In accordance with section 38E of the Public Finance and Audit Act 1983, I present a report titled Working With Children Check: NSW Commission for Children and Young People.

Peter Achterstraat
Auditor-General

Sydney
February 2010
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Foreword

The NSW Commission for Children and Young People (the Commission) commenced operations in July 2000 following the Royal Commission into the Police Service paedophile inquiry in 1997.

The Commission has a role in ensuring the safety, wellbeing and welfare of children and young people. It achieves this through being an advocate for children and young people and screening people who wish to be involved in child-related services.

New South Wales was the first state to introduce employment screening to identify people who may pose a risk to children and that should be prevented from working in areas where they could have unsupervised contact with a child.

This process is called a Working With Children Check.

Today, over 21,000 employers are registered as providing child-related services that must have employees screened and over 200,000 checks are completed each year.

This audit looks at the role of the Commission in screening prospective employees, the self-employed and volunteers. It also looks at how effective current screening practices are in identifying people who may pose a risk to children.

It has been nearly a decade since employment screening commenced in NSW. Other states have adopted a different approach to screening than we have here. Now is probably a good time to examine how the Commission is performing.

Peter Achterstraat
Auditor-General

February 2010
Audit conclusion and recommendations
The focus of our audit

The Working With Children Check (WWCC) is to protect children through reducing the risk of abuse in the work place. It excludes people from working with children because of convictions for serious sexual or child-related violence (referred to as prohibited people). It also identifies and advises employers of people who although not prohibited, may still pose a risk to children because of their past conduct.

For child-related employment, the WWCC requires:
- employers to request pre-employment checks of paid employees
- self-employed people to obtain a certificate to show they are not prohibited people
- volunteers to sign a declaration to state that they are not prohibited people.

Commencing in 2000, NSW was the first state in Australia to introduce a WWCC. Over 200,000 background checks are conducted annually.

The NSW Commission for Children and Young People (the Commission) has overall responsibility for the WWCC.

The checking process is shared amongst a number of screening agencies including the Commission.

The Commission develops and provides guidelines and tools to the screening agencies. It also monitors and audits screening agency practices.

In this audit we assessed whether the WWCC reliably identifies those people who may pose a risk to children. We examined whether the Commission:
- ensures that required employers are requesting checks and employers check everyone they should
- ensures that information on applicants is reliable and complete and that background checks by screening agencies are consistent
- monitors employees who may pose a significant risk and manages subsequent offences.

The approach in NSW differs to that of other States where anyone wishing to work with children is issued a certificate and people without a certificate should not be employed. In NSW, the onus is on the employer to arrange for a person to be checked.

There is much debate about which approach is best. This audit does not comment on the merits of the approach in NSW as we consider this is a matter of government policy.

Audit conclusion

To be effective the WWCC has to be thorough. Gaps in the checking process such as employers not checking everyone they should mean that people who may pose a risk to children are not identified. We found that the WWCC does not reliably identify all those who may pose a risk to children.
In addition, we found the Commission does not monitor the compliance of employers, the self-employed or volunteer organisations with their obligations or have a formal strategy to promote awareness of the WWCC.

It is estimated that in NSW over 1.3 million volunteers are working with children. We found the Commission does not know whether all volunteer organisations are requiring Prohibited Employment Declarations. Where they do, these are filed away and rarely checked by the Commission. Organisations rely on the applicant to be truthful.

There is also a likely risk around the recently introduced checking of self-employed people. The Commission anticipates it will issue around 10,000 self-employed certificates each year however over the first six months they only issued about 1,600.

Employers also need to identify which positions should be checked. For example, school cleaners who work outside school hours do not need to be checked whereas those who work during school hours should be checked. A 2005 review of applications for the WWCC found that up to 22 per cent of checks were for positions that did not need to be checked.

In addition, some individuals are over checked. Employers who recruit short term or seasonal staff such as casual teachers and swimming coaches are requesting WWCCs for each period of employment.

When a check is done and a record that is relevant is found, the screening agency works out how much risk that person may be to children in a workplace. They use a risk estimate model developed by the Commission called A Workplace and Applicant Risk Estimate (AWARE).

We found the outcomes of risk estimates are not always consistent. In 2009 a review on the use of the AWARE model found problems in 19 of 21 completed cases. For example there were errors in recording data and guidelines were not followed.

Finally, whatever the risk a person poses to children, as long as they are not prohibited, the Commission cannot stop employers from hiring them. Employers determine who to employ. For example, in 2008-09, 14 people assessed as significant risk were employed.

The type of relevant records that have triggered a significant risk rating includes:

- a dismissed charged for common assault on a 17 year old male
- evidence of accessing child pornography on a number of occasions.

The ongoing management of the employee and risks to children are a matter for the employer. The Commission advises employers on how to mitigate the risk a person may bring to a position and an organisation. But it does not have any ongoing role to make sure its advice is followed.

This is unique to NSW. In other jurisdictions, the agencies undertaking the check make the decision on whether a person is appropriate to work with children.

In addition, only the self-employed are checked to see if they have committed subsequent offences that pose a risk to children. There is no guarantee that new offences committed by paid employees or volunteers after employment will be picked up.
We also found the Commission has responsibility for multiple and sometimes conflicting roles. For example it is both the regulator of the WWCC and an operator, providing about 40 per cent of checking services to NSW employers while regulating activities of other screening agencies. The government may consider that the community may be better served if these roles were separated.

**Recommendations**

1. To reduce the risk of prohibited people working with children it is recommended that the Commission by December 2010:
   a. have all volunteer organisations register with the Commission (page 14)
   b. move to direct electronic lodgement to the Commission of the Prohibited Employment Declaration by volunteers (page 14)
   c. undertake regular audits to check that volunteers are completing Prohibited Employment Declarations and are not prohibited persons (page 14)
   d. make sure that organisations and parents check that self-employed people have current certificates. (page 14)

2. To improve compliance with the WWCC it is recommended that the Commission by December 2010:
   a. undertake regular audits to ensure all employers who are required to request the check are in fact doing so (page 11)
   b. implement provisions to only check certain short term employees once every 12 months (page 12)
   c. screen applications and only process checks for child-related employment. (page 11)

3. To improve risk estimate outcomes we recommend the Commission:
   a. ensure consistent practices amongst screening agencies by December 2010 (page 18)
   b. complete the evaluation of AWARE as planned. (page 18)

4. To manage risks following employment we recommend the Commission by June 2010:
   a. ensure employers of significant risk employees implement Child Safe Child Friendly strategies (page 20)
   b. identify people that have committed a prohibited offence while in child-related employment and advise Police. (page 21)

5. To improve the reliability of checks we recommend that the Commission by December 2010 review its approach to collecting and analysing relevant employment information and review the usefulness of apprehended violence orders. (page 18)
Response from the NSW Commission for Children and Young People

Thank you for the opportunity to respond to this Audit. Its recommendations will help to strengthen the Working With Children Check.

My response to each of the recommendations at the end of the preceding section is detailed below.

- **Registering volunteer organisations**

  A register of volunteer organisations is one approach to help achieve greater compliance with the Working With Children Check. Statutory change would be needed to empower the Commission to establish such a register.

- **Direct electronic lodgement of Prohibited Employment Declarations**

  This approach would change the way employers recruit volunteers, and would let them check on the Commission’s database to see whether that volunteer has a current Declaration, instead of collecting their own forms. It is accordingly a form of volunteer accreditation. Options for accreditation of volunteers may be considered within the forthcoming review of the Commission’s legislation.

- **Audit volunteer declarations**

  We recognise that auditing will strengthen volunteer declarations. The Commission plans to commence its full program of volunteer declaration audits in mid 2010.

- **Make sure organisations and parents check for self employed certificates**

  We have planned a major community information campaign for 2010.

- **Regular audits of employer compliance**

  The Commission supports this proposal in principle. The size and scope of a compliance program will be determined by the funds available.

- **Implement provisions to check short term employees only once every 12 months**

  Our current statutory provisions permitting short-term employees to avoid [some] multiple Checks cannot be fully implemented until our planned new ESS database comes into operation in late 2010 or 2011. Even so, we believe employers may find it hard to use these statutory provisions, given that they add complexity to an already complex environment. We propose to investigate further options during the 2010 review of the Commission’s legislation.

- **Screen applications and only process checks for child-related employment**

  There are limited options for further screening to remove non-valid applications without statutory change that makes the Check simpler to understand, implement and enforce.
Pending the review of our legislation, the Commission will undertake more training and education to help employers use the Working With Children Check appropriately.

- **Ensure consistent risk estimate practices**

  We agree that the "distributed" system of checks in NSW provides challenges in delivering consistent practice. All other States have developed centralised checks that avoid this challenge. We propose that the costs and benefits of the distributed system be further assessed through the 2010 review of the Commission for Children and Young People Act 1998.

  Meanwhile, audit and education remain our tools to ensure consistent practice. The Commission will continue its regular audits and education sessions.

- **Complete evaluation of AWARE as planned**

  We expect to commence our evaluation of AWARE as planned in late 2011.

- **Ensure employers of significant risk employees implement child safe child friendly strategies**

  The Commission will need to investigate statutory options for achieving this outcome.

- **Identify people who commit a prohibiting offence while in child-related employment and advise Police**

  We support ways to identify people already working with children who present a danger to them. This recommendation is one way to do this, and it is an approach already used for interstate Working With Children Cards and our own Certificate for Self Employed People.

  The way this system could work with our existing NSW Check is certain to require statutory change. The 2010 review of the Commission for Children and Young People Act 1998 gives an opportunity to explore ways to achieve this outcome.

- **Review the collection and analysis of Relevant Employment Proceedings and the usefulness of AVOs**

  The Commission supports this recommendation. The current arrangements are due for a full review.

  (signed)

  Jan McClelland
  A/Commissioner

  Dated: 29 January 2010
Key findings
1. What is the Working With Children Check?

The NSW Commission for Children and Young People Act 1998 (CCYP Act) requires employers to undertake pre-employment checks of paid employees in child-related work.

Since May 2009, self-employed people such as music and dance tutors, sports coaches and nannies, may obtain a certificate to show they are not prohibited from working with children.

Volunteers must sign a declaration to state that they are not prohibited from working with children.

This is called the Working With Children Check (WWCC). The NSW Commission for Children and Young People (the Commission) has responsibility for the completeness and accuracy of checks.

Implemented in 2000, the WWCC aims to reduce the risk to children by firstly excluding prohibited persons, and secondly advising employers of the risk certain employees may pose to children.

<table>
<thead>
<tr>
<th>Exhibit A: Prohibited person offences</th>
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</table>
| A prohibited person is a person who is convicted of the following:
| • serious sex offence
| • child-related personal violence offence
| • murder of a child
| • indecency offences punishable by imprisonment of 12 months or more
| • kidnapping (unless the offender is or has been the child’s parent or carer)
| • offences connected with child prostitution
| • possession, distribution or publication of child pornography or
| • attempt, conspiracy or incitement to commit the above offences.


To determine if a person seeking paid employment poses a risk to children, they are checked for:

• past criminal records, including charges and convictions
• relevant employment proceedings such as child-related incidents in the workplace that have been investigated by the employer
• apprehended violence orders (AVOs) involving a child.

If a record is found by a screening agency, a risk estimate is completed. The outcome determines the risk that person may pose to children in the position to be filled.

The employer is advised of the level of risk. They then make a decision on whether or not to employ that person.
Key findings

Screening agencies

The checks are undertaken by five screening agencies including the Commission. Employers must be registered with one of these.

Screening agencies match sectors. For example, the screening agency with responsibility for the public education sector is the NSW Department of School Education (DET), for the health sector it is the NSW Department of Health (Health), the Catholic Commission for Employment Relations screens all Catholic system services (CCER) and the Department of Arts, Sport and Recreation has looked after sporting activities (DASR). The Commission screening unit looks after all other services.

Working With Children Check 9
Key findings

Over 200,000 WWCCs are conducted by screening agencies each year.

<table>
<thead>
<tr>
<th>No. checked</th>
<th>90,000</th>
<th>80,000</th>
<th>70,000</th>
<th>60,000</th>
<th>50,000</th>
<th>40,000</th>
<th>30,000</th>
<th>20,000</th>
<th>10,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
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<tr>
<td>2008</td>
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<td></td>
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<tr>
<td>2009</td>
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</table>

Approved Screening Agencies

Self-employed people

From 1 May 2009, self-employed people whose work with children is unsupervised; such as music and dance tutors, sports coaches and nannies, may apply for a Certificate for Self Employed People in Child Related Employment (WWC Certificate). The WWC Certificate costs $80 and is valid for three years.

From 1 May 2009 it will be an offence for a person who is self-employed to engage in child-related employment without a current WWC Certificate. Compliance is to be monitored by the Commission.

Each certificate has a verification number, and parents are encouraged to check this number against the register of self-employed people on the Commission’s website to ensure that it is valid.

Volunteers

Volunteer organisations must have all volunteers who work unsupervised with children complete a Prohibited Employment Declaration. This must be kept and provided to the Commission if requested.

2. Are all relevant people checked?

Adults who have direct, unsupervised contact with children either in a paid, self-employed or voluntary capacity should have a full WWCC, a self-employed certificate or have completed a Prohibited Employment Declaration.

We found that the Commission does not know whether all relevant people are checked. This is because the Commission does not promote or monitor employer compliance with the WWC.

It is estimated that in NSW over 1.3 million volunteers are working with children. We found the Commission does not know whether all volunteer organisations are requiring Prohibited Employment Declarations. Where they do, these are filed away and rarely checked by the Commission.
Key findings

The Commission anticipates it will issue around 10,000 self-employed certificates and is currently delivering an awareness campaign to parents in pre-schools.

Are all relevant people in paid child-related positions checked?

Currently there are 21,000 registered employers across the five screening agencies. The Commission does not know whether:
- all required employers are registered
- all required employers are requesting WWCCs
- those who are requesting checks are doing so for all necessary positions.

