (Working with Children) Act 2012* (NSW) s 5 and Sch 1, 2.

130 The *Working with Vulnerable People (Background Checking) Act 2011* (ACT) draws a distinction between criminal history (which is defined by reference to convictions or findings of guilt for any one of the eight categories of relevant offence) and non-conviction information (which includes charges laid but not finalised, acquittals, convictions that have been quashed or set aside, and spent convictions. See *Working with Vulnerable People (Background Checking) Act 2011* (ACT) ss 24–26.

131 The *Registration to Work with Vulnerable People Act 2013* (Tas) defines criminal history by referring to particular offences, referring only to convictions and findings of guilt against the person for relevant offences (as defined in section 3), other than annulled convictions. Non-conviction information (which may be included in the matters the Registrar must or may take into account in conducting a risk assessment) covers charges that are not finalised, have lapsed or have been withdrawn or discharged, as well as acquittals, infringement notices and annulled convictions. See *Registration to Work with Vulnerable People Act 2013* (Tas) ss 3, 26(2).

132 Section 3 of the *Working with Children Act 2005* (Vic) refers to the conduct of a 'police record check' without defining which kinds of records are examined. However, other sections of the Act define the terms 'findings of guilt' and 'charged with an offence' for the purpose of classifying WWCC applications and therefore determining what level of risk assessment is required. See *Working with Children Act 2005* (Vic) ss 3, 4, 5, 11.

133 See *Memorandum of Understanding for a National Exchange of Criminal History Information for People Working with Children*, dated 26 November 2009, at Appendix B of the Commonwealth Government's Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, above note 50.

134 A criminal record becomes 'spent' if, following a 'crime-free' rehabilitation period, the person concerned is permitted under relevant spent-conviction legislation not to disclose the fact that they were convicted, or found guilty of, an offence.

135 Pending charges are current charges that have not yet been decided by a court.

136 Non-conviction charges are charges that have been finalised by a court but did not result in a conviction or finding of guilt (for example, because they were withdrawn, dismissed, acquitted, quashed or otherwise overturned on appeal).

137 These types of records comprise a person's criminal history under the ECHIPW, regardless of whether or not they relate to when the person was an adult or a child. No WWCC scheme excludes juvenile records from the range of criminal history information checked by screening agencies; however, no juvenile record on its own is sufficient to trigger an automatic WWCC refusal.

138 The *Working with Children Act 2005* (Vic) only includes reference to findings of guilt and pending charges. See also Department of Justice, Victoria, above note 117, p 22.

139 The Victorian government is currently reviewing its position with respect to the inclusion of non-conviction information. Department of Justice, Victoria, above note 117, p 22.

140 NSW Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working with Children Check,* released 17 June 2013, p 17.

141 Department of Justice, Victoria, above note 117, p 13.

142 While no state or territory WWCC laws exclude juvenile records from being checked, these types of records are not expressly included in all jurisdictions' statutory definitions of criminal history.

143 Public authorities and other designated non-government agencies are required to notify the NSW Ombudsman of certain allegations and convictions against employees involving children (including sexual offences and sexual misconduct). The Ombudsman has responsibility for overseeing agency investigations into such allegations, and for ensuring that relevant findings and concerns are reported to the NSW Children's Guardian for consideration in WWCCs.

144 See the Victorian Government's response to the report of the Family and Community Development Committee Inquiry into the handling of child abuse by religious and other non-government organisations, *Betrayal of Trust,* undated, p 2, http://www.parliament.vic.gov.au/file_uploads/Government_Response_to_the_FCDC_Inquiry_into_the_Handling_of_Child_Abuse_by_Religious_and_Other_Non-Government_Organisations_C6QLfJYH.pdf (viewed 11 May 2015).

145 *Child Protection (Working with Children) Act 2012* (NSW) Sch 1.

146 *Working with Children Act 2005* (Vic) s 14(2)–(3).

147 *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 221(1)(b).

148 *Child Protection (Working with Children) Act 2012* (NSW) s 35 and s 2, Sch 1.

149 *Child Protection (Working with Children) Act 2012* (NSW) s 2A, Sch 1.

150 *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 221(1)(b)

151 *Working with Children Act 2005* (Vic) s 14(2)–(3)

152 Section 12 of the *Working with Children (Criminal Record Checking) Act 2004* (WA) indicates that information other than an applicant's criminal history is not able to be assessed unless and until a risk is triggered by a relevant criminal offence.

