Queensland Commission for Children and Young People and Child Guardian

Submission to the Royal Commission Into Institutional Responses to Child Sexual Abuse

Issues Paper 1 - Working with Children Check

August 2013
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## Glossary

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<tr>
<td>Blue card</td>
<td>The plastic card issued to an individual which evidences that they have had a Working with Children Check assessment undertaken in Queensland and been approved to work with children and young people in regulated child-related service environments.</td>
</tr>
<tr>
<td>Blue card system</td>
<td>The legislative framework which governs the provision of regulated services for children and young people, which involves a working with children check (employment screening) for people commencing employment or voluntary activities with children; ongoing monitoring of changes to criminal history and disciplinary information of applicants and blue card holders; and the requirement for child-related organisations to implement risk management strategies to identify and manage potential risks of harm to children in their particular service environments.</td>
</tr>
<tr>
<td>Card</td>
<td>The plastic card issued to an individual in some jurisdictions, which evidences that they have undergone a Working with Children Check assessment and been approved to work with children and young people in regulated child-related service environments.</td>
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<tr>
<td>CD$SMAC</td>
<td>Community and Disability Services Ministers Advisory Council</td>
</tr>
<tr>
<td>CDSMAC</td>
<td>Community and Disability Services Ministers Conference</td>
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<tr>
<td>Clearance</td>
<td>Generic reference to the outcome of a working with children check whereby the individual has been approved to work with children in regulated child-related service environments.</td>
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<tr>
<td>Conditional clearance</td>
<td>An outcome which allows a person to work with children in regulated child-related service environments, provided certain conditions are complied with – eg the person may be required to be supervised at all times, or the person may be approved to work in a particular, defined environment only.</td>
</tr>
<tr>
<td>Conviction</td>
<td>Any recorded or un-recorded conviction or finding of guilt for a criminal offence or acceptance of a plea of guilty by a court (whether the person was dealt with as an adult or a child).</td>
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<tr>
<td>Criminal history</td>
<td>A national check of all charges and convictions across Australia, regardless of where and when the offence occurred or was alleged to have occurred, including:</td>
</tr>
<tr>
<td>Daily monitoring</td>
<td>The regular monitoring on a daily basis of any changes to the criminal history of a working with children check applicant or clearance/card holder. This is currently undertaken at a state level only, through links between State screening authorities and their state-based police service to identify new charges or convictions, without the need for an updated national police check to be undertaken. In Queensland, this is achieved through an electronic interface between the Queensland Children’s Commission and the Queensland Police Service, which enables the Commission to be notified on a daily basis when a relevant change in criminal history occurs.</td>
</tr>
<tr>
<td>Disciplinary information</td>
<td>Information from professional registration bodies, regarding allegations or findings of misconduct by professionals such as teachers, child care workers, foster or kinship carer approvals,</td>
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<tr>
<td>Disqualification framework</td>
<td>A framework which prevents certain individuals from applying for a working with children check.</td>
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<tr>
<td>Disqualification order</td>
<td>An order made by a court in Queensland when sentencing an individual for certain offences, which prohibits the person from obtaining a blue card.</td>
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<tr>
<td>Disqualified person</td>
<td>In Queensland, a person who has a conviction for a disqualified offence.</td>
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<tr>
<td>Disqualifying offence</td>
<td>In Queensland, an offence prescribed in the Commission for Children and Young People and Child Guardian Act 2000, including child-related sex offences, child pornography and the murder of a child.</td>
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<tr>
<td>ECHI$WP$C</td>
<td>Refers to the agreement by the Council of Australian Governments (COAG) for the National Exchange of Criminal History Information for People Working with Children. The agreement is governed by a memorandum of understanding (MoU) and enables participating screening units to access from interstate extensive criminal history information about working with children check applicants, including:</td>
</tr>
<tr>
<td>Eligibility application</td>
<td>An application made by a disqualified person in Queensland to be declared eligible to apply for a blue card to work with children and young people in regulated child-related service environments. A disqualified person is not able to apply for a blue card or commence child-related work until they have applied for and been issued with an eligibility declaration.</td>
</tr>
<tr>
<td>Eligibility declaration</td>
<td>The result issued to a disqualified person on an eligibility application when the Queensland Children’s Commissioner is satisfied that the individual’s case is an exceptional one in which it would not harm the best interests of children for them to be issued with an eligibility declaration (and a blue card).</td>
</tr>
<tr>
<td>Eligibility refusal</td>
<td>The result issued to a disqualified person on an eligibility application when the Queensland Children’s Commissioner is not satisfied that the individual’s case is an exceptional one in which it would not harm the best interests of children for them to be issued with an eligibility declaration (therefore prohibiting them from applying for a blue card and working with children in regulated child-related service environments).</td>
</tr>
<tr>
<td>Employment screening</td>
<td>An assessment of an individual’s criminal history, and in some jurisdictions investigative information and/or relevant disciplinary information, to determine their eligibility to be approved to work with children in regulated child-related service environments.</td>
</tr>
<tr>
<td>FaHCS$IA$</td>
<td>Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs</td>
</tr>
<tr>
<td>Governing body</td>
<td>In Queensland, a body with responsibility for oversight of the work or activities of certain individuals, eg the Non-State Schools Accreditation Board is responsible for oversight of Directors of Non-State School Boards; certain religious organisations are responsible for oversight of priests within their religious entity.</td>
</tr>
<tr>
<td>Term/Acronym</td>
<td>Definition</td>
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| High risk individual | In Queensland, an individual is considered to be in a “high risk” category if they are prohibited from working with children in regulated child-related service environments. This includes individuals who:  
- have applied for a blue card and been issued with a negative notice;  
- have been issued with a blue card which was subsequently suspended or cancelled following a change in their criminal history or disciplinary information;  
- have applied for a blue card and withdrawn their application after being challenged in relation to their criminal history or disciplinary information;  
- have applied for a blue card and been charged with a disqualifying offence while their application was in process;  
- have applied for an eligibility declaration and their application was refused;  
- have applied for an eligibility declaration and withdrawn their application after being challenged in relation to their criminal history;  
- applied for a blue card but the criminal history check confirmed they are a disqualified person who is ineligible to apply.  
It is an offence, in Queensland, for individuals falling into any of the above categories to work or volunteer in regulated child-related service environments. |
| Interim negative | A provisional outcome for a working with children check in some jurisdictions – issued to individuals where the screening authority has undertaken a preliminary assessment of the person’s criminal history, and other relevant information, and decided that the person may be issued with a negative notice. The interim negative prohibits the person from working with children until the assessment is finalised and the application is approved. If the application is not approved, a final negative notice will be issued. |
| Investigative information | In Queensland, information about alleged offending where the alleged perpetrator was formally notified about the alleged offence, and police considered there was sufficient evidence to establish each element of the offence, however the offence did not proceed because the complainant died before the charge was brought, or the complainant (or the complainant’s parent or guardian) was not willing to proceed with the matter. |
| Mutual recognition | A scheme that operates which allows a person who has been issued with a licence/clearance in one jurisdiction to apply to be issued with a comparable licence/clearance in another jurisdiction. |
| National Operators Forum (NOF) | A voluntary network of national WWCC agencies with cross-jurisdictional representation which meets to share information and work co-operatively to develop robust and consistent screening approaches. |
| Negative/negative notice | An outcome for a working with children check which indicates the person is not considered eligible to work in regulated child-related service environments and is prohibited from doing so. |
| Non-conviction charge | Whether a person was charged as an adult or a child – refers to a charge: that has been withdrawn; that has been the subject of a nolle prosequi, a no true bill or a submission of no evidence to offer; that led to a conviction that was quashed on appeal; or upon which a person was acquitted or disposed of by a court otherwise than by way of conviction. |
| No-ticket, no-start | A requirement to be issued with a working with children check clearance/card before commencing regulated child-related work. |
| Offender prohibition order | An order which may be made against certain convicted child sex offenders which prohibits them from engaging in specified conduct (including conduct which may not amount to criminal behaviour), on the basis that the court is satisfied that the person has engaged in conduct which poses an unacceptable risk to the lives or sexual safety of children. |
| Ongoing monitoring | This involves regular monitoring of any changes to the criminal history of a working with children check applicant or clearance/card holder. This is currently undertaken at a state level only, through links between State screening authorities and their state-based police service to identify new charges or convictions, without the need for an updated national police check to be undertaken. In Queensland, this is achieved through an electronic interface between the Queensland Children’s Commission and the Queensland Police Service, which enables the Commission to be notified on a daily basis when a relevant change in criminal history occurs. |
| Pending charge | A current charge for a criminal offence that has not yet been finalised (whether the person is being dealt with as an adult or a child). |
| Police information | Refers to criminal history and investigative information. |
| Positive notice | Refers to the outcome of a working with children check whereby the individual has been approved to work with children in regulated child-related service environments. |
| Relevant disqualified person | In Queensland, a person who has been convicted of a disqualifying offence for which they were sentenced to a term of imprisonment. It also includes a person who is the subject of:  
- reporting obligations under the Child Protection (Offender Reporting) Act 2004 (Qld),  
- an offender prohibition order under the Child Protection (Offender Prohibition Order) Act 2008 (Qld),  
- a disqualification order issued by a Queensland court, or  
- a sexual offender order under the Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld).  
A relevant disqualified person may not apply for or be issued with a blue card and is therefore prohibited from working in regulated child-related service environments in Queensland. |
<p>| Reporting obligations | Refers to a person recorded on the Australian National Child Offender Register (ANCOR) who has responsibility for keeping police informed about their current whereabouts and other personal details, such as address, employment and car registration details, and any affiliations with clubs that have child membership or child participation. |
| Risk management strategy | A written strategy developed, implemented and reviewed at least annually, by child-related organisations to identify and manage risks of harm to children in their particular service environment. A risk management strategy may be required to include elements such as codes of conduct, recruitment and training practices, strategies for identifying and reporting disclosures or suspicions of harm and for managing high-risk activities and special events. |</p>
<table>
<thead>
<tr>
<th>Term/Acronym</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Screening authority/Screening</td>
<td>Refers to the State-based entity with responsibility for administering the relevant working with children check scheme/system in a state or territory in Australia.</td>
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<tr>
<td>unit</td>
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<tr>
<td>Sexual offender order</td>
<td>In Queensland, an order in relation to a person who has a conviction for an offence and is considered to represent a serious danger to the community providing for the person to be detained in custody for an indefinite term or released from custody subject to specified requirements, such as reporting, supervision, compliance with a curfew and/or reasonable directions.</td>
</tr>
<tr>
<td>Spent conviction</td>
<td>A conviction which has been deemed by relevant legislation (after a rehabilitation period) to be no longer part of the person’s criminal history and which the person need not disclose.</td>
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<tr>
<td>WWCC</td>
<td>Working with Children Check</td>
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Executive Summary