Of a sample of 50 new employers registered for WWCC in 2009, we found that 60 per cent had been operating child-related services for four or more years apparently without registering for a WWCC.

We found the Commission does not promote awareness or monitor compliance with the WWCC. Although some screening agencies have programs to promote compliance with the WWCC.

<table>
<thead>
<tr>
<th>Sample of employees requesting checks for new employers</th>
</tr>
</thead>
<tbody>
<tr>
<td>- During the winter season, many ski operators request checks for new employees. For those who do not, the Department of Arts, Sport and Recreation sends letters reminding them of their obligation to request a WWCC prior to employing staff.</td>
</tr>
<tr>
<td>- In the last winter season, after sending a reminder 38 further WWCC requests were received.</td>
</tr>
</tbody>
</table>

Source: Department of Arts, Sport and Recreation, 2009

To date the Commission has not fined an employer or volunteer organisation for non-compliance.

Recommendation

To improve compliance with the WWCC it is recommended that the Commission by December 2010 undertake regular audits to ensure all employers who are required to request the check are in fact doing so.

Some employers are over checking

A 2005 review of a sample of WWCC applications showed that over 22 per cent were not required as the position was not child-related.

Each check processed by a screening agency costs a minimum of $20.60 for access to criminal records. Since the 2005 review identified 22 per cent of checks as unnecessary the Commission has taken some steps to try to reduce these. Despite these changes a number of unnecessary checks proceed.

Although this has been a problem for some time, the Commission has not yet developed a means of identifying when a check is not required.

Recommendation

To improve compliance with the WWCC it is recommended that the Commission by December 2010 screen applications and only process checks for child-related employment.

Some individuals are over checked

In addition, some individuals are over checked. Employers who recruit short term or seasonal staff such as casual teachers and swimming coaches are requesting WWCCs for each period of employment.
Key findings

<table>
<thead>
<tr>
<th>Exhibit 1: Records of Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Casual employees tend to move between employers. As a result we found multiple checks are being done on these employees. For example:</td>
</tr>
<tr>
<td><strong>Casual Employee 1</strong>: checked five times between February and July 2009</td>
</tr>
<tr>
<td><strong>Casual Employee 2</strong>: checked four times between February and April 2009</td>
</tr>
<tr>
<td><strong>Casual Employee 3</strong>: checked eight times between August 2007 and February 2008</td>
</tr>
<tr>
<td><strong>Casual Employee 4</strong>: checked seven times between August 2008 and November 2009.</td>
</tr>
</tbody>
</table>

Source: Catholic Commission for Employment Relations, 2009

An amendment to the CCYP Act was introduced in 2007 to allow casual staff to be checked only once every 12 months, but it has not as yet been fully implemented.

**Recommendation**

To improve compliance with the WWCC, it is recommended that the Commission by December 2010 implement provisions to only check certain short-term employees once every 12 months.

**Are all volunteers checked?**

Volunteer organisations are currently only required to have volunteers who are in direct, unsupervised contact with children complete a Prohibited Employment Declaration.

It is estimated that in NSW over 1.3 million volunteers are working with children in sport, welfare, education, religious and health services.

Some volunteer organisations have expressed concern that volunteers are their greatest area of exposure, and that perpetrators of child abuse may target their organisations to access children.

For the Prohibited Employment Declaration to be effective, volunteer organisations need to make sure they are completed and the volunteer is correctly identified.

We found the Commission does not know whether all volunteer organisations are requiring Prohibited Employment Declarations. Where they do, these are rarely checked by the Commission. Organisations rely on the applicant to be truthful.

The Commission commenced a three-year project in 2009 to verify a sample of Prohibited Employment Declarations (PEDs) completed by volunteers.

Of the 144 volunteers checked in the pilot project, one was found to be a prohibited person. However, further investigation found that this person was not working with children and should not have completed a PED in any event.

However, the project did identify problems with the PED forms, including that the form did not contain enough information to run a police check to see if applicants were prohibited people.
The Commission is currently revising the PED forms to require volunteer organisations to check identification documents such as a drivers licence to verify the information on the PED. The Commission will also continue with this project.

In the future, some volunteers will have to undergo a more thorough background check. The recent Special Commission of Inquiry into Child Protection Services in New South Wales (the Wood Inquiry) recommended that the WWCC should extend to some volunteers including those who:
- provide mentoring for disadvantaged children
- provide personal care for children with disabilities
- are adult household members of family day carers and foster carers.

The Commission anticipates that this will result in around 27,000 extra checks each year.

The type of check and who is checked varies between jurisdictions. For example, in Victoria all volunteers have a WWCC.

<table>
<thead>
<tr>
<th>State</th>
<th>Self-employed</th>
<th>Volunteer</th>
<th>Young Child</th>
<th>Student</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Vic</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Qld</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>WA</td>
<td>✓</td>
<td></td>
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</tbody>
</table>

Costs associated with WWCC:
- NSW: free, $80, free, not required
- Vic: $76.10, $76.10, free, free
- Qld: $61.85, $61.85, free, free
- WA: $50, $50, $10, $10

Total applications for WWCC:
- NSW: 214,599
- Vic: 178,431
- Qld: 284,398
- WA: 83,862

Source: Audit Office research, 2009

Self-employed need a certificate

From 1 May 2010, it will be compulsory for self-employed people whose work with children is unsupervised, such as music and dance tutors, sports coaches and nannies, to have a Certificate for Self Employed People in Child Related Employment (WWC Certificate).
Each certificate has a verification number. Organisations and parents are encouraged to check this number against the register of self-employed people on the Commission's website to ensure that it is current.

The Commission anticipates it will issue around 10,000 self-employed certificates each year however over the first six months they only issued about 1,600.

The Commission is currently delivering an awareness campaign to parents in pre-schools.

To reduce the risk of prohibited people working with children it is recommended that the Commission by December 2010:

- have all volunteer organisations register with the Commission
- move to direct electronic lodgement with the Commission of PEDs by volunteers
- undertake regular audits to check that volunteers are completing PEDs and are not prohibited persons
- make sure that organisations and parents check that self-employed people have current certificates.

3. Are outcomes of the checks for paid employees reliable?

The reliability of the checking process depends on three things; getting the name right, checking against accurate up to date records and consistent decision making. We found that not all outcomes of checks are reliable.

The records held by the Commission on relevant employment proceedings (REPs) and apprehended violence orders (AVOs) are not always reliable and complete.

Of particular concern are REPs. We found examples where these were not properly investigated by the employer, or where the conclusion was incorrect and a lower risk rating was given to the event. The problem with this is that these records are relied on to judge the level of risk a person presents to a child.

We also found that risk estimates differed between screening agencies suggesting that the AWARE model has implementation issues.

Before the WWCC is requested, the applicant must prove their identity to the employer through a '100 point' check. The applicant must show the employer original documents such as a birth certificate, drivers licence and land rates notices that add up to 100 points. Applicants must also disclose all former names or aliases. A check is run against all names provided.

The employer sends the completed WWCC application form to the screening agency they are registered with. The screening agency should check the application is properly completed, and verify that the request is for a child-related position. They then forward it to the Commission.

The Commission then runs three checking processes. These are with CrimTrac, the Commission's REP database and AVO database.
If an applicant has any relevant records, the screening agency must complete a risk estimate.

**Key findings**

**Display 2: What are the relevant records held in a WWCC?**

- **CRIMTRAC**
  - Criminal records relating to serious sex offences and child-related violence. Records from all states are searched. All relevant criminal charges and convictions are included.

- **Apprehended Violence Orders**
  - The database of AVOs held by the Commission includes only AVOs involving children.

- **Relevant Employment Proceedings**
  - REPs include any sexual offence or sexual misconduct involving a child, child pornography offences, child-related violence, or ill-treatment or neglect of a child in a workplace. A database of REPs is held by the Commission.

Source: Audit Office research, 2009

Employers are obliged to report relevant employment proceedings

About 20 per cent or 40,000 of WWCCs return possible matches between an applicant and a record. An initial review of these identifies over 90 per cent or 37,000 as not accurate matches. About 1.5 per cent or 3,000 WWCCs annually reveal a relevant record.

The CCYP Act requires employers to notify the Commission of the name and other identifying particulars of any employee or volunteer against whom relevant employment proceedings have been completed, whether or not that person is in child-related employment.

REP records are included in the WWCC as they have been found to be a useful tool in identifying people who may pose a risk to children. About seven per cent of the relevant records identified are REPs.

Employers must also judge the seriousness of the conduct and label the event a category one or a category two event.

**Display 3: What are the relevant employment proceedings?**

The onus is on the employer to decide how significant an employment incident is and which category it should be reported under.

**Category one** are those where:
- the investigation has found that reportable conduct or an act of violence took place or
- there is some evidence of these occurring but the finding was inconclusive, yet the employer thinks the circumstances warrant inclusion in any future estimate of risk.

**Category two** are where the investigation found some evidence that reportable conduct or an act of violence occurred however the finding is inconclusive.

Source: Audit Office research, 2009
Key findings

Category one matters trigger a risk estimate in a WWCC. Category two matters will only be considered if the applicant has other relevant records.

The Commission receives about 500 REPs a year. More than half of these are category one.

REP records are not reliable

However, there are problems with the reliability of REPs. In 2006 the Commission reviewed 66 REPs to assess if:
- employers were reporting the right incidents
- risk categories were correct
- investigations were adequate.

The review found that:
- 10 incidents did not need to be reported
- 13 of the 37 incidents reported as category two should have been category one (more serious).
- 20 incidents were not properly investigated.

Also, if REP records are requested from an employer for a risk estimate but are incomplete, they cannot be used. This means that significant issues of past behaviour cannot be verified as accurate and therefore the risk cannot be properly estimated.

In 2008, the Commission engaged a consultant to provide options to improve problems identified in the REP process. The consultant proposed 11 options, most of which included a new approach to categorizing incidents. The Commission did not adopt any of these proposals. Instead the Commission intends to improve their forms and reissue the Employer Guidelines.

Some AVO records are not reliable

The Commission maintains a database of relevant AVOs. To be relevant, an AVO must be made by a police officer or other public official, and be for the protection of a child (that is anyone 18 years or younger), or a child and others. About 11 per cent of relevant records identified are AVOs.

Problems with AVOs include that children may be named but their age is not stated. Age is needed to determine that the record is child-related. It is also needed to determine the seriousness of the incident. In such situations the AVO cannot be relied upon.

If an applicant has a relevant record, the screening agency completes a risk estimate. Before this is done, the screening agency must verify that:
- the position is in paid child-related employment
- any criminal records are relevant
- the applicant is not a prohibited person
- any AVOs and REPs are relevant
- the records belong to the applicant.
Key findings

Screening agencies will also try to remedy incomplete information by requesting further documents from police, employers or from courts. For example, if the victim’s age in an assault is not clear it may or may not be a relevant record so further information is needed. This is time consuming. In 2008-09, only 56 per cent of risk estimates by the Commission were completed within the target time of 16 weeks.

Risk estimates must be consistent

Each screening agency uses the risk estimate model developed by the Commission called AWARE to assess the possible risk a person may pose working with children. AWARE was introduced in 2007.

Screening agencies do about 580 risk estimates a year. About 0.3 per cent of all WWCCs end up with a risk estimate being completed.

| Source: Audit Office research, 2009 |

| AWARE is based on research about what constitutes risk to children in organisations and what are the best ways to manage these risks. |
| AWARE includes three tools: The Individual Risk Estimate (IRE) gives a score for the relevant records. The information used to decide the IRE score includes: |
| • the date of the incident |
| • the number of incidents |
| • type and location of the incident |
| • charges and convictions |
| • age of the victim and offender |
| • relationship between the victim and offender |
| The possible IRE scores are: |
| • IRE 3: significant risk |
| • IRE 2: some risk |
| • IRE 1: no greater risk to children than any other employee |
| If the applicant scores anything but IRE 1, the assessor must review factors that contributed to the incident, and what actions the applicant has taken to reduce risks of reoffending. |
| This supplementary assessment may lower the rating where the risk assessor considers that the applicant is unlikely to repeat the offence. |
| If the score remains at IRE 3 or 2, the assessor completes the Position Risk Estimate and an Organisational Risk Estimate. These are done in consultation with the employer. The assessor then advises the employer of the outcome and steps they could take to manage risks. |

Outcomes from the WWCC risk estimates are not consistent

Of 246 risk estimates done by the Commission’s screening unit in 2009 (the remaining 314 were done by other screening agencies) about 115 were initially IRE 3. After considering further information during the supplementary assessment only 38 remained as IRE 3 or posing a significant risk.

The Commission ensures risk estimates by screening agencies are consistent by:
- providing guidelines and procedures
- hosting risk assessor forums
- providing feedback to questions.
And yet recent audits of two screening agencies on the use of the AWARE model found problems. Of a sample of 21 completed case files reviewed, 19 were not fully compliant. This means there is a risk that people who pose risk to children are not identified.

### Key Findings

#### Criminal records used to estimate risk

People may be of significant risk if they have been charged but not convicted of a prohibited offence or if they have a relevant criminal record.

#### Exhibit 14: Examples of incomplete or incorrect practices

- Failure to follow the AWARE guidelines. IRE 3 was reduced to IRE 1 with no confirmation that the records belonged to the applicant and the reference requested from the employer did not comply with guidelines.
- Errors in recording data and the use of AWARE. Data was not correctly entered with a serious juvenile offence not being identified. The outcome was an IRE 1 when it should have been an IRE 2 or 3.
- Poor recording of decisions. IRE 3 was reduced to IRE 1 without any evidence to show a relevant AVO was considered. Also, no supplementary materials to demonstrate why the IRE was reduced.

Source: Audit Office research, 2009

#### Recommendations

To improve the reliability of checks we recommend that the Commission by December 2010 review its approach to collecting and analysing relevant employment information and review the usefulness of AVOs.

To improve risk estimate outcomes we recommend the Commission:

- ensure consistent practices amongst screening agencies by December 2010
- complete the evaluation of AWARE as planned.
4. Are risks managed following employment?