153 For example, Northern Territory Administrative Guidelines (made pursuant to section 191 of the *Care and Protection of Children Act 2007* (NT)) authorise the screening agency to take into account a range of matters, irrespective of an applicant's criminal history, including child protection, foster and residential care records; current or previous domestic violence orders; history of drug or alcohol abuse; and mental health history information that has resulted in criminal charges being discontinued. Northern Territory Police, *Care and Protection of Children Act – Administrative Guidelines,* undated, cl 18, http://www.workingwithchildren.nt.gov.au/docs/Administrative_Guidelines.pdf (viewed 11 May 2015).

154 For example, Queensland checks 'investigative information', which is defined to include allegations of certain child-related sexual offences investigated by police, providing that the person who was the subject of investigation was formally notified of the investigation and there was sufficient information to lay charges but these were not laid for any one of the reasons set out in the Act (for example, the complainant not willing to proceed): *Working with Children (Risk Management and Screening) Act 2000* (Qld), ss 305–306 and Sch 6, 6A.

155 For example, the screening agency may undertake further investigations if the applicant is, or has been, the subject of an apprehended violence order under the *Family Violence Act 2004* (Tas): *Registration to Work with Vulnerable People (Risk Assessment for Child-Related Activities) Order 2014* (Tas) Order 7(g).

156 For example, three states check whether WWCC applicants are subject to specified orders made under other statutes. Queensland requires its screening agency to check whether a person is subject to offender reporting obligations under the *Child Protection (Offender Reporting Act) 2004* (Qld); offender prohibition orders or disqualification orders under the *Child Protection (Offender Prohibition Order) Act 2008* (Qld); or sexual offender orders under the *Dangerous Prisoners (Sexual Offenders) Act 2005* (Qld) – see *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 170 and Sch 7. By virtue of the definition of what constitutes a Category A WWCC application in Victoria, the screening agency checks whether a person is subject to reporting obligations under the *Sex Offenders Registration Act 2004* (Vic); extended supervision orders under the *Serious Sex Offenders Monitoring Act 2005* (Vic); or supervision or detention orders under the *Serious Sex Offenders (Detention and Supervision Act 2009* (Vic) – see *Working with Children Act 2005* (Vic) s 12. Tasmania requires its screening agency to undertake further investigations if an applicant is subject to offender reporting obligations under the *Community Protection (Offender Reporting) Act 2005* (Tas) – see *Registration to Work with Vulnerable People (Risk Assessment for Child-Related Activities) Order 2014* (Tas) Order 6(1)(e).

157 *Child Protection (Working with Children) Act 2012* (NSW) s 18.

158 *Care and Protection of Children Act 2007* (NT) s 189.

159 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 12(7).

160 Most applicants who are refused a WWCC clearance in these circumstances have the option to lodge an appeal. In New South Wales, people can appeal to the NSW Civil and Administrative Tribunal unless they have been convicted of murdering a child or are subject to current charges for a barring offence: *Child Protection (Working with Children) Act 2012* (NSW) s 26. In Western Australia, applicants can apply to the State Administrative Tribunal for a review of a decision to issue a negative notice: *Working with Children (Criminal Record Checking) Act 2004* (WA) s 26(2). In the Northern Territory, applicants may apply to the Local Court for a review of the screening agency's decision: *Care and Protection of Children Act 2007* (NT) s 194. Further information about appeals is contained in section 6.2 of this report.

161 In Queensland, section 225(1) of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) requires its screening agency to issue a negative notice, *inter alia*, to persons convicted of 'serious' offences (separately defined in the Act) or disqualified because they are subject to certain orders under various sex offender laws. Despite this, the screening agency may still issue a positive notice to an applicant if satisfied that it is an exceptional case and to do so would not harm the best interests of children: *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 225 (2).

162 In Victoria, section 12(2) of the *Working with Children Act 2005* (Vic) requires the screening agency to refuse to issue a positive notice to Category A applicants. Despite this, the screening agency may still issue a WWCC if the applicant was previously given a positive notice under an order made by the Victorian Civil and Administrative Tribunal; a relevant change in the person's circumstances has not occurred since the order was made; and the screening agency is satisfied that exceptional circumstances do not exist that justify issuing a negative notice: *Working with Children Act 2005* (Vic) s 12. Victorian law also requires its screening agency to refuse to issue a positive notice to Category B applicants unless satisfied that, having regard to a range of specified assessment factors, this would not pose an unjustifiable risk to the safety of children: *Working with Children Act 2005* (Vic) s 13(1)–(2). In reaching the conclusion that issuing a positive assessment notice would not pose an unjustifiable risk to the safety of children, the screening agency must be satisfied that a reasonable person would allow his or her own child to have direct, unsupervised contact with the applicant while the applicant was engaged in any type of child-related work; and the applicant's engagement in any type of child-related work would not pose an unjustifiable risk to the safety of children: *Working with Children Act 2005* (Vic) s 13(3).