There are two primary issues which drive the need to achieve greater national consistency in relation to the Working with Children Check (WWCC):

- the safety of children and young people is not being safeguarded to a consistent level given the different systems operating across different jurisdictions, and
- individuals and organisations operating across jurisdictions are subject to multiple systems of regulation and must complete multiple administrative processes (including payment of multiple fees where necessary).

An analysis of the requirements of WWCC across jurisdictions demonstrates that while there are significant differences in the operation of the systems, there is some consistency across the basic elements of the systems. In order to achieve consistent safeguards for children and young people consistency should be achieved across jurisdictions in relation to all the following critical aspects of a WWCC:

- consistent requirements for organisations to develop and implement risk management strategies to identify and manage risks of harm to children and young people
- a consistent disqualification framework so that individuals with the most serious types of criminal histories (i.e. convictions for child-related sex offences, child pornography and murder of a child) are excluded from each system
- consideration of a consistent basic range of information (for example, all convictions, charges and investigative information) in assessing a person’s eligibility to work with children
- a consistent decision making framework to ensure that individuals are appropriately identified as posing a risk of harm to children and excluded from the system
- consistent daily monitoring of criminal history by each jurisdiction to ensure immediate action is taken to cancel, suspend or otherwise notify an organisation where necessary to ensure safeguards for children are maintained where a person has a relevant change in their eligibility status
- a process which requires the registration of an individual with an organisation to ensure that changes to a person’s eligibility status are communicated to all relevant organisations and governing bodies, and
- a compliance framework.

There is limited data available to determine the extent of the issues associated with individuals and organisations undertaking cross-border activities. The data which does exist suggests that while this is an area in which it would be desirable to achieve a greater level of consistency, the issue is not particularly widespread, and the majority of WWCC are carried out for the purpose of undertaking state-based activities.

There are a number of potential models which could be implemented to achieve national consistency which are explored in this paper. One option is the implementation of a national WWCC scheme, but there are a number of identified issues associated with implementation of a national WWCC scheme:

- there are likely to be significant costs associated with developing the infrastructure and systems to support a national scheme. Given most states have established screening systems in place, it is arguable that a better investment would be to focus funding on building awareness and educating the community about how to identify and manage risks for children, which is the most effective strategy to promote safe environments for children
- state governments and stakeholders have invested significantly in the development of state based systems which would be rendered redundant by the implementation of a national system. The implementation of a national system will potentially divert resources away from current risk management requirements and screening requirements, which are improving safeguards for children, and
- current WWCC operate under different policy and administrative frameworks and establishing a common approach across such a vast array of issues is likely to be challenging and may result in diminishing of safeguards in some mature systems in order to achieve agreement.
In essence, the implementation of a national scheme would be a large scale, potentially costly and complex solution to what appears to be a relatively limited issue.

The Queensland Children’s Commission’s preferred option is to achieve national consistency across the critical elements of the system outlined above, and continue the implementation of an exemption scheme (which is already underway) across jurisdictions.