The Commission cannot stop employers from hiring people who may pose a significant risk to children.

While the Commission does advise employers of how to mitigate the risk a person may bring to a position and an organisation, they do not monitor whether or not these actions were taken by the employer.

People who have committed 'prohibited offences' cannot be employed or perform volunteer work with children. And anyone who commits such an offence after they have started working with children should leave the position. But there is nothing in place to make sure this happens.

Only self-employed people are monitored for subsequent offences.

Prohibited people are not employed

It is against the law for a prohibited person to apply or engage in child-related work and it is also an offence to employ a prohibited person in such work. Anyone who commits such an offence after they have started working with children should leave the position.

However, each year about 70 prohibited people apply for child-related employment. Some people may not know they are a prohibited person. For example, a person convicted of carnal knowledge as a teenager many years ago may not know that this offence would stop them from working with children. Their prohibited person status is checked when a WWCC is done.

Prohibited people can request review of status

Some prohibited people can seek a review of their status by the Commission, the Industrial Relations Commission or the Administrative Decisions Tribunal. Each year about 70 do so, of which about 40 are able to demonstrate they are no longer a risk to children and the restriction is lifted.

A 22-year-old male was charged for sexually assaulting a 10-year-old female in a public place in 2006. The male did not know the female. The case however got dismissed and the male was not convicted.

If this person applies for child-related employment and a WWCC is done, he will be assessed as a person of significant risk. This will be based on factors including:

- was the person charged? Yes
- where did the alleged incident happen? In a public place
- when did the alleged incident happen? Recently
- did the victim know the alleged offender? No.

If the male was convicted of the sexual assault, he would become a prohibited person and thus not allowed to work in child-related employment.

Source: Audit Office research, 2009
Key findings

People estimated to be of significant risk are employed

Employees assessed to be of significant risk may still be employed in child-related employment. This is because the decision rests with employers. In fact, of over 50 significant risk applicants assessed each year, on average seven are employed in child-related employment.

<table>
<thead>
<tr>
<th>Year</th>
<th>Risk assessments done</th>
<th>Assessed as significant risk (ie IRE 3)</th>
<th>Significant risk people employed</th>
</tr>
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<tbody>
<tr>
<td>2004-05</td>
<td>497</td>
<td>62</td>
<td>8</td>
</tr>
<tr>
<td>2005-06</td>
<td>608</td>
<td>67</td>
<td>1</td>
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<tr>
<td>2006-07</td>
<td>607</td>
<td>39</td>
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<td>2007-08</td>
<td>581</td>
<td>43</td>
<td>7</td>
</tr>
<tr>
<td>2008-09</td>
<td>560</td>
<td>53</td>
<td>14</td>
</tr>
</tbody>
</table>

Source: Audit Office research, 2009

Screening agencies advise the employer of the risk and how to manage it, for example by increasing supervision. However, the Commission does not have a role to follow up whether this is actually done.

The Commission is also responsible for the Child Safe Child Friendly program which it developed as another means of mitigating the risk of child abuse in the workplace. This program helps employers develop their own child protection responses such as restricting and supervising visitors. Yet, we found that this program is not offered to employers who hire people rated as significant risk.

To manage risks following employment, we recommend the Commission ensure employers of significant risk employees implement Child Safe Child Friendly strategies by June 2010.

Recommendation

Significant risk employees are not monitored by the Commission

The only obligation on employers is that they advise the Commission if they refuse employment to an applicant on the basis of a WWCC. In 2008-09, 14 people identified as significant risk were employed.

The type of relevant records that have triggered a significant risk rating includes:

- a dismissed charged for common assault on a 17-year-old male
- evidence of accessing child pornography on a number of occasions.

Monitoring subsequent offences

The WWCC does not have an expiry date and remains valid as long as the person remains with the same employer in the same position.

This means that if a person in child-related employment is charged with a prohibiting offence or one that may indicate the person poses a significant risk to children, for example a charge for common assault where the victim is under 18, the employer may not know unless the employee tells them or is convicted and imprisoned.
In contrast, self-employed people who are granted a Certificate for Self Employed People in Child Related Employment are monitored by NSW Police for subsequent convictions that would make them a prohibited person.

When this occurs, NSW Police advise the Commission, who revoke the Certificate.

Other jurisdictions like Queensland, Victoria, Western Australia have a card system. Those who are cleared through the working with children check are provided with cards which can be valid for a period between two and five years.

These cards remain with the cardholder and are valid for all child-related jobs. Cardholders are also monitored for criminal offences. Police provide updates on changes in criminal history to the checking agency.

In 2007-08, Queensland cancelled 185 cards and further suspended 65 cardholders after charges of serious child-related sex offences and child pornography offences were laid against them.

Source: Audit Office research, 2009

Recommendation

To manage risks following employment we recommend the Commission by June 2010 identify people that have committed a prohibited offence while in child-related employment and advise Police.
Appendix

About the audit

This audit examined whether the Commission is effective in ensuring that the WWCC reliably identifies those people who may pose a risk to children.

Lines of Inquiry

In reaching our opinion against the audit objective, we sought to answer the following questions:
1. Are all relevant people checked?
2. Are the outcomes of the checks reliable?
3. Are risks managed following employment?

Audit criteria

In answering the lines of inquiry, we used the following audit criteria (the 'what should be') to judge performance. We based these standards on our research of current thinking and guidance on better practice. They have been discussed, and wherever possible, agreed with those we are auditing.

For line of inquiry 1, the audit criteria were:
- How does the Commission know that required employers are requesting WWCCs?
- How does the Commission know that employers check everyone they should?

For line of inquiry 2, the audit criteria were:
- How does the Commission know that information on applicants is reliable and complete?
- How does Commission ensure that background checks by screening agencies are consistent?

For line of inquiry 3, the audit criteria were:
- Are high risk employees monitored?
- How does the Commission manage subsequent offences?

Audit scope

We limited this audit to the reliability of the WWCC.

For checks to be reliable, they must comprehensively cover all relevant employment groups that are subject to checking (as defined in the legislation to include the self-employed and volunteers), and be based upon proper, valid and complete information, and be performed in a consistent manner. Our assessment was based upon a review of the quality and consistency of WWCC outcomes.

The audit did not examine:
- Information integrity. Information required for the WWCC is collected by the courts, NSW Police, police from other jurisdictions, employers and professional organisations
- Persons listed as prohibited from working in child-related employment other than those identified by the screening agencies
- The types of checks done i.e. whether there are other categories of offences that should be added to the WWCC
- Whether all relevant types of employment are covered.
Audit Approach

The audit team acquired subject matter expertise by:

- interviewing and examining relevant documents including guidelines, reports, case files, strategies and reviews relating to the WWCC
- discussion with relevant staff at the Commission and staff of the four screening agencies
- discussion with representatives of key stakeholders including NSW Ombudsman, NSW Police Force and the Parliamentary Committee on Children and Young People whom the Commission reports to
- comparing where appropriate with other States and countries
- discussion with other audit offices, especially the Victorian Audit Office
- examining relevant government and better practice guidelines.

We also examined the WWCC in other jurisdictions to compare practices. These included Victoria, Queensland, Western Australia, South Australia and the Northern Territory.

Audit selection

We use a strategic approach to selecting performance audits which balances our performance audit program to reflect issues of interest to Parliament and the community. Details of our approach to selecting topics and our forward program are available on our website.

Audit methodology

Our performance audit methodology is designed to satisfy Australian Audit Standards AUS 806 and 808 on performance auditing, and to reflect current thinking on performance auditing practices. Performance audits commencing after 1 January 2009 comply with the Standard on Assurance Engagements ASAE3500 Performance Engagements.

We produce our audits under a quality management system certified to International Standard ISO 9001. Our processes have also been designed to comply with the auditing requirements specified in the Public Finance and Audit Act 1983.

Acknowledgement

We gratefully acknowledge the co-operation and assistance provided by the Commission for Children and Young People. We also thank the staff of the other screening agencies, (NSW Department of Arts, Sport and Recreation, NSW Department of Health, NSW Department of Education and Training, and the Catholic Commission for Employment Relations) for their assistance. We would also like to thank the staff of the NSW Police Force and the NSW Ombudsman’s Office.

Audit team

Our team leader for this performance audit was Penelope Josey, who was assisted by Angelina Pillay. Jane Tebbatt provided direction and quality assurance.

Audit cost

Including staff costs, printing costs and overheads the estimated cost of the audit is $175,000.
Performance Audits by the Audit Office of New South Wales
Performance Auditing

What are performance audits?

Performance audits determine whether an agency is carrying out its activities effectively, and doing so economically and efficiently and in compliance with all relevant laws.

Performance audits may review a government program, all or part of a government agency or consider particular issues which affect the whole public sector.

Where appropriate, performance audits make recommendations for improvements.

If you wish to find out what performance audits are currently in progress, visit our website at www.audit.nsw.gov.au.

Why do we conduct performance audits?

Performance audits provide independent assurance to Parliament and the public that government funds are being spent efficiently and effectively, and in accordance with the law.

Performance audits seek to improve the efficiency and effectiveness of government agencies so that the community receives value for money from government services.

Performance audits also assist the accountability process by holding managers to account for agency performance.

What are the phases in performance auditing?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team will develop audit criteria and define the audit field work.

At the completion of field work we will meet with agency management to discuss all significant matters arising out of the audit. Following this, we will prepare a draft performance audit report.

We meet with agency management to check that facts presented in the report are accurate and that recommendations are practical and appropriate. Following this, a formal draft report is provided to the CEO for comment. The relevant Minister is also provided with a copy of the final report. The final report, which is tabled in Parliament, includes any comment made by the CEO on the conclusion and the recommendations of the audit.

Depending on the scope, performance audits can take several months to complete.

Copies of our performance audit reports can be obtained from our website or by contacting our Office.

How do we measure an agency's performance?

During the planning phase, the team develops the audit criteria. These are standards of performance against which the agency or program is assessed. Criteria may be based on best practice, government targets, benchmarks, or published guidelines.

Do we check to see if recommendations have been implemented?

Agencies are requested to report actions taken against each recommendation in their annual report so that we can monitor progress.

The Public Accounts Committee (PAC) may conduct reviews or hold inquiries into matters raised in performance audit reports. These inquiries are usually held 12 months after the report is tabled.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards. This includes ongoing independent certification of our ISO 9001 quality management system.

The PAC is also responsible for overseeing the activities of the Audit Office and conducts a review of our operations every three years.

Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament and from internal sources.

Further information

Further information can be obtained from our website www.audit.nsw.gov.au or by contacting us on 9275 7277.
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If you have any problems accessing these reports, or are seeking older reports, please contact our Office Services Manager on (02) 9275 7116.
Title: Changes to the Commission for Children and Young People Act 1998

Minister: Minister for Citizenship and Communities

Date of Minute: 2 September 2011

Main purpose: To seek Cabinet approval for changes to the Commission for Children and Young People Act 1998, proposed as a result of a statutory review, including changes to the Working With Children Check.

Resources Required for Implementation: A total of $4.33 m in 2011/12 to fund the start up costs of the new Working With Children Check, including $2.35 m capital.

Priority: High. There are significant benefits for the community in reforming the Working With Children Check model, proposed by a 2010 independent review.

Legislative Programming: Spring Session 2011

Announcement of Decision: Minister for Citizenship and Communities

Action Required Before Announcement: Nil
Changes to the *Commission for Children and Young People Act 1998*

2. **PURPOSE**

2.1 To seek Cabinet approval for new legislation to reform the Working With Children Check so child-related workers and volunteers can be cleared to work with children generally, instead of at a nominated workplace, to make the check fairer and more efficient, and to provide greater protection for children.

3. **RECOMMENDATION(S)**

   It is recommended that Cabinet:

3.1 NOTE that a statutory review of the *Commission for Children and Young People Act* in 2010 recommended changing the current model of the Working With Children Check to a model which provides an individual with a time limited clearance to seek work with children, as operates in interstate Working With Children Checks.

3.2 NOTE that the new Working With Children Check system will be complemented by enhanced compliance programs and child safe practice programs run by the Commission for Children and Young People, in line with the 2010 recommendations of the Auditor General.

3.3 APPROVE the drafting of legislation and regulations to:

3.3.1 Establish a new model for the Working With Children Check with the following elements:

   a. The clearance is portable and applies for all child-related positions, rather than being attached to individual jobs;

   b. The clearance process is the same for paid workers and volunteers;

   c. Applicants are either cleared for work with children or barred from working with children;

   d. Employers may not engage any barred person in a child-related role or as a child-related volunteer;

   e. Defined convictions will automatically bar a person from working with children;

   f. Other defined records may bar a person from working with children, on the basis of individual assessment;

   g. Any barred person, other than one convicted of child murder, may seek a review of the bar in the Administrative Decisions Tribunal;

   h. People with a Working With Children Check must renew it every five years if they continue to work with children;

   i. A person’s Working With Children Check will be withdrawn if they commit barring offences while they hold accreditation;
j. Employers will be required to verify that the Working With Children Check of child-related workers and volunteers is valid and up to date;

k. Some groups can be exempted from needing a Working With Children Check where risk is low and other processes are better able to manage any risks involved;

l. There will be a fee to apply for a Working With Children Check, initially $60 for paid workers and $10 for volunteers.

3.3.2 Make consequential amendments to other legislation.

3.4 APPROVE the following administrative arrangements for the new model of the Working With Children Check:

a. The new Working With Children Check will apply to people seeking new child-related work in the first instance.

b. The new Working With Children Check will be progressively rolled out to existing employees and volunteers over a five year period from commencement of the new scheme.

c. The four existing Approved Screening Agencies for the Working With Children Check will be joined into a single Checking Agency that will operate the new Working With Children Check.