163 Tasmania's screening agency must issue a proposed negative notice to any applicant convicted of a Schedule 1 offence, provided that, at the time of the commission of the offence, the applicant was an adult and the victim of the offence was a child: *Registration to Work with Vulnerable People (Risk Assessment for Child-Related Activities) Order 2014* (Tas) Order 10.

164 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 37.

165 While South Australia's WWCC law does not include offences leading to an automatic refusal, section 65 of the *Child Sex Offenders Registration Act 2006* (SA) prohibits a registrable offender (as defined in that Act as a person sentenced for a class 1 or class 2 offence, or subject to a child sex offender registration order) from applying for, or engaging in, child-related work.

166 Not all of the categories of offences listed here are covered in each state and territories' automatic refusal provisions. For example, in Western Australia, only adult convictions for certain child sexual offences result in an automatic WWCC refusal. Conversely, other jurisdictions include a wider range of offences than those highlighted below. For example, among other things, New South Wales also includes adult convictions and current charges for additional violence offences (for example, intentional wounding of a child), child welfare offences (for example, neglect of a child under seven years of age) and animal-related sexual offences.

167 Adult convictions for murder in New South Wales, Victoria and Queensland result in an automatic WWCC refusal, irrespective of whether or not the offence was perpetrated against a child: *Working with Children Act 2012* (NSW) Sch 2(1)(a)*; Working with Children Act 2005* (Vic) Sch 1(3); *Working with Children (Risk Management and Screening) Act 2000* (Qld) Sch 2. Murder is also a disqualifying offence in the Northern Territory, and results in the issue of a proposed negative notice in Tasmania, but only if the victim was a child: *Care and Protection of Children (Screening) Regulations* (NT) Sch 3(1); *Working with Children Registration to Work with Vulnerable People (Risk Assessment for Child-Related Activities Order 2014* (Tas) Sch 1.

168 An adult conviction for manslaughter against a child in circumstances other than a car accident is an automatic barring offence in New South Wales: *Working with Children Act 2012* (NSW) Sch 2(1)(b). An adult conviction for manslaughter in Tasmania will result in the issue of a proposed negative notice: *Working with Children Registration to Work with Vulnerable People (Risk Assessment for Child-Related Activities Order 2014* (Tas) Sch 1. Manslaughter is not included in schedules of prescribed automatic refusal offences in Queensland, Western Australia and the Northern Territory.

169 All jurisdictions with provisions for automatic WWCC refusals include adult convictions for a wide range of child sex offences. Some jurisdictions (for example, New South Wales) include sex offences perpetrated against adults as well as children.

170 All jurisdictions with provisions for automatic WWCC refusals include adult convictions for incest-related offences where the victim was a child. Incest-related offences concerning adult victims also trigger the imposition of an automatic bar in New South Wales.

171 All jurisdictions with provisions for automatic WWCC refusals include a range of offences related to using, making and/or distributing child pornography or child abuse material.

172 Except for Western Australia, all jurisdictions with provisions for automatic WWCC refusals include offences relating to abducting or kidnapping a child.

173 Commonwealth Government, above note 50, p 2.

174 *Working with Children Check Act 2005* (Vic) s 14(3)(d); *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 226(2)(a)(v); Families SA, above note 40, p 29.

175 *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 226(2)(a)(v).

176 *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 226(2)(b).

177 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 29(e); Families SA, above note 40, p 29; Northern Territory Police, *Care and Protection of Children Act – Administrative Guidelines,* undated, cl 17.12, http://www.workingwithchildren.nt.gov.au/docs/Administrative_Guidelines.pdf (viewed 11 May 2015).

178 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 29(f).

179 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 29(g).

180 Northern Territory Police, *Care and Protection of Children Act – Administrative Guidelines,* undated, cl 17.9, http://www.workingwithchildren.nt.gov.au/docs/Administrative_Guidelines.pdf (viewed 11 May 2015).

181 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 29(h); Northern Territory Police, *Care and Protection of Children Act – Administrative Guidelines,* undated, cl 17.14, http://www.workingwithchildren.nt.gov.au/docs/Administrative_Guidelines.pdf (viewed 11 May 2015).