This option is the preferred model because:

- it improves safeguards for children by achieving national consistency across critical elements of a WWCC
- it represents a proportional response to the identified issues as:
  - it deals with the identified issues in relation to individuals engaging in short-term cross border activities and achieves maximum red tape reduction for organisations and individuals as it does not require:
    - an application to be lodged in order for the exemption to apply
    - the payment of any fee (given that no additional checks or assessment are being undertaken and no application is being processed)
  - it does not require significant disruption to established state based systems in which significant investments have been made and which have the support and engagement of stakeholders
  - it does not require significant financial investment by states to implement allowing them to continue to direct resources into building community awareness and education in relation to the importance of risk management
  - the Standing Council on Community, Housing and Disability Services has already agreed to the implementation of an exemption scheme and accordingly this indicates that states are supportive of this generally as an approach
  - it achieves an appropriate balance between addressing the identified issues and allowing states to retain autonomy over the operation of their systems, and
  - a similar approach of building on the strength of current state based systems has been used successfully to address identified issues at a national level in relation to the operation of WWCCs (for example, the ECHIPWC scheme).
Section A – Background

1. Jurisdictional comparison of Working with Children Checks

Most states and territories now have a Working with Children Check (WWCC) scheme or are working towards implementation of a similar system.

Table 1 below provides a summary of the current requirements across jurisdictions

<table>
<thead>
<tr>
<th>Working with children check</th>
<th>QLD</th>
<th>NSW</th>
<th>WA</th>
<th>VIC</th>
<th>NT</th>
<th>SA</th>
<th>ACT</th>
<th>TAS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☑</td>
<td>☑</td>
<td>☑</td>
<td>☑</td>
<td>☑</td>
<td>☑</td>
<td>☑</td>
<td>☑</td>
</tr>
<tr>
<td>Commencement date</td>
<td>2001</td>
<td>2000</td>
<td>2006</td>
<td>2006</td>
<td>2010</td>
<td>2010</td>
<td>2012</td>
<td>N/A</td>
</tr>
</tbody>
</table>

However, the operation of WWCC schemes varies across jurisdictions as is outlined extensively within this paper.

2. Work to date to achieve national consistency

2.1. Background

The need to develop national consistency in relation to WWCCs is an issue that has previously been identified and significant work has been progressed. A brief history of achievements is outlined below:

- In 2005, the Community and Disability Services Ministers’ Conference (CDSMC) created the Creating Safe Environments for Children National Framework. This framework was designed to implement a national approach to creating child-safe organisations, while acknowledging the distinct systems in place across jurisdictions. The framework established best practice guidelines for:
  - building the capacity of child safe organisations
  - risk assessment and decision making when undertaking background checking
  - excluding people from employment/volunteering in child-related areas, and
  - cross-jurisdictional information sharing.

- In April 2009, the National Framework for Protecting Australia’s Children was endorsed by COAG. The framework required:
  - the development of a nationally consistent approach to WWCCs, and
  - the implementation of a national framework for inter-jurisdictional exchange of criminal history for people working with children.

- As a result, a range of work has been done to promote and achieve greater national consistency:
  - implementation or enhancement of WWCC legislation across all states and territories (except Tasmania) which is increasingly making checks more consistent. While there are differences between jurisdictions, the consistent objective is to enable an assessment of the level of risk that a prospective employee/volunteer poses to the safety of children and to exclude unsuitable applicants from working with children.

1 Previously South Australia offered a single, general clearance for a person to work with children, vulnerable people and in aged care. The Screening Unit in SA have advised that from 12 August 2013 separate WWCCs will commence.

2 Tasmania currently has no formal Act or screening program; however, individual employers may require police checks at their discretion. Recent media reports indicate that Tasmania may introduce WWCC legislation into Parliament in late 2013.

ongoing commitment by the National Operators Forum (NOF)\(^4\) to explore opportunities to enhance national consistency by:

- identifying that the key elements of a WWCC\(^5\) are:
  - strong and reliable screening and decision making processes
  - strong community support, awareness and organisational commitment
  - continuous background and compliance checking and reporting
  - recognising the importance of a nationally consistent risk management framework and agreeing to broad guidelines\(^6\)
  - sharing best practice decision making guidelines and cases studies to test decision making frameworks and identify consistent outcomes of final decisions (i.e. decisions about whether or not a person would be consistently screened out even though different decision making and legislative frameworks may be used), and
  - developing common communication strategies to raise awareness of the existing provisions that allow individuals to work or volunteer in another jurisdiction

- on 30 November 2009, a trial of the Exchange of Criminal History Information for People Working with Children (ECHIPWC) commenced. This required states and territories to commit to specified participation requirements\(^7\) and make legislative changes to allow for the exchange of a broader range of criminal history information across borders (including spent convictions, pending and non-conviction charges\(^8\)) to use in WWCC assessments

- in 2010, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) released the Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks. The paper outlined the relevant history, the work done to move towards national consistency and a proposed way forward\(^9\)

- on 21 October 2011, the Standing Council on Community, Housing and Disability Services agreed to introduce, by late 2012, national exemptions to WWCCs for paid employees and volunteers who are required to cross state or territory borders for work related purposes. The exemption was proposed to operate in circumstances where a person was providing services for up to 30 days in any 12 month period. The concept was that people could work/volunteer on a short term basis across jurisdictions without the need for a further check on the basis that they had already been checked in their own jurisdiction.

### 2.2. Current status

While some work has been progressed, work is continuing to meet the commitment under the National Framework for Protecting Australia’s Children 2009-2020 Second Action Plan to ‘Continuing to improve the effectiveness of Working with Children Checks across jurisdictions’.

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\(^{4}\) NOF is a voluntary network of national WWCC agencies with cross-jurisdictional representation which meets to share information and work co-operatively to develop robust and consistent screening approaches. NOF has been identified by FaHCSIA, CDSMAC and CDSMC as a useful mechanism as a community of best practice which provides advice on current operational information on what is happening in the area of WWCCs.

\(^{5}\) Page 3 of a FaHCSIA produced Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks and Achievements, progress towards a Nationally Consistent Approach to Working with Children Checks and proposed actions to enhance national consistency: Observations and proposals from the National Operators Forum (NOF) – June 2010

\(^{6}\) In 2010, NOF identified a number of key elements for national consistency to promote child safe organisations, and sought to map those against the best practice principles identified by CDSMC in the ‘Guidelines for Building the Capacity of Child-Safe Organisations’. This schedule can be provided if required.

\(^{7}\) To be eligible to participate in the ECHIPWC, participation screening agencies are required to:
  - have the legislative basis for screening persons working or seeking to work with children, which specifically enables consideration of information available through the exchange
  - comply with Commonwealth, State or Territory laws relating to privacy, human rights and records management
  - comply with the principles of natural justice, and
  - have a risk assessment and decision making framework that is evidence based, documented and supported by business rules and tools and have appropriately skilled staff make assessments about the risks to children’s safety suggested by the applicant’s criminal history.