3.5 APPROVE allocation of funds to establish and operate the new Working With Children Check model as follows:

a. One off start up costs of $4.33m in 2011/12, to:
   - inform the community about the new model
   - bring the current Approved Screening Agency operations together in a single Checking agency;
   - develop new on-line interfaces and systems;
   - prepare new procedures;
   - train and develop officers to operate the new model;
   - establish a phasing in program for existing employees and volunteers.

b. Additional operating costs of up to $7.2m between 2012/13 and 2015/16. While the new Working With Children Check will incur higher recurrent costs overall (at around $17 m) it will be offset by user fees and recurrent funding streams to operates the Check. The additional costs involve professional verification of applicant identity, increased vetting of criminal records and a gradual increase in workload while existing employees and volunteers are phased into the new model. The costs are offset by annual user fees of around $9 million and existing agency funding. With these offsets the new model saves the consolidated fund between $2.7m and $4.3m per annum in cash terms between 2012/13 and 2015/16.
c. Under the new model employers will have limited access to information accessed by the checking agency. However, there will be protocols to alert certain employers to the need for a potential probity check. Agencies that choose to undertake separate probity checks on potential employees will need to continue to absorb these costs, noting that some agencies such as Education already allocate resources for this function.

3.6 APPROVE referral of the financial impacts of these proposals to the Expenditure Review Committee.

3.7 APPROVE a comprehensive independent evaluation of the new model Working With Children Check's first two years of operation. This evaluation will cover a range of implementation aspects including: fee levels; impact on probity checking and costs; community understanding, compliance and acceptance; impact on volunteers, employees and employers; transitional arrangements; exemptions; validity of risk assessment tools; staff development needs; and system design and operation.

3.8 NOTE that the Review also affirmed the advocacy, policy, research and monitoring functions of the Commission for Children and Young People.

4. EXECUTIVE SUMMARY

4.1 NSW was the first state in Australia to introduce a Working With Children Check. Ten years on, the Working With Children Check is ready for a major upgrade that will modernise and simplify its operations, extend its reach and allow future recognition of interstate Working With Children Checks.

4.2 The proposal for a new Working With Children Check reflects consistent views expressed by stakeholders consulted in the 2010 review of the Commission for Children and Young People Act 1998. These stakeholders supported a Working With Children Check like those in other states, where a person may be accredited to work in any child-related role for a period of years and a check that extends to all child related volunteers.

4.3 Since the review was completed a high level interagency committee has operated to consider the details of a new system, the recommendations of which are reflected in this Minute.

4.4 There has been further consultation with key non-government agencies in the sports, education and welfare sectors since the tabling of the review Report in August 2011. All these sectors have indicated their support for the new model of Working With Children Check and their willingness to work with government to support implementation of the new model.

4.5 There will be improved consistency of practice from a single operating agency. There have been occasions when an individual has been differently assessed by different Approved Screening Agencies, whose own organisational cultures and approaches overlay the uniform Operator Guidelines. In a single dedicated agency, operators will develop a shared professional culture that will better standardise the results of Working With Children Checks.

4.6 The new Working With Children Check will take a firmer line on excluding high risk offenders from child-related work. This will overcome the current situation that the Auditor General adversely noted in 2010, which allows an employer to
engage an applicant assessed as high risk. The new Working With Children Check retains an automatic bar for adult sex offenders and adults convicted of serious violence against children and any applicant found to be high risk after a risk assessment will also be barred. There will be no employer discretion to engage a barred person to work with children.

4.7 For child-related work employees must be cleared through the Working With Children Check system. However, a person who is cleared to work with children is not guaranteed a particular job: employers choose whom they employ.

5. BACKGROUND AND SUPPORTING INFORMATION

The current model for the Working With Children Check (Recommendation 3.1)

5.1 People with convictions for serious sex offences, murder of a child, kidnapping offences and serious violence against a child are currently prohibited from child-related employment. It is an offence for such people to seek child-related employment. Employment is defined as volunteering, contracting, paid work and a student placement required to earn a tertiary qualification.

5.2 Child related employment is statutorily defined as employment primarily involving direct, unsupervised contact with children in listed workplaces, for example schools and child care centres. A full list of the nominated workplaces is at Attachment C.

5.3 In addition, certain roles are defined as child related employment. They are:

- Providing prescribed children's services (ie. licensees of child care centres);
- Authorised supervisors or managers of child care centres;
- Assessment officers for Family and Community Services;
- Principal officers of adoption agencies;
- Contractors for the Department of Education and Communities with direct unsupervised contact with children.

5.4 All employees, students on placement and volunteers in child-related employment must sign a formal declaration that they are not a prohibited person. Employers and volunteer organisations must retain this declaration for two years after the engagement ceases. All forms are paper based.

5.5 Employers must request a Working With Children Check for any person entering a new primary child-related position. Before submitting a Working With Children Check, employers must verify the identity of the applicant. This requirement does not currently apply to most volunteers.

5.6 Each new placement requires a new Working With Children Check to be submitted and a new declaration to be signed.

5.7 Police may release only "relevant" national criminal records for the Working With Children Check. These records are charges and convictions (including spent convictions) for crimes involving sex or violence towards children. Other
criminal history may not be exposed to the Working With Children Check. Risk assessments are accordingly undertaken without knowing the applicant’s full criminal history.

5.8 The outcome of a risk assessment is advice to the employer about the level of risk the applicant presents, the level of risk inherent in the position being filled, and the level of risk in the employer’s overall workplace. The risk assessment includes advice on how the last two groups of risks might be minimised. Employers are not prevented from engaging a person assessed as high risk.

5.9 Certain prohibited people can appeal to the Administrative Decisions Tribunal, the Industrial Relations Commission or the Commission for Children and Young People. These bodies may issue an order that allows the person to work with children if they do not present a risk to children. Other prohibited people are permanently barred and may not appeal.

5.10 Self employed people are not covered by the standard Working With Children Check. Instead they must obtain a Certificate for Self Employed People, costing $80, to show their clients that they are not a prohibited person. A self employed person who is also employed cannot use their Certificate for child related employment. They need a full Working With Children Check from their employer.

5.11 The current Working With Children Check is fully government funded, at a cost of over $10 million per annum.

5.12 There are four Approved Screening Agencies that serve employers seeking Working With Children Checks. They are in the Department of Education and Communities (Office of Communities and the Department of Education and Communities), the Department of Health and the Catholic Commission for Employment Relations.

5.13 The current Working With Children Check is a paper based system without online capacity.

Identified problems with the current model (Recommendation 3.1)

5.14 The Working With Children Check requires employers, applicants and screening agencies to apply different processes for volunteers, paid workers, authorised carers and their household members, and self employed people.

5.15 Further, a new Working With Children Check is required each time a person takes a new child-related job. For many workers, including the casual workforce and new graduates, this means multiple Working With Children Checks, while people who remain in the same job do not get checked at all. The Commission for Children and Young People identified an applicant who was checked more than 70 times in three years.

5.16 Each Working With Children Check involves red tape for applicants and employers, as they must complete multiple forms, send them to their Screening Agency and store originals or copies.

5.17 Risk assessments cannot access the applicant's full criminal history and so cannot produce fully informed results.
5.18 The statutory definitions for relevant employment proceedings and relevant apprehended violence orders require the notification of much unsupported information and minor matters that cannot be relied on in risk assessment.

5.19 The current definitions of child-related work are too complex for the community and screening agencies to understand and comply with.

5.20 A worker cannot be cleared for child-related work before seeking a job. A check can only start after a child-related job has been offered. This means that the current Working With Children Check imposes a delay for the employer and employee between the job offer and the commencement of work.

5.21 The statutory provisions for assigning and appealing prohibited status are complex and unfair to some people. There are limited avenues to challenge prohibited status, screening agency decisions and employer decisions to notify a relevant employment proceeding.

5.22 The current model has no user-pays component so the Working With Children Check is fully funded by Government. This makes it difficult to expand the reach of the Working With Children Check to volunteers or other groups not currently checked.

5.23 Reliance on the Working With Children Check as a single risk mitigation tool overshadows the need for agencies to develop practices and systems to ensure they have child-safe organisations.

Child Safe Organisations and Compliance Programs (Recommendation 3.2)

5.24 The Commission for Children and Young People monitors and regulates the community’s compliance with accountabilities for the Working With Children Check. In addition it oversights the policy settings and strategic directions for the Working With Children Check.

5.25 As not all people who harm children have records, and people can be “opportunistic” offenders, the Working With Children Check needs to be supplemented by protective practices in children’s organisations.

5.26 The Commission for Children and Young People’s statutory function of encouraging organisations to adopt child-safe practice complements the Working With Children Check. The Commission supports employers with information and education to help them develop:

- commitment to the principles of safe and supportive environments for children;
- codes of conduct for working with children;
- recruitment, selection, training and management strategies that encourage best practice and enhance the safety and well-being of children;
- proactive assessment and management of workplace risks for children;
- policies and procedures for handling disclosures and suspicions of harm;
- strategies for communication and support for all stakeholders, including children.
5.27 The Commission for Children and Young People will continue to operate these broader programs that engage employers and workers in child-related organisations in keeping children safe.

New model for the Working With Children Check (Recommendation 3.3)

A single portable working with children check for all child related activity

5.28 The new model offers a single Working With Children Check for the full range of child related engagements, whether the engagement is paid work, home based, volunteering or as a student on placement. The check will be portable and last for five years.

Greater protections for children through regular review

5.29 Child-related workers will have a new check every five years. During the five year period new NSW criminal or disciplinary records are automatically provided to the Checking Agency which can bar a person from working with children on the basis of these new records. People who continue to work with children can renew their Clearance after five years.

5.30 Employers may engage any person cleared to work with children, but may not engage any barred person in child-related work. Employers may make emergency appointments of people who have not yet applied for the Working With Children Check where children would not otherwise be at risk. (These employees must apply for a Working With Children Check within five business days.)

5.31 The Working With Children Check guidance and information resources will recommend that applicants obtain a clearance before they apply for child-related work and it is expected that this will become standard practice over time. Employers offering high risk roles may decide only to appoint people who already have a clearance. The new model allows employers in emergency circumstances to engage a person who has applied for a Working With Children Check but not yet received a clearance and where the risks are considered low. If any records indicate a serious early risk in the assessment process an interim bar will be issued. Additionally, employers are encouraged to apply other child-safe practices to complement the Working With Children Check.

5.32 The new model allows much quicker processing of the majority of applications, and it is expected that at least 70% of applicants will be cleared within 24 hours. A further 20% should be cleared within the next 9 working days. Streamlining of risk assessments will allow quicker assessment of applicants with records.

5.33 An additional protection to children will be provided when any applicant’s records demonstrate significant risks at risk assessment. Instead of waiting for the risk assessment to be completed, the Checking Agency will issue an interim bar so that the high risk applicant may not work with children while the risk assessment is underway. Employers may not engage a person who has an interim bar in a child-related role.

Streamlined processes
5.34 The new model will be efficient, modern and customer focussed. It will replace complex and time-consuming paper-based systems with a quick and efficient on-line paperless system. This is consistent with the Government's priority to reduce red tape.

5.35 The on-line system will be easier for both employers and applicants to use and will allow employers to automate systems to verify that their employees and volunteers have up to date Working With Children Checks.

5.36 Employers will no longer need to keep complex paper based records of applications and declarations. There will be a very simple process for employers to verify that their child-related workers and volunteers have a valid Working With Children Check. Employers will reduce the time invested in processing checks.

5.37 Applicants will visit a motor registry for professional verification of their identities. This will improve the safety of the scheme by reducing opportunities for identity fraud.

5.38 A person who is not barred from working with children will receive a Clearance number (like a tax file number) that they will need to provide to their employers. Employers will be required to verify that the Clearance number is valid. This will be an on-line verification. A similar system is in place in the United Kingdom.

5.39 Using a number rather than a plastic card will:
   - reduce the costs of the Working With Children Check;
   - reduce opportunities for fraud; and
   - help restrict demand for a generic "badge of suitability" for workers not in child-related roles.

**National consistency**

5.40 The model will be broadly in line with models in place in other jurisdictions, ensuring a level of consistency for employers and volunteer groups operating in different states and territories which already offer a portable renewable check.

5.41 The model also builds on the experiences of other states and territories that have had such systems in place for a number of years and, importantly, allows for mutual recognition and national harmonisation in the future.

**Simplified definitions**

5.42 The new model redefines employment so that exactly the same Working With Children Check applies to all categories of child-related work, including:
   - paid work and contracting;
   - volunteering;
   - ministers of religion;
   - home based care;
• adult household members of home based carers;
• authorised care;
• adult household members of authorised carers;
• authorised supervisors;
• licensees for centre based care;
• people applying to become adoptive parents;
• well being units;
• placement of tertiary students; and
• self employment.

5.43 The new model broadens the definition of child-related employment to cover situations where there is risk to children even though the worker is under supervision. In addition, it will allow employers to nominate areas of work that involve high risk to children, even where the workers do not have face to face contact with children. An example would be where workers access confidential and sensitive information about children using the organisation’s services.

5.44 The range of children’s organisations and services that are defined as child-related employment remains essentially unchanged, adding only school crossings supervisors and pre-adoptive parents.

Allowing exemptions

5.45 The new model will allow certain groups to be exempted from the requirement to obtain a Working With Children Check.

5.46 The rationale for exemptions is to avoid interventions where there is no clear risk that would be managed by a check or where other processes provide better protection. Exemptions are proposed where:

• the Working With Children Check would add no value: for example, where there is no possibility that the role would allow a relationship of trust to be established with children;

• it is unlikely that there will be any records for the Working With Children Check to analyse: for example where the person is very young;

• the Working With Children Check would impose an unacceptable burden on the community or individuals: for example where the work involves informal arrangements between friends or neighbours, or where the volunteer is a family member of the children involved.