182 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 31.

183 *National Framework: Creating Safe Environments for Children – Organisations, Employees and Volunteers, Schedule: An Evidence-based Guide for Risk Assessment and Decision-making when Undertaking Background Checking,* Council of Australian Governments, 2005.

184 Amendments to the *Criminal Records Act 1991* (NSW), which took effect on 24 November 2014, allow people with historical convictions relating to decriminalised homosexual offences to apply for the conviction to be extinguished.

185 The risks to children arising from longer application processing times were noted in the 2012 review of Western Australia's WWCC law. See Guest, above note 9, p 31.

186 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) ss 15–16.

187 *Child Protection (Working with Children) Act 2012* (NSW) s 8(1).

188 *Care and Protection of Children Act 2007* (NT) ss 187(4)–187(6). Northern Territory provides for eligibility through an exemption process that allows people to begin child-related work upon providing proof of an application for a WWCC.

189 *Working with Children Act 2005* (Vic) s 33.

190 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 25.

191 *Working with Children (Risk Management and Screening Act) 2000* (Qld) ss 188, 191, 193, 197.

192 *Children's Protection Act 1993* (SA) s 8B(1). People can start work in South Australia if there is an urgent need for them to do so, but cannot undertake 'prescribed functions' until an assessment is completed satisfactorily. Families SA, above note 40, pp 19–20.

193 *Registration to Work with Vulnerable People Act 2013* (Tas) s 15(2).

194 *Child Protection (Working with Children) Act 2012* (NSW) ss 8(2), 17.

195 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) ss 15(2), 15(4), 16(2); *Working with Children Act 2005* (Vic), ss 33(2)(a)(ii)–33(2)(a)(iii); *Working with Children (Criminal Record Checking) Act 2004* (WA) s 25(2).

196 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 15(2)(d).

197 Office of the Children's Guardian, *Annual report 2013–14*, Sydney, 2014, pp 38–39.

198 Working with Children Check, *Statistics*, Department of Justice & Regulation, http://www.workingwithchildren.vic.gov.au/home/about+the+check/statistics/ (viewed 11 May 2015). See also, Office of the Children's Guardian, *Annual report 2013–14*, Sydney, 2014, p 40.

199 See, for example, Administrative Review Council, *Decision Making: Accountability,* Better Practice Guide 5, Canberra, August 2007, p. 1.

200 See, for example, Administrative Review Council, above note 199, p 3.

201 *Child Protection (Working with Children) Act 2012* (NSW) s 27(1).

202 *Child Protection (Working with Children) Act 2012* (NSW) s 27(2).

203 *Child Protection (Working with Children) Act 2012* (NSW) s 27(3).

204 *Working with Children Act 2005* (Vic) s 26.

205 *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 353–355.

206 *Working with Children (Criminal Record Checking) Act 2004* (WA) ss 20, 26.

207 http://www.dcsi.sa.gov.au/services/screening/other-services.

208 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 40 (1).

209 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 44(2).

210 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 47(4).

211 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 59 (1).

212 *Registration to Work with Vulnerable People Act 2013* (Tas) s 32.

213 *Registration to Work with Vulnerable People Act 2013* (Tas) s 39.

214 *Registration to Work with Vulnerable People Act 2013* (Tas) s 40.

215 *Registration to Work with Vulnerable People Act 2013* (Tas) s 51.

216 *Registration to Work with Vulnerable People Act 2013* (Tas) ss 30, 36.

217 *Care and Protection of Children Act 2007* (NT) s 194.

218 'During 2012–13, it was estimated that 333,300 people moved interstate, a decrease of 1.8% from the number of people who moved in the previous year. In 2011–12 there were 339,500 people who moved interstate, an increase of 0.3% from the number of people who moved in 2010-11 (338,400 persons)': Australian Bureau of Statistics, *Migration, Australia, 2011–12 and 2012–13*, cat no 3412.0, ABS, Canberra, 2013.

219 Productivity Commission, *Geographic Labour Mobility,* Research Report, Canberra, April 2014. See http://www.pc.gov.au/inquiries/completed/labour-mobility/report/labour-mobility.pdf.

220 *Child Protection (Working with Children) Act 2012* (NSW) s 22(1).

221 *Working with Children Act 2005* (Vic) s 19(1).

222 *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 231(2), 231(3).

223 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 14(1).

224 See Families SA, above note 40, pp 19–22.

225 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 41(3).