\(^{8}\) Victoria does not exchange non-conviction charges (for example, charges that did not proceed and acquittals in certain circumstances).

A Working with Children Checks Working Group (WWCCWG) has been established by FaHCSIA and has responsibility for implementing actions under the framework.

The terms of reference for this working group are currently being revised to determine the appropriate focus points towards achieving greater national consistency for WWCCs across jurisdictions. Projects undertaken by the WWCCWG are proposed to focus on achieving consistency across the three key areas identified by the Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks, previously released by FaHCSIA:

- screening
- risk management, and
- ongoing monitoring.
Section B – Identified Issues

3. Policy development principles

It is a well-established principle that any policy development process should begin with an analysis of the problem that requires a solution.10

The Centre for Comparative Constitutional Studies submitted a paper to the Legislation Reform Working Group in 1999, Implementation options for National Legislative Schemes in Public Health11, which provides a useful guide to assessing the best solution to a problem requiring some level of uniformity amongst state legislation. The Queensland Children’s Commission has applied this approach, where relevant, in developing its response to the issues paper:

- **Step 1:** Identify the problem to be dealt with and decide what outcomes are to be achieved (including a consideration of the issue, its history, its current status, any current legal regime, the current political climate and the funding available or required).

- **Step 2:** Make a prima facie decision about:
  - the degree of uniformity that is needed to address the issue and achieve the desired outcomes
  - the costs and what you are prepared to pay in terms of those costs, and
  - the option which is best suited to the circumstances.

- **Step 3:** Decide whether you will need legislation, a ministerial council, an intergovernmental agreement or a centralised administrative body to implement the most desired approach.

Accordingly, it is important to identify the underlying reasons driving the demand for a national and consistent approach to WWCCs to ensure that the solution is tailored to address the identified issues.

4. The current issues

There are two primary issues with the current state based approach to WWCCs:

- the safety of children and young people is not being safeguarded to a consistent level given the different systems operating across different jurisdictions, and
- individuals and organisations operating across jurisdictions are subject to multiple systems of regulation and must complete multiple administrative processes (including payment of multiple fees where necessary).

In order to assess the extent of the problem, and determine the appropriate response it is necessary to:

- undertake an analysis of the comparability of safeguards in place across jurisdictions, and
- determine the level of cross-border activity which is being undertaken.

4.1. The comparability of the safeguards in place across jurisdictions

A detailed analysis of various aspects of the systems is outlined throughout this paper. It is evident that there are significant differences in the operation of WWCC systems across jurisdictions. However, some of these differences have no impact on safeguards for children (for example, differences in fee structures or whether or not a physical card is issued) and reflect administrative or policy decisions made by state governments.

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It is the view of the Queensland Children’s Commission that there are a number of critical components of a WWCC system and it is important to achieve consistency in relation to these in order to ensure comparable safeguards for children across jurisdictions:

- consistent requirements for organisations to develop and implement risk management strategies to identify and manage risks of harm to children and young people
- a consistent disqualification framework so that individuals with the most serious types of criminal histories (i.e. convictions for child-related sex offences, child pornography and murder of a child) are excluded from each system
- consideration of a consistent basic range of information (for example, all convictions, charges and investigative information) in assessing a person’s eligibility to work with children
- a consistent decision making framework to ensure that individuals are appropriately identified as posing a risk of harm to children and excluded from the system
- consistent daily monitoring of criminal history by each jurisdiction to ensure immediate action is taken to cancel, suspend or otherwise notify an organisation where necessary to ensure safeguards for children are maintained where a person has a relevant change in their eligibility status,
- a process which requires the registration of an individual with an organisation to ensure that changes to a person’s eligibility status are communicated to all relevant organisations and governing bodies, and
- a compliance framework.

Table 2 provides a summary of these critical elements in WWCC systems across jurisdictions:

| Table 2 – Comparison of critical elements of a WWCC system |
|-----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Risk Management requirements | QLD | NSW | WA | VIC | NT | ACT | SA |
| Yes – legislative | Yes – legislative | Yes – not legislative | Yes – not legislative | Yes – not legislative | Yes – legislative | Yes legislative (partially) | Yes legislative |
| Disqualification framework | ☒ | ☒ | ☒ | ☒ | ☒ | ☒ | ☒ |
| Consideration of convictions, charges and investigative information | ☒ | ☒ with the exception of investigative information | ☒ | ☒ with the exception of investigative information | ☒ | ☒ with the exception of investigative information | ☒ with the exception of investigative information |
| Decision making framework | Whether an ‘exceptional case’ has been demonstrated in which it would not harm the best interests of children OR Whether an ‘exceptional case’ has been demonstrated in which it would not be in the best | Whether applicant poses a risk to the safety of children | Whether it is in the best interests of children and whether children will be exposed to an unacceptable risk of harm through the applicant’s child related work | Whether there is an unjustifiable risk to safety of children | Whether there is an unacceptable risk of harm or exploitation of children | Whether there is an unacceptable risk of harm to a vulnerable person | Whether applicant poses a risk to safety of children |

12 The Working with Vulnerable People (Background Checking) Act 2011 provides for risk management strategies to be in place by an employer only if a role-based registration is proposed

13 The Children’s Protection Act 1993 requires that organisations providing certain services to children create and maintain a child safe environment, including the lodgement of a Child Safe Environment Compliance Statement with the Department for Families and Communities. All organisations providing health, education, welfare, sporting and recreational, child care, or residential services wholly or partly for children must ensure that they have a child safe environment policy in place to promote the safety and well-being of children.
This analysis of the critical elements of a WWCC across jurisdictions demonstrates that:

- there is basic consistency across jurisdictions in relation to some of the critical elements of a WWCC system, and
- more can be done to achieve greater consistency.

### 4.2. The level of cross-border activity

There is limited information available in relation to the level of cross-border activity in terms of WWCC systems. In December 2010, a survey of 395 respondents was facilitated by WWCC operators as part of the development of options to meet the commitment in the National Framework for Protecting Australia’s Children to achieve national consistency in relation to WWCC systems. The survey data indicated that:

- just over half of all respondents (56%) reported that their organisation was involved in regulated interstate activities
- these activities generally occur once or twice a year for a short duration of up to 7 days, and
- 84% reported that their volunteers and employees are required to have a WWCC to work with children and young people in their own state or territory.

This survey demonstrates that there is a need to consider options to improve consistency and transferability of WWCCs across states and territories, but it also indicates that the problem is confined to a particular set of circumstances, rather than a broad ranging issue of individuals regularly working across state borders.

This is also supported by data held by the Queensland Children’s Commission. Only approximately 2.13% of blue card holders have a recorded residential address outside of Queensland. Under the blue card system a person is exempt from screening in certain circumstances when participating in a short term national or state event. Accordingly, this data indicates that this exemption may be providing some assistance to those involved in interstate activities, but there is a small group of individuals who may be screened multiple times across jurisdictions.