5.47 The proposed exemptions are closely modelled on those used in interstate Working With Children Checks, listed at Attachment D:

• interstate volunteers and workers visiting NSW for one-off events like jamborees and tours (this is a national standard planned to be signed off by the Community and Disability Services Ministerial Council in late 2011);
• interstate volunteers and workers participating in short term but regular cross border events like team sports (with their interstate home team) where they have an interstate Working With Children Check (this is a national standard planned to be signed off by the Community and Disability Services Ministerial Council in late 2011);

• people who are under 18;

• volunteering parents/guardians/close kin of participating children in team or club events or at schools (including overnight excursions or camps for the team, club or school);

• co-employees, work supervisors or work placement supervisors

• people who work in a children’s entertainment or party service involving provision of food, equipment or venues, that does not involve work with children;

• privately arranged babysitting;

• police officers in their capacity as police officers; and

• agreed existing employee groups with strong professional checking requirements.

5.48 These exemptions are similar to those in most other jurisdictions and considered to represent both low risk scenarios, and where the evidence does not suggest there is a strong justification to impose an additional regulatory and cost burden on the community and government. For example, all jurisdictions exempt volunteer parents in activities with their participating child, on the basis that protective factors are in place, and that to check all parents is both costly and significantly intrudes into the private domain. At the same time, one area of debate has related to Education’s concern about the potential to include parents volunteering on overnight excursions as part of the checking regime. Currently, these parents are covered in two states. However, given the lack of risk data to justify this inclusion and the fact that this could add between $6m and $13m to the cost of the scheme, it has been agreed that Education will collate relevant data about this group and the actual risks associated with them as input to the proposed two year evaluation and in order to inform any proposals to further expand the scheme to cover these parents. Existing controls for overnight excursions through declarations or probity checks will continue to be used to manage any risks up to this time.

5.49 Agencies and individuals working with children, whether or not they are subject to the Working With Children Check, will be assisted by the Commission for Children and Young People’s Child Safe Organisations program to understand and implement child safe principles and risk management strategies.

Adequate employer discretion

5.50 Child related employers will be able to manage employees who are barred from child-related work. Employers will be able to dismiss any person who has been barred (either by an interim or final bar) from a child-related position. Such a dismissal may not be considered an unfair dismissal. Employers may
alternatively continue to employ a barred person in a role that is not child-related. This will be reflected in the new legislation.

**Clarified system of barring people from working with children**

5.51 The Working With Children Check keeps known paedophiles, child murderers and those with recorded histories of serious violence against children out of child-related work.

5.52 Stephen Smallbone, Associate Professor, School of Criminology & Criminal Justice at Griffith University, and co-author of Preventing Child Sexual Abuse: Evidence, Policy and Practice states that there is no reliable profile for child sex offenders, and no strong match between individual characteristics and offenders. Smallbone’s work indicates that people who harm children in workplaces are mostly opportunistic offenders: that is, they do not plan their harm. They harm a child when certain circumstances are present, namely where:

- the child is vulnerable;
- their own inhibitions are diminished;
- the environment is not monitored / detection is unlikely; and/or
- the work culture does not value and protect children.

5.53 However, statistical modelling shows some areas where repeat or escalating offending is more common:

- some sex offenders follow a pattern of offending;
- some "non contact" sex offences escalate into serious assaults;
- some violent conduct can continue over a protracted period and may escalate;
- cruelty to animals can be a precursor of harm to children.

5.54 The new model will simplify the definition of convictions that automatically bar a person from working with children. By listing some additional barring records in the Regulation, it will no longer be necessary to define being on the Child Protection Register as a barring condition. All the offences that lead to being on the Register will be listed in the regulation as a barring offence.

5.55 The new model will also extend the range of records that automatically bar (prohibit) a person from working with children so that a conviction for manslaughter of a child (except where the offence relates to a driving accident) will become an automatically barring record.

5.56 The new model defines a second set of records that may bar a person from working with children which will be detailed in a regulation. Applicants holding these records will need to be assessed by a team of expert assessors with child protection and related backgrounds. The assessment will determine whether the applicant is barred or is allowed to work with children. All criminal records and relevant employment proceedings, including AVOs, will be available to the assessors making this assessment, and further information can
also be sort (such as employer references, psychological reports) to develop a comprehensive risk profile. In assessing a person's record, assessors consider a range of factors in a structured decision making schema, including: the serious and circumstances of the offence, length of time since offending, other offences, the relationship with the victim, commitment to rehabilitation, patterns of concerning behaviour, and so on. The decision to bar an individual from child related work on the basis of this thorough independent assessment takes any discretion away from the employer.

5.57 All the barring records under the new model are set out below. They include all convictions that would place a person on the Child Protection Register. The same offences appear as automatically barring records and barring by decision records. This is because convictions and pending convictions for these offences are normally automatic bars, and non-conviction charges for these offences are assessed. Further details are at attachment E:

<table>
<thead>
<tr>
<th>Automatic Bars</th>
<th>Bars by Assessment Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conviction/pending charge for</td>
<td>Non-conviction charge for</td>
</tr>
<tr>
<td>• Murder of a child</td>
<td>• Murder of a child</td>
</tr>
<tr>
<td>Adult conviction or pending charge for</td>
<td>Juvenile conviction or pending charge, and all non-conviction</td>
</tr>
<tr>
<td>• Manslaughter of a child (not driving accident)</td>
<td>charges for</td>
</tr>
<tr>
<td></td>
<td>• Manslaughter of a child (not driving accident)</td>
</tr>
<tr>
<td>Adult conviction or pending charge for</td>
<td>Juvenile conviction or pending charge, and all non-conviction</td>
</tr>
<tr>
<td>• Serious/aggrevated child-related</td>
<td>charges for</td>
</tr>
<tr>
<td>personal violence offences, including:</td>
<td>• Serious/aggrevated child-related</td>
</tr>
<tr>
<td>- Wounding / grievous bodily harm of a child</td>
<td>personal violence offences, including:</td>
</tr>
<tr>
<td>- Discharge firearm causing</td>
<td>- Wounding / grievous bodily harm of a child</td>
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<tr>
<td>grievous bodily harm to a child</td>
<td>- Discharge firearm causing grievous bodily harm to a child</td>
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<tr>
<td>- Threat to kill or injure child</td>
<td>- Threat to kill or injure child</td>
</tr>
<tr>
<td></td>
<td>Conviction, pending charge and non-conviction charge for</td>
</tr>
<tr>
<td></td>
<td>• Assault occasioning actual bodily harm against child</td>
</tr>
<tr>
<td></td>
<td>Conviction, pending charge and non-conviction charge for</td>
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<tr>
<td></td>
<td>• Stalking child</td>
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<tr>
<td>Conviction for</td>
<td>Conviction for</td>
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<tr>
<td>• Common assault of a child</td>
<td>• Serious sex offences, including</td>
</tr>
<tr>
<td></td>
<td>- Sexual assault</td>
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<tr>
<td>Adult conviction or pending charge for</td>
<td>- Acts of indecency</td>
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<tr>
<td>• Serious sex offences, including</td>
<td>- Indecent assault</td>
</tr>
<tr>
<td>- Sexual assault</td>
<td>- Persistent sexual abuse</td>
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<tr>
<td>- Acts of indecency</td>
<td></td>
</tr>
<tr>
<td>- Indecent assault</td>
<td></td>
</tr>
<tr>
<td>- Persistent sexual abuse</td>
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</tr>
</tbody>
</table>
### Automatic Bars
- Procuring, grooming
- Sexual intercourse with a 16-18 year old child in special care
- Incest
- Gross indecency
- Sexual servitude
- Voyeurism
- Bestiality
- Child prostitution
- Child pornography (including importing child pornography)
- Child sex tourism
- Offences of intent, attempt, conspiracy etc
- Carnal knowledge

### Bars by Assessment Decision
- Persistent sexual abuse
- Procuring, grooming
- Sexual intercourse with a 16-18 year old child in special care
- Incest
- Gross indecency
- Sexual servitude
- Voyeurism
- Bestiality
- Child prostitution
- Child pornography (including importing child pornography)
- Child sex tourism
- Offences of intent, attempt, conspiracy etc
- Carnal knowledge

<table>
<thead>
<tr>
<th>Conviction or pending charge for</th>
<th>Non-conviction charge for</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Kidnapping, where the kidnapper is not or has not been the child's parent</td>
<td>• Kidnapping, where the kidnapper is not or has not been the child's parent</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Conviction or charge (other than those with a not-guilty finding)</th>
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<tbody>
<tr>
<td>• Neglect, including</td>
<td>• Neglect, including</td>
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<tr>
<td>- Abuse by neglect</td>
<td>- Abuse by neglect</td>
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<tr>
<td>- Leaving a child in a car</td>
<td>- Leaving a child in a car</td>
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<tr>
<td>- Drug offences involving children</td>
<td>- Drug offences involving children</td>
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<table>
<thead>
<tr>
<th>Conviction for assault and violence indicating a pattern of conduct</th>
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<tbody>
<tr>
<td></td>
<td>Conviction and pending charge for</td>
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<tr>
<td></td>
<td>• Cruelty to animals</td>
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<table>
<thead>
<tr>
<th>Disciplinary proceeding</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Findings of sexual misconduct/ grooming</td>
<td>• Findings of serious physical assaults</td>
</tr>
</tbody>
</table>

5.58 The five Working With Children Check systems in Australia are almost uniform in listing sex offending against children under 13 as automatic bars, but otherwise have some variations. Victoria does not have any automatic bars. Northern Territory and Western Australia focus their automatic bars on the most serious sex offending against children. Interstate consistency is more marked in the offences that lead to an assessment-based bar. More details about interstate approaches to automatic bars are at Attachment F.

5.59 The key differences among interstate automatic bars under the current and proposed new model are:

- Only NSW and Queensland impose automatic bars for violence against children other than murder
Only NSW and Queensland impose automatic bars for child pornography
Only NSW and Queensland impose an automatic bar for underage sex (formerly referred to as carnal knowledge)
Only NSW imposes an automatic bar for child kidnapping and abduction.

Targeting records for risk assessment (assessment based bars)

5.60 The purpose of risk assessment is to identify people whose past conduct indicates possible future conduct that would harm children in their care. Assessing risk can be an intrusive and resource intensive activity.

5.61 The recommended principles used to determine which records should initiate a risk assessment are:
- records that indicate risk of harm to children;
- records that relate generically to working with children;
- records that are supported by detailed contextual information;
- records where investigations and findings have been based on natural justice;
- records which could support a decision to bar an applicant from working with children;
- where a record, standing alone or as a “pattern trigger”, could not be envisaged as leading to a bar, it should not be a record that triggers a risk assessment.

5.62 Concerns about the use of Apprehended Violence Orders (AVOs) and Relevant Employment Proceedings (REPs) in the Working With Children Check were raised in both the 2010 Auditor General’s Performance Review of the Working With Children Check and the independent review of the Commission’s legislation.

5.63 The independent review found that AVOs used in the current Working With Children Check were not adequately targeted and were not generally a reasonable guide in assessing risk to children. The Department of Attorney General and Justice is shortly to commence a statutory review of the Crimes (Domestic and Personal Violence) Act 2007 which establishes AVOs. This review may provide opportunities for new settings more suited to the Working With Children Check.

5.64 The independent review proposed that AVOs initiated by Joint Investigative Response Teams (JIRTs) that focus on child protection investigations, would provide the level of targeting and evidence needed for a record that triggers an assessment. However, at present JIRT-initiated AVOs are not recorded in a way that allows reliable and accurate identification of these records for provision to the Check Agency for the Working With Children Check.

5.65 The use of AVOs in the Working With Children Check will be delayed until the statutory review of the Crimes (Domestic and Personal Violence) Act 2007 has been completed, and a system has been developed to capture appropriately
targeted AVOs. It is expected that the use of AVOs in the Working With
Children Check will be reviewed by the end of 2012.

5.66 The independent review further recorded substantial concerns about the
reliability of the existing relevant employment proceedings (REPs), given
definitions that were too broad to target serious conduct, and that many
employers were unable to achieve the required standard investigation and
assessment of evidence. The result has been the over-notification of minor
misconduct in the workplace (for example, pushing a child or shouting at a
child) and poor quality information that cannot be effectively used in
assessment.

5.67 The new model will identify employers whose investigative standards and
practices are at a high level and require them to notify disciplinary proceedings
involving sexual misconduct (including grooming) and serious physical assaults
on children.

5.68 The employers required to notify disciplinary proceedings will be all government
agencies, statutory registration and licensing bodies and all employers subject
to a Class or Kind Agreement under Part 3A of the Ombudsman Act. These
employers include those children's organisations and out of home care
agencies whose standards of investigation have the Ombudsman's confidence.

5.69 The relevant employment records will be defined as:

- findings that the worker’s conduct was sexual misconduct, grooming or
  serious physical assaults, and

- investigations providing evidence of such conduct that do not proceed to a
  finding because the employee was allowed to separate from the
  organisation.

Assessing risk

5.70 When an applicant has a record that is listed as allowing an assessment based
bar, the Checking Agency must conduct a risk assessment. The result of the
risk assessment will be a decision that the applicant is either barred from
working with children, or is cleared to work with children.

5.71 A decision that the applicant is barred can be appealed in the Administrative
Decisions Tribunal.

5.72 Where the Checking Agency identifies a high risk early in the risk assessment
process, it will issue an interim bar. An applicant barred in this way may not
work with children. An interim bar can last for 12 months, allowing time for the
Checking Agency to complete the risk assessment.

5.73 An interim bar may be appealed if it remains in place for more than six months.
The first six months of an interim bar have been exempted from appeal
because an appeal can take some months to reach a hearing and in most
cases the risk assessment will be completed well before the end of the six
month period.

5.74 The Act will allow employers to dismiss an employee subject to an interim or
final bar, but will not compel them to dismiss such employees. This will allow
employers to place barred employees in roles that are not child-related if they wish.

5.75 The new model will allow the Checking Agency to consider an applicant's full criminal history in a risk assessment. This corrects the current provisions that artificially prevent police from disclosing all relevant information to the Checking Agency. The new provisions will bring the NSW model into line with all interstate models and will simplify practices for NSW and interstate police in supplying information for the Working With Children Check. The additional information available in risk assessment provides an enhanced level of protection to children. NSW and interstate spent convictions will continue to be provided for the Working With Children Check in accordance with the National Agreement for the Exchange of Criminal History Information for People Working With Children.