226 *Registration to Work with Vulnerable People Act 2013* (Tas) s 34(1).

227 *Care and Protection of Children Act 2007* (NT) s 192(1)

228 Department of Justice, Victoria, above note 117, p 9.

229 As set out in section 4.2, these jurisdictions generally also have corresponding offences for failing to comply with these obligations.

230 'During 2012–13, it was estimated that 333,300 people moved interstate, a decrease of 1.8% from the number of people who moved in the previous year. In 2011–12 there were 339,500 people who moved interstate, an increase of 0.3% from the number of people who moved in 2010-11 (338,400 persons)': Australian Bureau of Statistics, *Migration, Australia, 2011–12 and 2012–13*, cat no 3412.0, ABS, Canberra, 2013.

231 *Child Protection (Working with Children) Act 2012* (NSW) ss 39–40.

232 *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 8(b), 395.

233 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 42.

234 *Commissioner for Children and Young People Act 2012* (Vic) s 25.

235 Information provided by jurisdictions during internal consultation processes.

236 *National Research Agenda for Protecting Children 2011–2014,* Department of Families, Housing, Community Services and Indigenous Affairs and National Framework Implementation Working Group, Canberra, October 2011.

237 Ibid, p 7.

238 *National Framework: Creating Safe Environments for Children – Organisations, Employees and Volunteers*, above note 45.

239 *National Framework: Creating Safe Environments for Children – Organisations, Employees and Volunteers*, above note 183.

240 *National Framework: Creating Safe Environments for Children – Organisations, Employees and Volunteers* above note 46.

241 *Protecting Children is Everyone's Business,* above note 6.

242 *Protecting Children is Everyone's Business,* above note 6, p 35.

243 *National Framework for Protecting Australia's Children: Implementing the first three-year action plan 2009–2012*, 2009, http://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/national-framework-for-protecting-australias-children-implementing-the-first-three-year-action-plan-2009-2012-2009.

244 *Protecting Children is Everyone's Business:* above note 6, pp 18, 32.

245 Commonwealth Government, above note 50, p 12.

246 Commonwealth Government, above note 50, Appendix G.

247 *Protecting Children is Everyone's Business,* above note 6, p 2.

248 Ibid, p 3.

249 Commonwealth Government, above note 50, p 7–8.

250 See above note 54.

251 *National Framework for Protecting Australia's Children: Second three-year action plan 2012–2015*, http://www.dss.gov.au/sites/default/files/documents/07_2014/facs_42647_nfpac_action_plan_text.pdf.

252 Commonwealth Government, above note 50, p 12.

253 *Child Protection (Working with Children) Act 2012* (NSW) s 8(1).

254 *Child Protection (Working with Children) Act 2012* (NSW) s 8(2).

255 *Child Protection (Working with Children) Act 2012* (NSW) s 10(1).

256 *Child Protection (Working with Children) Act 2012* (NSW) s 45.

257 *Child Protection (Working with Children) Act 2012* (NSW) s 9(1).

258 *Child Protection (Working with Children) Act 2012* (NSW) s 10(2).

259 *Working with Children Act 2005* (Vic) s 33.

260 *Working with Children Act 2005* (Vic) s 38.

261 *Working with Children Act 2005* (Vic) s 37(1).

262 *Working with Children Act 2005* (Vic) s 39.

263 *Working with Children Act 2005* (Vic) s 39A.

264 *Working with Children Act 2005* (Vic) ss 20, 20A.

265 *Working with Children Act 2005* (Vic) ss 30(2), 31(2), 31A(2).

266 *Working with Children Act 2005* (Vic) s 35.

267 *Working with Children Act 2005* (Vic) s 37(2).

268 *Working with Children Act 2005* (Vic) s 40.

269 *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 195(1), 196(2).

270 *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 240(4).

271 *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 240(4).

272 *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 258.

273 *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 351.

274 *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 194(2).

275 *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 323(3).

276 *Working with Children (Risk Management and Screening) Act 2000* (Qld) ss 194(2), 196, 258.

277 *Working with Children (Criminal Record Checking) Act 2004* (WA) ss 16(5), 174(4).

278 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 24.

279 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 23.

280 *Working with Children (Criminal Record Checking) Act 2004* (WA) ss 29, 32A.

281 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 35.

282 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 28.

283 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 33.

284 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 36.

285 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 22.

286 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 30.

287 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 39.

288 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 9B.

289 *Working with Children (Criminal Record Checking) Act 2004* (WA) s 42(3).