The data indicates that the issue of transferability of WWCCs across jurisdictions is an area where it would be desirable to achieve greater consistency, but it does not demonstrate that the problem is particularly widespread or significant.

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12 Victoria has advised that they also use the following tests in their decision making - ‘appropriate to refuse’ test; ‘reasonable person’ test; ‘any type of child-related work’ test; ‘public interest’ test; and ‘exceptional circumstance’ test.
13 The test to be applied depends on the type of police or disciplinary information the person has.
15 There is a discretionary power for the Chief Executive or managing authority to obtain a criminal history report on certain persons at any time if it is considered necessary or desirable for the purpose of establishing or maintaining a child safe environment.
16 There are no legislative provisions to audit and monitor compliance but there is an administrative risk and compliance framework used for assessing breaches of the Act. If the breach is serious, then this is referred to Victorian Police for prosecution.
Section C – Identifying and analysing the options

The Queensland Children’s Commission has undertaken some preliminary analysis to identify possible options which may assist in achieving greater national consistency which are summarised in this section.

1. A national system

One option to address the identified issues would be the development of a national system of WWCCs.

1.1. Background

There are potentially a number of different models which could facilitate the implementation of a national system. The Queensland Children’s Commission has looked at the proposed model for the National Occupation Licensing Authority (NOLA) as an example of how a national system is proposed to operate in a similar context. This provides a frame of reference in which to examine the potential benefits of a national system for WWCCs and also to examine where there may be risks or challenges to the implementation of a national system.

The NOLA scheme is designed to operate under a delegated agency model, with the Authority assuming responsibility for policy development, the establishment of relevant procedures and guidelines, and the development, implementation and maintenance of a national public register for the included occupations. Individual jurisdictions will remain responsible (as delegates of the Authority) for processing licence applications, setting and enforcing conduct requirements and setting and receiving licensing fees.

1.2. A proposed model

If a national system for WWCCs were to be adopted, the Queensland Children’s Commission is of the view that a similar model to the NOLA scheme would be appropriate for implementation. It would be imperative to have an overarching body setting policies and guidelines to ensure consistency, but it would also be equally important to maintain the administration of the system at a state-based level. This is primarily because the success of any WWCC scheme is premised on establishing a strong partnership with the stakeholders who are actually providing the services regulated by the system. The successful operation of a WWCC scheme is based on:

- regulated organisations understanding the requirements of the system – this requires education and community engagement activities
- stakeholders identifying the value of the system and the assistance it provides in managing their own legal liabilities, and
- stakeholders engaging with the requirements of the system to ensure compliance.

The range of activities and organisations covered by a WWCC system means that unless an inordinate amount of resources are committed to compliance activities the system will fail without the co-operation and support of stakeholder groups.

In the mature systems, such as Queensland, significant investment has occurred over a number of years in relation to education and community engagement processes across the state, with a particular emphasis on Aboriginal and Torres Strait Islander communities. Stakeholders have an established relationship with the Queensland Children’s Commission that they value. Accordingly, it would be imperative that any national system incorporated state-based processing units to maintain the existing connections and resulting engagement with stakeholders.

Using the NOLA model as an example it is clear that the development of a national WWCC would require:

- the establishment of an independent statutory authority as a national oversight body responsible for policy development, establishing relevant policies and guidelines and developing and maintaining appropriate infrastructure to support a national system

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• maintaining state-based units to process applications for WWCCs, provide support and community engagement to stakeholders and undertake compliance activities
• the establishment of a national WWCC register and validation system (to verify a WWCC is current and has not been cancelled or suspended), and
• uniform legislation based on a nationally consistent approach to:
  – the scope of the system (for example, whether the system would be limited to screening only or also include risk management obligations and ongoing daily criminal history monitoring)
  – the scope of screening to be undertaken in each jurisdiction (for example, in Queensland screening is limited to mandatory, essential and developmentally focused services)
  – the fee structure supporting the WWCC (for example, a consistent policy of whether or not volunteers should be charged and the fee structure for paid applications)
  – the disqualification framework to be applied to automatically exclude individuals from the system
  – the range of information to be considered in undertaking a WWCC
  – the decision making framework to be applied in assessing relevant information to establish a person’s eligibility to work with children
  – the appropriate appeal framework in relation to WWCC decisions
  – a national system of daily criminal history monitoring, and
  – a consistent compliance framework.

1.3. The benefits of developing a national WWCC

Implementation of a national system would assist to improve safeguards for children and address issues of cross-border activities. Accordingly, there are a number of identifiable benefits in developing a national WWCC including:

• the opportunity to achieve a consistent legislative requirement for organisations to develop and implement a risk management strategy
• achieving a consistent level of screening which minimises risk of harm to children and young people
• the reduction of red-tape for individuals and organisations who operate across jurisdictions, and
• greater opportunities for the development of national systems which would enhance current jurisdictional based WWCCs (such as the development of national daily criminal history monitoring).

1.4. The challenges of a national WWCC

The issues to be considered in assessing the feasibility of a national WWCC check are outlined below.

1.4.1. The costs

The cost of a national system

There are a number of identifiable costs associated with the implementation of a national system:

• states currently operate independent technology systems which generally link with Crimtrac and/or their jurisdiction’s police systems. Moving to a national system would likely require significant infrastructure development to harmonise these processes or create a new consistent process
• the development of a national WWCC register and validation tool (to check the currency and validity of a WWCC) would be required, requiring additional infrastructure development
• the development of a national criminal history monitoring database would be required – this function is currently undertaken by individual jurisdictions linking with the police service in their state, and
• the establishment of a national oversight body would likely involve ongoing investment by state jurisdictions to fund its operation.

Current investment by states and territories

All states and territories, except Tasmania, have invested significant resources in implementing a WWCC system within their jurisdiction. This has required investment in a vast array of policy, information and
training material, research and decision making models, process development and most significantly investment in data and information technology systems. The development of a national system would render some of this investment redundant and likely require additional investment.

Further state governments are currently able to determine the level of investment that they are prepared to make in their WWCC by determining the scope of the screening within their system and the associated fee structure. The level of investment required by state government is determined by the number of checks undertaken and the fee structure implemented (i.e. an appropriate application fee and whether or not volunteers are charged or processed for free). Implementation of a national system would presumably require a uniform approach to the scope of screening and the fee structures, limiting the ability of state governments to determine what level of investment they are prepared to commit.

1.4.2. Achieving consistency across jurisdictions

There are a number of areas in which the operation of the WWCC differs across jurisdictions. The challenge of negotiating such a diverse range of issues amongst states will be extremely challenging and likely to be a long and protracted exercise.