Appealing a bar

5.76 The new model allows every barred applicant, other than child murderers, to appeal to the Administrative Decisions Tribunal for a review of the bar. This provision overcomes the limitations of the current model that prevents a number of offenders from appealing their prohibited status. Allowing appeals ensures that the Working With Children Check is transparent, effective and makes decisions that are consistent with community standards.

5.77 In most appeals relating to juvenile offences, the juvenile offence took place long ago, was associated with immaturity, isolated and not followed by further offending. The great majority of appeals by young offenders have been successful (over 75%). The new model will exempt juvenile offenders from the automatic bar, except where their offence was murder of a child, but serious offences by juveniles will be part of the assessment decision process. This will overcome problems identified by courts and young people's advocacy groups regarding the lifelong impact of immature conduct.

5.78 As in the current Working With Children Check and consistent with the Administrative Tribunal Act 1997, the Administrative Decisions Tribunal will not make cost awards except where the Tribunal identifies vexatious litigation. In such cases the Tribunal may make an order for costs. In other cases, parties to an appeal will bear their own costs.

5.79 An applicant whose appeal has been rejected may not apply for a check again for five years.

5.80 Transitional provisions will provide that prohibited persons already granted an unconditional Order (that frees them to enter child-related employment) will not be automatically barred. These people have already been judged by an appeal authority not to present a risk to the safety of children.

5.81 Appeals and risk assessments will take into consideration the best interests of children, seriousness of the offences, applicant and victim ages, recency of the offence(s), the applicant's overall criminal record and any other matters considered relevant.

Applicant co-funding of the Working With Children Check

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5.82 As in interstate models of the Working With Children Check, the new model will involve a user fee that provides part payment for the Working With Children Check.

5.83 The NSW Working With Children Check was the first such Check in Australia. It was offered with no charge as a strategy to overcome anticipated community resistance to its new obligations. There is now strong community support for the Working With Children Check and a contributory fee is not expected to reduce willingness to comply.

5.84 The current interstate fees range from $50 for paid workers and $10 for volunteers (Western Australia) to $76 for paid workers (Victoria). Western Australia’s volunteer fee, while small, has been effective in reducing demand by volunteers who do not work with children. No interstate Working With Children Check is fully funded by applicant fees.

5.85 A NSW fee of $60 for paid workers and of $10 for unpaid workers is proposed. This is considered low enough to overcome community resistance to paying for the Working With Children Check and high enough to ensure the cost of the operation is effectively managed.

5.86 The $10 fee for unpaid workers is based on the successful use of this fee in Western Australia. Volunteer fees need to be high enough to discourage demand from agencies that are not offering child-related roles, and low enough so that genuine volunteers are not discouraged. The Western Australian experience suggests that this level of fee, together with exemptions for parent volunteers and some other groups, has this effect. As in other states, volunteers will not be able to use a volunteer Working With Children Check for paid work. Not imposing a fee for volunteers is estimated to increase the cost of the system from between $7 m and $21 m.

5.87 Discussions during the independent review of the Commission for Children and Young People Act 1998 in 2010 and more recently indicate that there was likely to be general community acceptance of these new fees, notwithstanding possible resistance from some unions. For many applicants in paid employment, the fee will be tax deductible.

5.88 The user fee will be set in a Regulation and will be reviewed every two years.

Administrative Arrangements for the new model of the Working With Children Check (Recommendation 3.4)

Phasing in the Working With Children Check for volunteers and existing employees (Recommendations 3.4.a and 3.2.b)

5.89 Except for volunteer roles newly subject to the Working With Children Check, the new model will apply immediately to people taking a new child related position. Employers are already used to applying the Working With Children Check when they engage new child-related staff. They will be able to continue applying this approach with the new model, minimising the challenges of changing from one system to another.
5.90 Volunteers in sectors not currently subject to the Working With Children Check will be phased in over the first five years of the new model’s operation. This allows volunteer organisations time to organise themselves to undertake their Working With Children Check obligations. As volunteers pay a very low fee for the Working With Children Check, this slower roll out to volunteers allows Government time to manage implementation costs before the additional costs of volunteer checks are incurred. The proposed roll out anticipates 30,000 volunteer checks in each of the first two years, with expansion to 50,000 and 90,000 volunteers in following two years.

5.91 A phase in program will ensure that by the end of the first five years of the new Working With Children Check, all existing child-related employees and volunteers will be included in the Working With Children Check. Issues that will be resolved during this phase include the approach to Working With Children Checks that are a condition of continued employment. In some jurisdictions selected government agencies fund Working With Children Checks and renewals for their staff, as do some interstate NGOs, but there is no standard approach. The approach to capturing existing volunteers and employees will be referred to the Interagency Committee. Its recommendations will be provided to Cabinet during 2012.

5.92 Transitional provisions will be made for people holding a Certificate for Self Employed People. An extension is proposed to Certificates due for renewal before the new model commences. It is proposed that self employed people be required to adopt the new Working With Children Check within two years of commencement.

5.93 Negotiations will be undertaken within the coming year with related licensing and registration schemes, for example the Australian Health Professional Regulation Agency, to determine whether their existing criminal record checking provides adequate protection against risk to children. Where existing systems provide adequate protection, a regulation to exempt the relevant registrants or licensees from the Working With Children Check is proposed. This is a way to reduce red tape, avoid duplication and provide customer focussed interface. Where such exemptions are provided, the community will benefit from reduced direct and indirect costs associated with background checking.

5.94 The proposed two year evaluation of the new model will review progress of the planned five year phase in and report on any impact and cost issues.

Consolidating the existing Approved Screening Agencies (Recommendation 3.4.c)

5.95 The current Check is operated by four Approved Screening Agencies: the Office of Communities, the Education area of the Department of Education and Communities, NSW Health and the Catholic Commission for Employment Relations. The new system will centralise the Check into a single agency. Centralising the Check will address concerns raised by the Auditor General about consistency of practice and outcome.
5.96 All the affected government agencies are currently working together in an Interagency Implementation Committee and are supportive of the proposed changes, including the centralisation of checking in a single agency.

**Interagency Implementation and governance committee**

5.97 A high level interagency committee, chaired by the Chief Executive of the Office of Communities will implement the proposed changes. The interagency committee includes the Department of Education and Communities, NSW Health, Department of Family and Community Services, and representatives from other key NSW Government agencies. Industry and non government representatives and experts will be involved once the proposed changes are endorsed. The Committee will oversee the transition process, development of new business rules, a new risk assessment model, guidelines, communication and education strategies and change management, training and development and the phasing in of the Working With Children Check to existing workers and volunteers.

5.98 The committee will complete its work within two years of the commencement of the new Working With Children Check.

**Allocation of funds (Recommendation 3.5)**

5.99 The estimated funding requirements for commencing and operating the new model are detailed in Part 11 of this Minute.

**Evaluation of the New Model (Recommendation 3.6)**

5.100 A report on activity and outcomes of the new model will be provided to the Government after the model’s first year of operation.

5.101 The costs and impacts will be assessed at a two year point as part of an independent implementation evaluation to allow any necessary adjustments, including adjustments to the fee structure and the phase-in program. This evaluation will be managed by the Inter Agency Committee and the Commission for Children and Young People.

5.102 The evaluation will consider the costs and impacts of the new model. One potential cost to be monitored is any duplication of criminal record checking where agencies or employers use criminal record checks as part of their in-house probity checking. Other issues to be considered in the evaluation include actual costs, actual demand and child risk analysis.

5.103 A further issue to be considered in the evaluation is the impact of a user fee for existing government child-related employees required to have a Working With Children Check in the phase in period and required to renew their Clearance at the end of each five year period.

6. **IMPACT ON REGIONAL AND RURAL COMMUNITIES**

6.1 All child-related employers and workers will benefit from the efficiencies of the new Working With Children Check. The system will operate online, but will be supported by a service that will complete the on-line forms for applicants who do not have access to the internet.
6.2 Once the on-line forms have been completed, all applicants will need to attend a motor registry to verify their identity and pay their user fee. Most applicants will need to do this once every five years, as they already do to renew their driver’s licence.

6.3 Regional and remote workers, like other workers, will be required to pay the fee for a Working With Children Check ($60 every five years).

7. IMPACT ON GOVERNMENT AGENCIES IN CHILD RELATED WORK

7.1 The existing Working With Children Check is offered at the point of recruitment. At this time several government agencies also conduct a probity check. This allows other records that do not impact on the Working With Children Check – like property crime – to be assessed by employers through a probity check at the point of recruitment. This “dual purpose checking” has allowed some government agencies to avoid a separate $20.60 fee charged by CrimTrac for criminal history checking. Dual purpose checking will not be available with the new Working With Children Check so these agencies will fund probity checks internally where required.

7.2 Government agencies now using dual purpose checking (Family and Community Services, NSW Health and the Department of Education and Communities) will in future need to separately seek a general criminal records check for nominated positions, and pay the CrimTrac fee. While funds for probity checking purposes are already contained in agency’s base budgets, they will need to monitor expenses associated with in-house probity checking. This information will inform the two year evaluation of the new model. These agencies will also need to adjust existing recruitment practices to replace current Working With Children Check processes with a probity checking process.

7.3 To minimise the costs to these Government agencies, a new agreement with CrimTrac will be developed so that the Checking Agency can advise government agencies when a Working With Children Check has returned no criminal history. Government agencies will then be able to target their in-house criminal record checks to those cases where there are records to be assessed. It is anticipated that such a system will contribute to a reduction in agency probity checking costs over time.

8. IMPACT ON THE JUDICIARY

8.1 The new Working With Children Check will allow almost every person refused a Clearance the right to appeal. In addition the new Working With Children Check will allow appeals to be made only to the Administrative Decisions Tribunal (ADT). The current model allows only a subset of prohibited persons to appeal and allows appeal to be determined by the ADT, the Industrial Relations Commission (IRC) and the Commission for Children and Young People (CCYP). The current rate of appeals is around 53 per year. On average, 43 appeals are made to the CCYP and 10 to the ADT.

8.2 Under the new model, all appeals will be made to the ADT leading to an anticipated increase in ADT workload. Funding has been provided for up to 175 appeals to the ADT per year. The actual impact will be reviewed as part of the two year evaluation.

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9. REGULATORY IMPACT


9.2 Changes to the Parliamentary Electorates and Elections Act 1912 will align the declaration obligations of electoral candidates with the new definitions of barring records for the Working With Children Check. Elected members with a valid Working With Children Check will be able to demonstrate that they legally meet the requirements of the Parliamentary Electorates and Elections Act 1912 on the basis of a Working With Children Check.

9.3 The Commission for Children and Young People Regulation 2009 will also require full re-drafting. The Regulation currently establishes a Certificate for Self Employed People that will be made redundant by the new model of the Working With Children Check. Transitional provisions for the Certificate will be needed in the Act or the Regulation. The new Regulation will nominate the groups exempted from the Working With Children Check, the records that trigger a Working With Children Check risk assessment and other matters requiring further prescription.

9.4 The Working With Children Check already covers child-related businesses and the community. Most businesses and workers are experienced in the regulatory requirements in place for people working with children. There has been consistent demand from the community and from business for the model of Working With Children Check now proposed. There is widespread awareness and acceptance in the child-related sector of the interstate models of the Working With Children Check and the fee regimes that underpins them.

9.5 The application of the Better Regulation principles is demonstrated below:

9.6 Principle 1: The need for government action should be established. The review of the legislation identified significant unnecessary complexities, red tape and risks in the current Working With Children Check. The benefits of a new model for the Working With Children Check are strongly endorsed by the child-related community.

9.7 Principle 2: The objective of government action should be clear. The statutory objective of the Working With Children Check is to protect children by barring certain persons from being involved in child-related work. To carry out this objective, known offenders against children need to be identified through a background checking regime. The Working With Children Check is the way this objective is achieved.
9.8 Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options. The financial costs of the new Working With Children Check have been detailed, as well as the means to meet these costs. The new Working With Children Check model has been tested in a range of other jurisdictions. The model will reduce costs to the community and government over time by providing a simple process that is easy to use and that does not require significant investment by employers or applicants. The universal child protection outcomes sought from the Working With Children Check have broad community support and require a strong regulatory program.

9.9 Principle 4: Government action should be effective and proportional. The new Working With Children Check will more effectively target known offenders who present serious risks to children. Existing disproportionate impacts arising from the overuse of some minor records and poor quality information in risk assessment will be resolved.

9.10 Principle 5: Consultation with business and the community should inform regulatory development. The model proposed for the new Working With Children Check has been developed in response to community submissions and consultations that took place during the review process. The community will also be involved in the implementation of the new model of Working With Children Check.

9.11 Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered. The new model involves a simplification of existing complex statutory rules and guidelines, and amalgamation the functions of government agencies.

9.12 Principle 7: Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness. The current proposal arises from a statutory review of the Act that establishes the Working With Children Check. It is proposed to review the operation of the new model of Working With Children Check after two years and to undertake a full review of the underpinning legislation in five years.

10. FINANCIAL IMPACT

10.1 The new Working With Children Check involves several factors that impose new costs, but once operational, and funded partly by user fees, will cost less for Government. The new costs include:

- Professional identity verification
- Continuous alerts on new NSW records
- Higher number of appeals
- Development of new on-line system
- Change management for the community and screening agencies.

10.2 The user fee has been designed to minimise the cost burden to the Government while keeping the costs low enough to secure community acceptance and compliance by users. Employers may pay the fee for staff if they wish.
10.3 The major impact for Government is the requirement for start up costs in 2011/12. It is proposed to start the new model in mid 2012. The start up costs will be generated in 2011/12, and user fees will not be available until 2012/13, so offsets are not available for the start up costs. In subsequent years user fees will make an increasing contribution and reduce Government subsidy below current levels.