290 *Child Sex Offenders Registration Act 2006* (SA) s 65(1).

291 *Children's Protection Act 1993* (SA) s 8B(1).

292 *Children's Protection Regulations 2010* (SA) r 13.

293 *Children's Protection Regulations 2010* (SA) r 12.

294 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 13.

295 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 21.

296 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 48.

297 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 50.

298 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 52.

299 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 56.

300 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 14.

301 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 65.

302 *Registration to Work With Vulnerable People Act 2013* (Tas) s 16(2)(b).

303 *Registration to Work with Vulnerable People Act 2013* (Tas) s 23.

304 *Registration to Work with Vulnerable People Act 2013* (Tas) ss 24, 47(1), 47(2).

305 *Registration to Work with Vulnerable People Act 2013* (Tas) s 41

306 *Registration to Work with Vulnerable People Act 2013* (Tas) s 48.

307 *Registration to Work with Vulnerable People Act 2013* (Tas) s 17.

308 *Registration to Work with Vulnerable People Act 2013* (Tas) s 54.

309 *Care and Protection of Children Act 2007* (NT) s 187.

310 *Care and Protection of Children Act 2007* (NT) s 193

311 *Care and Protection of Children Act 2007* (NT) ss 193(6), 193(7).

312 *Care and Protection of Children Act 2007* (NT) s 187

313 *Care and Protection of Children Act 2007* (NT) s 195.

314 The Children's Guardian accesses applicants' full and unabridged national criminal history information for all offences, rather than just a subset of defined offences: Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working with Children Check*, released 17 June 2013, p 1.

315 Prescribed reporting bodies are required to notify the screening agency about findings of sexual misconduct by a child-related worker (including grooming) committed against, with or in the presence of a child, or any serious physical assault of a child: *Child Protection (Working with Children) Act 2012* (NSW) Sch 1(2).

316 A notification of concern arises from the NSW Ombudsman's Office receiving information in the course of exercising its functions that, in the Ombudsman's view, may satisfy the Children's Guardian that the person poses a risk to the safety of children: *Child Protection (Working with Children) Act 2012* (NSW) Sch 1(2A).

317 Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working with Children Check*, released 17 June 2013, p 19.

318 Department of Justice, Victoria, above note 117, p 7.

319 *Working with Children Act 2005* (Vic) s 13(1)(a), *Working with Children Regulations 2006* (Vic) r 9.

320 *Working with Children Act 2005* (Vic) s 13(1)(a), *Working with Children Regulations 2006* (Vic) r 9.

321 Department of Justice, Victoria, above note 117, p 7.

322 Criminal history is defined as 'every conviction and every charge committed in Queensland or elsewhere': *Working with Children (Risk Management and Screening) Act 2000* (Qld) Sch 7.

323 *Working with Children (Risk Management and Screening Act 2000* (Qld) Sch 7.

324 This includes reporting obligations under the *Child Protection (Offender Reporting) Act 2004* (Qld), *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) and *Working with Children (Risk Management and Screening Act 2000* (Qld) s 169.

325 *Working with Children (Risk Management and Screening) Act 2000* (Qld), sch 7.

326 *Working with Children (Risk Management and Screening) Act 2000* (Qld) s 305.

327 *Working with Children (Risk Management and Screening) Act 2000* (Qld) Division 6.

328 State of Western Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working with Children Check*, released 17 June 2013, p 8.

329 *Children's Protection Act* (SA) s 8B

330 Families SA, above note 40, p 4.

331 Families SA, above note 40, p 4.

332 *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 28(2); *Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2012* (ACT) p 9.

333 The Registrar may undertake further investigations if the applicant is, or has been the subject of an order under the *Family Violence Act 2004* (Tas), *Registration to Work with Vulnerable People (Risk Assessment for Child-Related Activities) Order 2014* (Tas) Order 7(g).

334 The Registrar may undertake further investigations if the applicant is, or has been the subject of an order under the *Children, Young Persons and Their Families Act 1997* (Tas), *Registration to Work with Vulnerable People (Risk Assessment for Child-Related Activities) Order 2014* (Tas) Order 7(g).

335 *Registration to Work with Vulnerable People (Risk Assessment for Child-Related Activities) Order 2014* (Tas) Order 7(f).

336 *Registration to Work with Vulnerable People (Risk Assessment for Child-Related Activities) Order 2014* (Tas) Order 7(h).

337 Northern Territory Police, *Care and Protection of Children Act – Administrative Guidelines,* undated, cl 18.

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