The implementation of a national system would require consistency to be achieved in the following areas:

**The scope of the system**

Table 3 provides an overview of the approach taken across jurisdictions to the scope of the WWCC system.
Table 3 - Scope of the systems

<table>
<thead>
<tr>
<th>Requirement to validate a WWCC</th>
<th>QLD</th>
<th>NSW</th>
<th>WA</th>
<th>VIC</th>
<th>NT</th>
<th>ACT</th>
<th>SA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Check Type</td>
<td>Working with Children</td>
<td>Working with Children</td>
<td>Working with Children</td>
<td>Working with Children</td>
<td>Working with Children</td>
<td>Working with Vulnerable People</td>
<td>Working with Children</td>
</tr>
<tr>
<td>Risk Management</td>
<td>Yes – legislative</td>
<td>Yes – not legislative</td>
<td>Yes – not legislative</td>
<td>Yes – not legislative</td>
<td>Yes – not legislative</td>
<td>Yes – legislative (partially)</td>
<td>Yes – legislative</td>
</tr>
<tr>
<td>Monitoring</td>
<td>Yes – daily</td>
<td>Yes**</td>
<td>Yes – weekly</td>
<td>Yes – weekly</td>
<td>Yes – daily</td>
<td>Yes</td>
<td>No**</td>
</tr>
<tr>
<td>Legislative requirement</td>
<td>Employer obligation to notify when engaging a new employee</td>
<td>Compulsory procedure</td>
<td>Employer obligation to validate clearance online when engaging a new employee</td>
<td>Not Compulsory</td>
<td>Legislative requirement</td>
<td>Individual obligation</td>
<td>Not Compulsory</td>
</tr>
<tr>
<td></td>
<td>Online verification</td>
<td>Online verification and registration</td>
<td>Employers must verify all new employees online - enables updates of changes to the individual’s status. Current employees must be verified online once they have been phased into the new WWCC. Details provided by employers to verify validity of individual also matches clearance holders to the employer organisation – allows Office of the Children’s Guardian to notify registered employers of relevant changes to individual’s clearance status.</td>
<td>Online verification and registration</td>
<td>Online verification</td>
<td>Any individual can check the validity of a clearance notice. Certain large employers receive this information online e.g. when a person’s WWCC application is in process or finalised. This service will be extended.</td>
<td>Online verification</td>
</tr>
<tr>
<td></td>
<td>Online verification and registration</td>
<td>Employers and clearance holders/ applicants can check the validity and status of a clearance or application</td>
<td>Online application</td>
<td>Online application</td>
<td>Clearance holders and applicants can register a new employer organisation online, by submitting an application to the Department or by calling its dedicated Information line.</td>
<td>Online and application-based registration</td>
<td>Clearance holders can update new organisation details either through submitting the relevant form or online through an “Update details” function.</td>
</tr>
<tr>
<td></td>
<td>Online verification</td>
<td></td>
<td>Online verification</td>
<td></td>
<td></td>
<td>Online verification</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Online verification and registration</td>
<td>Online verification and registration</td>
<td>Online verification</td>
<td>Online verification</td>
<td>Online verification</td>
<td>Online verification</td>
<td>Application-based registration</td>
</tr>
</tbody>
</table>

** From 12 August 2013, the Screening Unit in SA have advised that they no longer offer a single, general clearance for a person to work with children, vulnerable people and in aged care and separate WWCCs will commence.
** The Children’s Protection Act 1993 requires that organisations providing certain services to children create and maintain a child safe environment, including the lodgement of a Child Safe Environment Compliance Statement with the Department for Families and Communities. All organisations providing health, education, welfare, sporting and recreational, child care, or residential services wholly or partly for children must ensure that they have a child safe environment policy in place to promote the safety and well-being of children.
** There is a discretionary power for the Chief Executive or managing authority to obtain a criminal history report on certain persons at any time if it is considered necessary or desirable for the purpose of establishing or maintaining a child safe environment.
In order to implement a national system a consistent approach in relation to the following matters would need to be adopted:

**Risk management**

- Queensland has a rigorous legislated requirement for organisations and self-employed persons whose business activities fall within the scope of the WWCC system (‘the blue card system’) to implement child and youth risk management strategies. These strategies are aimed at ensuring appropriate policies and procedures are in place to identify and minimise the potential risk of harm to children and young people in regulated service environments.
- As demonstrated in table 3 above, across jurisdictions there are different requirements relating to risk management strategies (for example, some have policies requiring risk management, but no legislative requirement).
- The implementation of a national system would require a decision to be made about whether the WWCC system would include a legislative requirement for organisations to develop and implement risk management strategies.
- It is the view of the Queensland Children’s Commission that a WWCC system without a legislated requirement for organisations to develop, implement and regularly review a risk management strategy would not adequately manage risks of harm for children and young people.

**Screening**

- Most states and territories (with the exception of Tasmania) now have a legislated requirement for individuals working with children to undergo a criminal history assessment by an independent agency. With the exception of the Australian Capital Territory, all states and territories have specific WWCCs.
- The implementation of a national system would require every state to implement a specific WWCC to the agreed standard.

**Daily monitoring and ongoing criminal history assessments**

- Daily monitoring is not consistently in operation across all jurisdictions, although most states have the legislative ability to implement such a practice.
- In Queensland, daily monitoring is in operation and involves overnight notification to the Queensland Children’s Commission by the Queensland Police Service (QPS) of any change in Queensland criminal history of a WWCC applicant or clearance holder (‘blue card holder’). This means that if there is any change in a blue card applicant’s or card holder’s criminal history relevant to their child-related employment, the Queensland Children’s Commission can take steps to immediately protect children from harm. This may include immediately suspending or cancelling a person’s blue card.
- It is the view of the Queensland Children’s Commissioner that daily monitoring and associated ongoing assessment of a person’s police and disciplinary information is an essential component of a WWCC system in order to provide sufficient safeguards for children and young people.
- Since inception of daily monitoring the Queensland Children’s Commission has been advised of 12,234 changes to a relevant person’s criminal history. Following the assessment of these:
  - 576 had their blue card suspended due to a charge for a child-related sex offence. 235 blue cards were subsequently cancelled due to the applicant becoming a relevant disqualified person.
  - a further 1071 blue cards were cancelled following a reassessment of the person’s eligibility, and
  - 79 blue card applications were withdrawn because the applicant was charged with a disqualifying offence while their application was in progress.
- Accordingly, it is the view of the Queensland Children’s Commission that a critical component of a national system is the ability to monitor for changes in criminal history (for both applicants and clearance holders) on a daily basis with a requirement for a reassessment of a person’s eligibility to occur in specified circumstances.
- Presently, criminal history monitoring is only available on an intra-jurisdictional basis. It is the understanding of the Queensland Children’s Commission that while there is work underway in this
area, there are significant impediments to the development of a national daily monitoring system which will take time, and significant resources to resolve.

**A requirement for validation and registration of an organisation as a notifiable entity**

- In Queensland it is a legislative requirement that organisations register with the Queensland Children’s Commission as a notifiable entity in the event there is any change to a person’s blue card status. This enables the Queensland Children’s Commission to verify the blue card is still valid and notify the organisation (and any relevant governing body\(^26\) of a relevant change to the person’s blue card status.
- It is the view of the Queensland Children’s Commissions that the validation of a WWCC and the ability to notify an organisation in the event of a change in the person’s eligibility is a critical component of a WWCC system (as is demonstrated by the statistics provided above in relation to the prevalence of change in criminal history information).