10.4 The start up costs are estimated at $4.33 million and include capital costs of $2.35 million for the Checking Agency, the RTA and NSW Police, to enhance and integrate IT systems for new Working With Children Check. The remaining start-up costs cover organisational change and community education about how to use the new Working With Children Check.

10.5 Recurrent costs of the new model include an increased cost to the Department of Attorney General and Justice from the anticipated increase in appeals where a person has been barred from working with children.

10.6 The overall operating costs are similar to the current model's, but once the user fee is factored in, there is an annual cash saving to government estimated at between $2.7 and $4.2m over the first four years of operation. Accounting rules relating to accrual of fees for a five year clearance will affect the presentation of the budget for the first five years.

10.7 The current cost to the Commission for Children and Young People of operating the Working With Children Check ($7.533m) will continue to be applied to the new Working With Children Check. The subsidy allocated from the Consolidated Fund to the Education and Health Approved Screening Agencies ($3.022m) will revert to the Checking Agency in full in the second full year of the new Working With Children Check operations. During the first year these agencies will retain half the allocated budgets to subsidise structural and process changes arising from the new Working With Children Check and to support the transfer of Working With Children Check functions to the new Checking Agency.

11. ATTACHMENTS
Attachment A – Financial Impact Statement
Attachment B – Draft Media Release
Attachment C – List of current child-related sectors
Attachment E – Detailed List of Interstate Exemptions
Attachment D – Detailed List of Barring Records
Attachment E – Detailed List of Interstate Barring Records
Attachment F – Better Regulation Statement

Minister for Citizenship and Communities
# ATTACHMENT A: FINANCIAL IMPACT STATEMENT

## Schedule 1: Budget Impact of Proposal

<table>
<thead>
<tr>
<th>Year 1 ($'000)</th>
<th>Year 2 ($'000)</th>
<th>Year 3 ($'000)</th>
<th>Year 4 ($'000)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Budget</strong></td>
<td><strong>FORWARD ESTIMATES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>RECURRENT</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expenses:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Related(^1)</td>
<td>3,049</td>
<td>3,049</td>
<td>3,360</td>
</tr>
<tr>
<td>Non employee related (incl. depreciation)(^2)</td>
<td>1,980</td>
<td>4,980</td>
<td>4,943</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>8,029</td>
<td>8,029</td>
<td>8,303</td>
</tr>
<tr>
<td>Less agency offset savings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Expenses</td>
<td>8,029</td>
<td>8,029</td>
<td>8,303</td>
</tr>
<tr>
<td>Less Agency revenue</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agency Net Cost Of Services</td>
<td>8,029</td>
<td>8,029</td>
<td>8,303</td>
</tr>
<tr>
<td>Net on-costs to other budget sector agencies (as per schedule 3)</td>
<td>-1,200</td>
<td>-2,672</td>
<td>-2,572</td>
</tr>
<tr>
<td>Total Net Cost of Services (NCS)</td>
<td>6,829</td>
<td>5,357</td>
<td>5,731</td>
</tr>
</tbody>
</table>

## CONSOLIDATED FUND REVENUES

<table>
<thead>
<tr>
<th>Tax</th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Commonwealth Funding</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>User fees</td>
<td>9,300</td>
<td>9,300</td>
<td>9,500</td>
</tr>
<tr>
<td>Total Consolidated Fund Revenues</td>
<td>9,300</td>
<td>9,300</td>
<td>9,500</td>
</tr>
</tbody>
</table>

## CAPITAL

| Capital Expenditure | 2,350          | 200            | 100            | 100            |
| Less Agency offset savings (incl. asset sales) |                |                |                |                |
| Net Capital Expenditure | 2,350      | 200            | 100            | 100            |
| Net on-costs to other budget sector agencies (as per schedule 3) |                |                |                |                |
| Total Net Capital Expenditure | 2,350      | 200            | 100            | 100            |

**TOTAL FINANCIAL IMPACT**

(NCS less Depreciation + Net Capital expenditure less Consolidated Fund Revenues)

|               | 4,330          | -2,771         | -4,343         | -4,169         | -3,115         |

**Funded by:**

| Existing Cash Balances/Loans/Advances |                |                |                |                |                |
| Consolidated Fund | 4,530          | -2,922         | -4,343         | -4,377         | -3,361         |
| Crown acceptance of liabilities | 191            | 191            | 208            | 246            |
| Total               | 4,530          | -2,771         | -4,343         | -4,169         | -3,115         |

---

\(^1\) Crown liabilities included in employee related expenses.

\(^2\) $500K annual depreciation

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### Schedule 2: Budget Sector Staffing

<table>
<thead>
<tr>
<th>Budget Year</th>
<th>FORWARD ESTIMATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>Year 2</td>
</tr>
<tr>
<td>Additional Staffing (FTE) – lead agency</td>
<td>64</td>
</tr>
<tr>
<td>Other Budget sector agencies</td>
<td>64</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>64</td>
</tr>
</tbody>
</table>

### Schedule 3: Net on-costs to Other Budget Sector Agencies

<table>
<thead>
<tr>
<th>Budget Year ($'000)</th>
<th>FORWARD ESTIMATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1 ($'000)</td>
<td>Year 2 ($'000)</td>
</tr>
<tr>
<td>RECURRENT:</td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td>-700</td>
</tr>
<tr>
<td>Education and Communities</td>
<td>-850</td>
</tr>
<tr>
<td>Attorney General and Justice</td>
<td>350</td>
</tr>
<tr>
<td>Impact on Net Cost of Services (Transfer to Schedule 1)</td>
<td>-1,200</td>
</tr>
<tr>
<td>CAPITAL: (including asset sales)</td>
<td>500</td>
</tr>
<tr>
<td>RTA</td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td></td>
</tr>
<tr>
<td>Impact on Net Capital Position (Transfer to Schedule 1)</td>
<td>800</td>
</tr>
</tbody>
</table>

### Schedule 4: Net on-costs to Non-Budget Sector Agencies

<table>
<thead>
<tr>
<th>Budget Year ($'000)</th>
<th>FORWARD ESTIMATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1 ($'000)</td>
<td>Year 2 ($'000)</td>
</tr>
<tr>
<td>RECURRENT:</td>
<td></td>
</tr>
<tr>
<td>Agency 1 (insert agency name)</td>
<td>N/A</td>
</tr>
<tr>
<td>Agency 2 (insert agency name)</td>
<td>N/A</td>
</tr>
<tr>
<td>Agency 3 (insert agency name)</td>
<td>N/A</td>
</tr>
<tr>
<td>Impact on Net Cost of Services</td>
<td>-</td>
</tr>
<tr>
<td>CAPITAL: (including asset sales)</td>
<td>N/A</td>
</tr>
<tr>
<td>Agency 1 (insert agency name)</td>
<td>N/A</td>
</tr>
<tr>
<td>Impact on Net Capital Position</td>
<td>-</td>
</tr>
</tbody>
</table>

FIS Reviewed by: Included in Current Budget and Forward Estimates? Yes/No

Secretary of Treasury or Delegated Officer

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ATTACHMENT B: Media Release

MEDIA RELEASE

A MAKE-OVER FOR THE WORKING WITH CHILDREN CHECK

The NSW Government today announced that it will introduce legislation to make the Working With Children Check simpler, safer and more widely available.

"We are giving the Working With Children Check a makeover to modernise it, extend its reach and make it consistent with the models operated in other states," the Minister for Citizenship and Communities, the Hon Victor Dominello, said.

"The new Working With Children Check will remove the different checking and declaration regimes for employees, contractors, self employed people, students and volunteers. All successful applicants will get a five year Working With Children Clearance that they can use for any child-related engagement.

"Another improvement is that the new Working With Children Check will produce only two results: you'll be cleared to work with children or be barred. Once a person is barred, they cannot work with children. This is safer for children than the current system that cannot prevent employers from engaging a person assessed as high risk," the Minister said.

Other features of the new Working With Children Check include:

- continuous alerts of new NSW criminal records and disciplinary records for people holding a current Working With Children Check: if the new record indicates a high risk to children, the person's clearance will be revoked and they will be barred from working with children;

- opportunities for people to appeal against decisions where people have been denied authorisation to work with children

"The Working With Children Check is an internationally recognised safeguard for protecting children and young people. NSW was the first state in Australia to establish such a Check and when we make these changes, we will have the most up to date Working With Children Check in the country," Mr Dominello said.

"Recent extensive public consultations from a review of the Commission for Children and Young People Act 1998 demonstrated very strong community support for a renewable and portable Working With Children Check. The Government is delivering the system the community has asked for.

"These changes also implement key recommendations contained in the NSW Auditor General’s report of a review of the Working With Children Check," said the Minister.

Like interstate Working With Children Checks, the new NSW model will involve a small user fee of $60. Volunteers will pay only $10 for their five year Check. The NSW Government will continue to provide more than $10 million per year to support the system and keep down the cost for all applicants.

The Government is currently preparing the legislation for a new Working With Children Check and expects to start operating the new system in mid 2012. Until this time, the current Working With Children Check will continue unchanged.
ATTACHMENT C: Current Child Related Sectors

- Child protection system
- Preschools, kindergartens and child care centres
- Schools and other educational institutions (not universities)
- Detention centres
- Refuges
- Wards of hospitals where children are patients
- Clubs, associations or movements with a significant child membership
- Religious organisations
- Entertainment venues where the clientele is primarily children
- Babysitting or childminding arranged by an agency
- Fostering or other child care
- Taxis for disabled children
- Private tuition of children
- Direct provision of child health services
- Counselling and support services for children
- School buses
- Overnight camps for children
## ATTACHMENT D: Interstate comparisons – Common Exemptions from the Working With Children Check

<table>
<thead>
<tr>
<th>Category of Exemption</th>
<th>Victoria</th>
<th>Queensland</th>
<th>Western Australia</th>
<th>Northern Territory</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Volunteers who are family members of the participating child</strong></td>
<td>Volunteer parent or close relative of participating child. Close relative includes spouse, parent, step-parent, mother-in-law or father-in-law; grandparent, uncle or aunt, brother or sister, half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law, and includes people related through marriage and de facto relationships.</td>
<td>Parent volunteers of children participating in the activity/organisation. Parent volunteers at their child's school.</td>
<td>Parents volunteering in their child's activity are exempt, unless their volunteering involves overnight camps.</td>
<td>Parent volunteers where the work does not involve an overnight stay.</td>
</tr>
<tr>
<td><strong>Children</strong></td>
<td>Children under 18; and students on placement who are under 20</td>
<td>Volunteers under 18</td>
<td>Children under 15</td>
<td></td>
</tr>
</tbody>
</table>
| **Short term work** | A person who is not ordinarily resident in Victoria, if he or she does not ordinarily engage in that work in Victoria. | Work for less than:  
- 8 consecutive days; or  
- once a week for each week during a period of four weeks; or  
- once a fortnight for each fortnight during a period of 8 weeks; or | Short-term visitors to WA - for 2 weeks after their arrival, or if their work involves no more than 2 weeks in any period of 12 months. | A visitor to the NT volunteering for no more than 14 days per year.  
Home stays for less 7 consecutive days  
An emergency carer under the Care and Protection of Children |
<table>
<thead>
<tr>
<th>Category of Exemption</th>
<th>Victoria</th>
<th>Queensland</th>
<th>Western Australia</th>
<th>Northern Territory</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- once a month for each month during a period of 6 months Work that involves:</td>
<td></td>
<td></td>
<td>(Placement Arrangements) Regulations.</td>
</tr>
<tr>
<td></td>
<td>- observing or supplying information or entertainment to ten or more people;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- sporting or cultural event attended by more than one hundred people where the work is for ten days or less on no more than two occasions per year, and where the workers are unlikely to be physically present with a child without another adult being present.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Co-employees</td>
<td>Working With Children Check does not apply to the employment of a person only because the person gives help or guidance to a child as part of the child’s employment.</td>
<td>Employers of children, and people who work alongside children as fellow employees, do not need a Working With Children Check unless otherwise doing child-related work.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category of Exemption</td>
<td>Victoria</td>
<td>Queensland</td>
<td>Western Australia</td>
<td>Northern Territory</td>
</tr>
<tr>
<td>-----------------------</td>
<td>----------</td>
<td>------------</td>
<td>------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>Babysitters</td>
<td></td>
<td></td>
<td></td>
<td>Privately arranged babysitting or childminding, not as part of a commercial enterprise</td>
</tr>
<tr>
<td>Parties and entertainments</td>
<td>Commercial entertainment or party services for children unless they are merely incidental to or in support of other business activities</td>
<td>Work in children's entertainment or party service that provides food, equipment or a venue, but has no contact with children.</td>
<td>Performances open to the general public, not involving physical contact with children. Where the service only involves the provision of equipment, food or a venue.</td>
<td></td>
</tr>
</tbody>
</table>
| Professional groups    | o Teachers  
 o Police officers  
 o Accredited drivers | o Teachers  
 o Registered health practitioners  
 o Police officers  
 o Relevant person under the Corrective Services Act 2006 | o Police officers | |
### ATTACHMENT E: Detailed list of Automatic Bars

<table>
<thead>
<tr>
<th>Conviction/ pending charge: Murder of a child</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NSW Crimes Act</strong></td>
</tr>
<tr>
<td>• S18: Murder and manslaughter and attempts</td>
</tr>
<tr>
<td>• S21: Child murder by mother</td>
</tr>
<tr>
<td>• S22A: Infanticide</td>
</tr>
<tr>
<td>• S26: Conspiring to commit murder</td>
</tr>
<tr>
<td>• S27: Intent to commit murder</td>
</tr>
<tr>
<td>• S28: Acts done to property with intent to commit murder</td>
</tr>
<tr>
<td>• S29 and 30: Attempts to murder</td>
</tr>
<tr>
<td>• S37: Attempt to choke</td>
</tr>
</tbody>
</table>