**The scope of screening**

There are a number of areas of difference which would need to be reconciled if a national system were to be adopted:

**The categories of screening**

Table 4 broadly outlines the scope of screening across jurisdictions

<table>
<thead>
<tr>
<th>Table 4 – Scope of screening(^27)</th>
<th>QLD</th>
<th>NSW</th>
<th>WA</th>
<th>VIC</th>
<th>NT</th>
<th>ACT(^2)</th>
<th>SA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schools</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Education and child care services</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community Organisations (e.g. churches, sporting and recreation clubs etc.)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health and Counselling services</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private teaching/tutoring</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child accommodation (including homestay)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religious representatives</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>School crossing supervisors</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child Protection</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Youth justice</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transport services for children</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Overnight camps</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial entertainment/party services for children</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial photography services for children</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gym/play facilities for children</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Talent/beauty competitions for children</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Additional categories screened in other jurisdictions not covered by the above table**

<table>
<thead>
<tr>
<th>NSW</th>
<th>VIC</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Adoption services – only for principal officers of accredited adoption service provider</td>
<td>• Child Employment supervisors</td>
</tr>
<tr>
<td>• An employer may decide that a paid role requires screening where the role involves access to confidential records relating to children</td>
<td></td>
</tr>
</tbody>
</table>

\(^{26}\) An entity which has overarching responsibility/accountability for the individual (for example, a religious organisation is notified of a relevant outcome for a religious representative).

\(^{27}\) This is a high level overview of the categories of work where a person may require screening. There are specific requirements that must be met before this category is applicable and may differ between jurisdictions.

\(^{28}\) The ACT system is a Working with Vulnerable People check and may include additional screening under other categories covering all vulnerable people.
The scope of screening under the blue card system is currently limited to screening people providing services to children in specified environments. The rationale underpinning the blue card system is that Government has a role in assisting parents to create safe environments for children where they are receiving certain types of services:
- mandatory services - services that children are required by law to attend (e.g. school, foster care, youth detention)
- essential services - services that are regulated by law (e.g. child care centres), and
- developmentally focused services - where Government has indicated it wants to support and foster children’s involvement in activities which are good for their development (e.g. sporting, spiritual, cultural and recreational activities).

These are often environments where because of the nature of the service being provided (e.g. school or child care) parents are unable to exercise parental responsibility to ensure the safety of their children. Other environments, such as amusement parks, where children receive services which are not essential and/or developmentally focused are not within the scope of the Queensland WWCC system as they have been seen to be areas in which parents can and should exercise parental responsibility.

It is the view of the Queensland Children’s Commission that limiting the scope of screening to mandatory, essential and developmentally focused services creates an appropriate balance of government investment and parental responsibility.

If a national system were to be implemented a decision in relation to the scope of screening would need to be consistently applied across jurisdictions.

Targeting of screening

Jurisdictions have different requirements which govern the circumstances in which a person will be required to undergo screening.

Table 5 outlines how screening is targeted across jurisdictions:

<table>
<thead>
<tr>
<th>Contact with a child is required</th>
<th>QLD</th>
<th>NSW</th>
<th>WA</th>
<th>VIC</th>
<th>NT</th>
<th>ACT</th>
<th>SA</th>
</tr>
</thead>
<tbody>
<tr>
<td>(face to face required unless in a specified role)</td>
<td>☑️</td>
<td>☑️</td>
<td>☑️</td>
<td>☑️</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(also includes electronic contact)</td>
<td>☑️</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Screening is undertaken even if the person is supervised</th>
<th>QLD</th>
<th>NSW</th>
<th>WA</th>
<th>VIC</th>
<th>NT</th>
<th>ACT</th>
<th>SA</th>
</tr>
</thead>
<tbody>
<tr>
<td>(face to face contact is required)</td>
<td>☑️</td>
<td>☑️</td>
<td>☑️</td>
<td>☑️</td>
<td>☑️</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(also includes access to records)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>☑️</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In Queensland individuals are generally required to be screened if they are providing services directed mainly towards children. This is a broader requirement than in some other jurisdictions, where screening is limited to circumstances where a person is having direct contact with a child and in some cases where that contact is unsupervised.

It is the view of the Queensland Children’s Commission that screening should be limited to individuals who are in a position of risk (i.e. individuals having regular contact with children, individuals in positions of trust and individuals who have access to sensitive information about children).

If a national system were to be implemented a consistent sets of guidelines would need to govern when a person requires screening.

29 Contact is defined to be limited to face to face contact.
30 Supervision only excludes a person from screening requirements if they are a volunteer in children’s services, a school, club, association or movement with significant child membership.
Exemptions from screening

• Attachment 1 provides an outline of the exemptions. It is evident that the range of exemptions differs widely across jurisdictions.
• Implementation of a national system would require a consistent approach to the exemptions to be applied.

The disqualification framework

• A critical strength of the Queensland WWCC is the disqualification framework which prohibits an individual from making application for a blue card if they:
  – have been convicted of a serious child-related sexual or pornography offence or child murder;
  – are subject to a child offender reporting order;
  – are subject to a child protection prohibition order;
  – are subject to a disqualification order made by a court.
• Queensland has a no-ticket, no-start regime for volunteers, but paid employees are permitted to start work while their application is processed.
• Table 6 outlines information about the disqualification frameworks which apply across jurisdictions.

<table>
<thead>
<tr>
<th>Table 6 – Disqualification frameworks</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Disqualification framework?</strong></td>
</tr>
<tr>
<td>Child-related sexual or pornography</td>
</tr>
<tr>
<td>offences</td>
</tr>
<tr>
<td>Murder of a child</td>
</tr>
<tr>
<td>Child-related sexual or pornography</td>
</tr>
<tr>
<td>offences</td>
</tr>
<tr>
<td>Child- related sexual offence</td>
</tr>
<tr>
<td>Class 1 convictions</td>
</tr>
<tr>
<td>Limited to sexual offences</td>
</tr>
<tr>
<td>by an adult against a child under</td>
</tr>
<tr>
<td>the age of 13 where the offence</td>
</tr>
<tr>
<td>involves sexual penetration</td>
</tr>
<tr>
<td>Child-related sexual or pornography</td>
</tr>
<tr>
<td>offences</td>
</tr>
<tr>
<td>Murder</td>
</tr>
<tr>
<td>Child Protection (Offender Reporting)</td>
</tr>
<tr>
<td>Act 2004</td>
</tr>
<tr>
<td>Child Protection (Offender Prohibition</td>
</tr>
<tr>
<td>Order) Act 2008, Disqualification</td>
</tr>
<tr>
<td>order issued by a court, or</td>
</tr>
<tr>
<td>Sexual offender order under the</td>
</tr>
<tr>
<td>Dangerous Prisoners (Sexual Offenders)</td>
</tr>
<tr>
<td>Act 2003</td>
</tr>
<tr>
<td>Registered sex offender under Sex</td>
</tr>
<tr>
<td>Offenders Registration Act 2004</td>
</tr>
<tr>
<td>Order under Serious Sex Offenders</td>
</tr>
<tr>
<td>Monitoring Act 2005, or</td>
</tr>
<tr>
<td>Subject to detention or supervision</td>
</tr>
<tr>
<td>order</td>
</tr>
<tr>
<td>Interim negatives?</td>
</tr>
<tr>
<td>No-ticket, no-start regime</td>
</tr>
<tr>
<td>For volunteers and self-employed</td>
</tr>
<tr>
<td>people (but employer can seek an</td>
</tr>
<tr>
<td>exemption by demonstrating appropriate</td>
</tr>
<tr>
<td>safeguards for children)</td>
</tr>
<tr>
<td>(unless supervised at all times</td>
</tr>
<tr>
<td>pending approval)</td>
</tr>
</tbody>
</table>