**Equivalent offences in other jurisdictions**

<table>
<thead>
<tr>
<th>Conviction/ pending charge: Child-related personal violence offences</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NSW Crimes Act</strong></td>
</tr>
<tr>
<td>• S33: Wounding or grievous bodily harm with intent</td>
</tr>
<tr>
<td>• S35: Reckless grievous bodily harm or wounding</td>
</tr>
<tr>
<td>• S39: Using poison etc to endanger life or inflict grievous bodily harm</td>
</tr>
<tr>
<td>• S42: Injuries to a child at the time of birth</td>
</tr>
<tr>
<td>• S43: Abandoning or exposing a child under 7 years</td>
</tr>
<tr>
<td>• S45: Female genital mutilation</td>
</tr>
<tr>
<td>• S60E(3a and b): assaults at a school</td>
</tr>
<tr>
<td>• S86: Kidnapping (child other than offender's)</td>
</tr>
</tbody>
</table>

**Equivalent offences in other jurisdictions**

<table>
<thead>
<tr>
<th>Serious sex offences</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NSW Crimes Act</strong></td>
</tr>
<tr>
<td>• S61B(repealed): Sexual assault category 1 (grievous harm with intent)</td>
</tr>
<tr>
<td>• S61C (repealed): Sexual assault category 2 (actual bodily harm with intent)</td>
</tr>
<tr>
<td>• S61D (repealed): Sexual assault category 3 (sexual intercourse without consent)</td>
</tr>
<tr>
<td>• S61E (repealed): Sexual assault category 4 (indecent assault and act of indecency)</td>
</tr>
<tr>
<td>• S61F (repealed): Attempt to commit sexual assault</td>
</tr>
<tr>
<td>• S61I: Sexual assault</td>
</tr>
<tr>
<td>• S61J: Aggravated sexual assault</td>
</tr>
<tr>
<td>• S61JA: Aggravated sexual assault in company</td>
</tr>
<tr>
<td>• S61K: Assault with intent to have sexual intercourse</td>
</tr>
<tr>
<td>• S61L: Indecent assault</td>
</tr>
<tr>
<td>• S61M: Aggravated indecent assault</td>
</tr>
<tr>
<td>• S61N: Act of indecency</td>
</tr>
<tr>
<td>• S61O: Aggravated act of indecency</td>
</tr>
<tr>
<td>• S61P: Attempt to commit offence (61I-O)</td>
</tr>
<tr>
<td>• S63 (repealed): Rape and attempted rape</td>
</tr>
<tr>
<td>• S65A (repealed): Sexual intercourse procured by intimidation</td>
</tr>
<tr>
<td>• S66 (repealed): Procuring carnal knowledge by fraud</td>
</tr>
<tr>
<td>• S66A: Sexual intercourse child under 10</td>
</tr>
<tr>
<td>• S66B: Attempting to have sexual intercourse with child under 10</td>
</tr>
</tbody>
</table>
Automatic Bars

- S66C: Sexual intercourse child between 10-16
- S66D: Attempting to have sexual intercourse with child 10-16
- S66EA: Persistent sexual abuse of a child
- S66EB: Procuring or grooming a child under 16 for unlawful sexual activity
- S66F: Sexual offences – cognitive impairment
- S67: Carnal knowledge of girl under 10 (repealed)
- S73: Sexual intercourse with a child between 16-18 in special care
- S74 (repealed): Attempt carnal knowledge by teacher
- S76 (repealed): Assault with act of indecency on female under 16
- S78A: Incest
- S78B: Attempt incest
- S78H (repealed): Homosexual intercourse with male under 10
- S78I (repealed): Attempt / assault for homosexual intercourse with male under 10
- S78K (repealed): Homosexual intercourse with male 10-18
- S78L (repealed): Attempt / assault for homosexual intercourse with male 10-18
- S78N (repealed): Homosexual intercourse by teacher
- S78O (repealed): Attempt / assault for homosexual intercourse with pupil
- S78Q (repealed): Acts of gross indecency
- S79: Bestiality
- S80A: Sexual assault by forced self manipulation
- S80D: Causing sexual servitude
- S80E: Conduct of business involving sexual servitude
- S81 (repealed): Indecent assault upon male of any age
- S91D: Promoting or engaging in acts of child prostitution
- S91E: Obtaining benefit from child prostitution
- S91F: Premises not to be used for child prostitution
- S91G: Children not to be used for the production of child abuse material
- S91H: Production, dissemination or possession of child abuse material
- S91B (repealed): production of child pornography
- S91C (repealed): possession of child pornography

Equivalent offences in other jurisdictions

Commonwealth Criminal Code
- 270.6: Sexual servitude offences
- 270.7: Deceptive recruiting for sexual services
- 272.8: Sexual intercourse with child outside Australia
- 272.9: Sexual activity (other than sexual intercourse) with child outside Australia
- 272.10: Aggravated offence—child with mental impairment or under care, supervision or authority of defendant
- 272.11: Persistent sexual abuse of child outside Australia
- 272.14: Procuring child to engage in sexual activity outside Australia
- 272.15: "Grooming" child to engage in sexual activity outside Australia
- 272.18: Benefiting from offence against this Division
- 272.19: Encouraging offence against this Division
- 272.20: Preparing for or planning offence against this Division

Commonwealth Customs Act
- S233BAB: importing child pornography
### ATTACHMENT F: Summary of jurisdictional barring offences

<table>
<thead>
<tr>
<th>Convictions for</th>
<th>NSW</th>
<th>Victoria</th>
<th>WA</th>
<th>Queensland</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder and attempts (victim under 18)</td>
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<tr>
<td>Infanticide</td>
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<tr>
<td>Manslaughter (victim under 18)</td>
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<tr>
<td>Conspiring/intention/attempts etc to commit murder (victim under 18)</td>
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<tr>
<td>Wounding etc with intent to do bodily harm or resist arrest (victim under 18)</td>
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<tr>
<td>Reckless grievous bodily harm or wounding (victim under 18)</td>
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<tr>
<td>Injury to child at time of birth</td>
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<tr>
<td>Kidnapping (victim under 18)</td>
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<tr>
<td>Child abduction</td>
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<tr>
<td>Female genital mutilation (victim under 18)</td>
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<tr>
<td>Assaults/ grievous bodily harm (victim under 18)</td>
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<tr>
<td>Sexual intercourse – child under 13</td>
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<tr>
<td>Attempting sexual intercourse with child under 13</td>
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<tr>
<td>Sexual intercourse – child between 13 &amp; 16</td>
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<tr>
<td>Attempting sexual intercourse with a child between 13 &amp; 16</td>
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<tr>
<td>Underage sex (carnal knowledge)</td>
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<tr>
<td>Sexual intercourse with child between 16 and 18 under special care (old name – carnal knowledge by teacher etc)</td>
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<tr>
<td>Procuring for sex - child under 13</td>
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<tr>
<td>Procuring for sex- child 13-17</td>
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<tr>
<td>Promoting or engaging in acts of child prostitution</td>
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<tr>
<td>Obtaining benefit from child prostitution</td>
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<tr>
<td>Using premises for child pornographic purposes</td>
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<tr>
<td>Children used for child pornographic purposes</td>
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<tr>
<td>Production, dissemination or possession of child pornography</td>
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<tr>
<td>Persistent sexual abuse of a child</td>
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<tr>
<td>Procuring person by drugs etc (victim under 18)</td>
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<tr>
<td>Possession of child pornography</td>
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<tr>
<td>Publishing child pornography</td>
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<tr>
<td>Loitering by convicted child sexual offenders near premises frequented by children</td>
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<tr>
<td>Filming for indecent purposes (victim under 18) Not repealed but now covered by 91G of CA</td>
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</tr>
<tr>
<td>Installing device to facilitate filming for indecent purposes (victim under 18) Not repealed but now covered by 91H of CA</td>
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</tbody>
</table>

Filled boxes indicate automatic barring offences.
ATTACHMENT G: Better Regulation Statement

BETTER REGULATION STATEMENT


1. Executive summary

The statutory review of the Commission for Children and Young People Act 1998 (the Act) found that small adjustments were required to support the Commission’s advocacy, research and monitoring functions and recommended that broader changes to the Working With Children Check be made.

The proposed changes have been developed in consultation with government and non-government stakeholders and unions in the course of a full review of the Act. The proposed changes also have the effect of resolving a number of problems with the Check identified by the Auditor General in a 2010 report.

The Working With Children Check remains a key child protection program in NSW. The 2009 Wood Commission of Inquiry into the Child Protection System in NSW supported extension of the Check.

The proposed changes provide a simpler, fairer, cheaper and better-focussed Working With Children Check that provides certainty for employers and employees and protection for children. The benefits for the community are:

- Reduction in over-checking of applicants, as a single Check attached to an individual will have a life of five years
- Reduction in complexity, through the application of a single process for employees, self employed people and volunteers
- Increase in protection for children, by providing the same risk management standards to volunteers as for paid workers
- Increased efficiency as employers will know when they offer a job that the applicant has passed the Check
- Improved outcomes for potential employees who will no longer have to wait for position-related Checks to be completed before they can be offered a position
- Improved procedural fairness as applicants will have the right to appeal the outcome of the risk assessment.

2. Need for government action

The Working With Children Check establishes obligations on employers, employees and volunteers that must be supported by the law. This law is already in place and has operated for eleven years. The proposal is to change various settings within this law.

The 2010 report on the Working With Children Check by the Auditor General found that the different obligations for volunteers and paid workers was administratively onerous and left gaps in child protection.
The statutory review in 2010 also found that the current Check is overly complex and difficult to administer. The stakeholders who participated in this review agreed that a simpler person-based Check, similar to those in other states, would be preferable.

Those consulted were keen for the Working With Children Check to be made available to volunteers in child-related roles. Considerable additional investment by government would be required for this expansion of the Check in the current model. The proposed new model of the Working With Children Check will allow a small fee to be levied on applicants. This model is successfully used in other states and has broad community acceptance. The co-payment by applicants allows government to expand the reach of the Working With Children Check to volunteers and reduces the effort currently required to manage the un-met demand.

The current model of the Working With Children Check has limited options for applicants to challenge Check outcomes. The proposed new model will allow greater transparency through broader appeal provisions.

3. Objective of government action

The objectives of this proposal are to adjust the existing policy and practice framework for the Working With Children Check to make it more efficient and flexible, while strengthening the protection of children in workplaces and voluntary settings.

The Working With Children Check has strong community support. Stakeholder consultations have demonstrated overall support for the proposals to enhance and modernise this protective tool.

4. Consideration of options

The options considered were:

- maintain the status quo
- make minor amendments to the Check
- change from a position-based to a person-based Check.

The statutory review of the Act identified that the status quo prevented cost effective expansion of the Check to new groups of employees and volunteers. Another barrier to improvement identified was that current model had evolved to involve a significant level of administrative complexity. Continued minor amendments to the program were seen as adding to the existing complexity. Accordingly the review dismissed the option of making further minor amendments in favour of a more substantive overhaul.

There has been considerable community demand for simpler processes for the Check and for a "portable" person-based Check. All submissions to the legislative review supported making a substantive change to the Act to achieve this outcome.

Establishing a person-based check is an essential first step for NSW towards national recognition of state based checks. All other states operating a Working With Children Check use a person-based system. Adopting such an approach in NSW allows for future exchange of information and recognition of interstate checks.
The cost to government of maintaining the status quo is a minimum of $10.3 million per annum. Changing to a person based Check model is estimated to require $4.33 million for start up costs, and an annual Consolidated Fund saving of around $4 million from the first full year of operation. The cost to the community, which will now pay a subsidised fee for the Check, as in other states, will be around $9m per annum. This is made up of approximately $60 per check for paid workers and $10 per check for volunteers.

These costs were calculated by comparing the costs of interstate systems with the one proposed for NSW. An independent expert assessed costs.

**Compliance costs**

Under the model the compliance costs for businesses, including small businesses will reduce because the administrative burden of operating different schemes for paid and volunteer staff will be removed. Businesses will also be able to conduct all their Check transactions on-line, saving resources currently allocated to paperwork.

Some government agencies and employers may choose to seek additional criminal records checks at recruitment. The cost of this activity will depend on agency decisions about when to seek additional checks.

The new model will provide the Commission for Children and Young People with a defined role in supporting and monitoring compliance with the Working With Children Check. Resources to support education and monitoring compliance have been factored into the service costing.

**Administrative costs**

Start up cost for government to establish the new scheme is estimated at $4.33 million during 2011/12.

The existing Check must continue to be resourced to function up to the start time of the new Check.

**Competition impacts**

No competition restrictions have been identified, and no potential impacts on innovation have been identified.

**Other costs**

There will be environmental benefits as the new system reduces reliance on paper based applications. Hundreds of thousands of handwritten applications and declarations made annually will no longer be required.

A help line will support people communities who have trouble accessing computer or broadband systems to access the on-line service.

**Implementation and compliance**

The costs of this initiative include implementation and compliance costs. The start up costs include funds for informing the community of the changes in the system and supporting them through the change.
The regulation and compliance unit in the Commission for Children and Young People will oversee the operations of the Check to ensure its compliance with the required practices.

The Commission will also implement programs that monitor and improve community compliance with the Check and promote child-safe organisations.

Existing penalties for non-compliance under the existing Act will be transferred to the new system.

5. Consultation

This proposal has been developed after extensive consultation with the affected community. All the groups consulted supported the continuation of the Check and the development of a person-based "portable" check.

Some government agencies that use criminal histories provided through the Check process for general probity checking will need to explore alternative approaches for continued probity checking of new high risk recruits.

6. Preferred option

The preferred option is a person-based Working With Children Check that individuals can use for any type of child-related employment over a five year period.

7. Evaluation and review

The implementation phase will involve oversight by an interagency committee that will determine many of the critical settings and practices for the new Check.

The implementation and first year's operation of the new Check are to be reviewed in 2014, to determine whether the system is operating as expected, and to propose remedies to any identified problems. This will allow any essential statutory, operational or other changes to be considered early in the establishment process.