31 No automatic exclusion based on offence type
32 No automatic exclusion based on offence type
• As is demonstrated by the above table, there a number of models which operate across jurisdictions in order to manage the risks associated with a person with a serious criminal history entering a WWCC system.

• If a national system is implemented a uniform disqualification framework would need to be implemented.

**Range of information to be considered**

• In Queensland a person’s eligibility to hold a blue card is based on consideration of the following information:
  - national criminal history information including:
    - recorded and non-recorded convictions and spent convictions
    - outstanding charges and non-conviction charges
    - specified juvenile information
  - sexual offender prohibition orders and reporting obligations
  - disciplinary information from professional registration bodies, including teachers, the child care regulation body, and information about the cancellation of foster or kinship carer approvals, and
  - information about police investigations of a person for a serious child-related sexual offence that did not result in a charge (‘investigative information’).

• Further information may be sourced in order to properly assess a person’s eligibility to provide services to children. This includes:
  - information from the Queensland Office of the Director of Public Prosecutions
  - information from Queensland Corrective Services
  - information in relation to the person’s involvement with the child protection system (with consent), and
  - an assessment, in specific circumstances, of the person’s mental health.

• Table 7 outlines the range of information considered across jurisdictions.

<table>
<thead>
<tr>
<th>Table 7 – Information considered</th>
<th>QLD</th>
<th>NSW</th>
<th>WA</th>
<th>VIC</th>
<th>NT</th>
<th>ACT</th>
<th>SA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Unspent convictions</strong></td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
</tr>
<tr>
<td>National criminal history check, including:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Spent convictions</strong></td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
</tr>
<tr>
<td><strong>Charges</strong></td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
</tr>
<tr>
<td><strong>Juvenile history</strong></td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
</tr>
<tr>
<td><strong>Investigative information</strong></td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
</tr>
<tr>
<td><strong>Disciplinary or other information</strong></td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
</tr>
<tr>
<td>Disciplinary information for certain professionals</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Whether a person is the subject of child protection prohibition order, disqualification order, or specified reporting obligations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Findings of misconduct (sexual misconduct or serious physical assault of a child) by a reporting body and notifications made by the Ombudsman</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Department for Child Protection materials or disciplinary records</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other information that is considered relevant – child protection records, corrective services records or medical/psychiatric information</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disciplinary information (from Victorian Institute of Teaching and out of home care Suitability Panel)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information from any other source the Secretary thinks fit</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employment history – assessment of references and/or disciplinary proceedings</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Registration information</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>May seek information from entities to conduct a risk assessment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information from professional registration bodies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information held by the screening agency or other government agency and information for persons disciplined or precluded from working with children or vulnerable people</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

33 SA has access to South Australian spent convictions and will soon access spent convictions from other jurisdictions through ECHIPWC

34 Victoria does not consider non-conviction charges (for example, a charge that did not proceed or where a person was acquitted in certain circumstances).

35 Where there are triggering charges or convictions
Implementation of a nation system would require:
- consideration of the range of information it is desirable to consider as part of a WWCC application, and
- an assessment of the feasibility of accessing this information on a national basis, taking into account the capacity of relevant state-based organisations (such as registration bodies) to provide this information in relation to a national check.

The decision making framework

Table 8 outlines the test applied within different jurisdictions in assessing a WWCC application.

<table>
<thead>
<tr>
<th>Test considered when conducting assessment</th>
<th>QLD</th>
<th>NSW</th>
<th>WA</th>
<th>VIC</th>
<th>NT</th>
<th>ACT</th>
<th>SA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whether an 'exceptional case' has been demonstrated in which it would not harm the best interests of children OR Whether an 'exceptional case' has been demonstrated in which it would not be in the best interests of children</td>
<td>Whether the applicant or holder poses a risk to the safety of children</td>
<td>Whether it is in the best interests of children and whether children will be exposed to an unacceptable risk of harm through the applicant's child related work</td>
<td>Whether the person poses an unjustifiable risk to the safety of children or exploitation to children</td>
<td>Whether the person poses an unacceptable risk of harm to a vulnerable person</td>
<td>Whether the applicant or holder poses a risk to the safety of children</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The test in Queensland is arguably broader than in other jurisdictions, as it is not necessary for the Commissioner to be satisfied that a person does or does not pose an unacceptable risk before being satisfied that an exceptional case exists.

Whilst there are some differences across jurisdictions in terms of the details of their decision making frameworks, case study exercises conducted at various NOF meetings attended by WWCC jurisdictions demonstrate that the decisions are broadly consistent between the jurisdictions notwithstanding differences between the legislative and decision making frameworks.

If a national system were to be implemented a consistent evidence-based decision making framework would need to be developed, supported by relevant research.

The appeal framework

There is a basic level of consistency in terms of the appeal frameworks which apply across jurisdictions as is demonstrated in table 9 below.

---

36 The test to be applied depends on the type of police or disciplinary information the person has.

37 Victoria has advised that they also use the following tests in their decision making – 'appropriate to refuse' test; 'reasonable person' test; 'any type of child-related work' test; 'public interest' test; and 'exceptional circumstance' test.
### Table 9 – Appeal framework

<table>
<thead>
<tr>
<th>Right of appeal?</th>
<th>QLD</th>
<th>NSW</th>
<th>WA</th>
<th>VIC</th>
<th>NT</th>
<th>ACT</th>
<th>SA</th>
</tr>
</thead>
<tbody>
<tr>
<td>When can a person appeal?</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>• A person can appeal the decision to issue a negative notice or refusal to cancel a negative notice</td>
<td>• A person can appeal in any circumstance except if: – their interim bar has been in force less than 6 months, or – they have a bar due to ongoing proceedings relating to a pending disqualifying offence under Schedule 2, or – their bar is based on a conviction for child murder</td>
<td>• A person can appeal the decision to issue a negative notice or refusal to cancel a negative notice</td>
<td>• A person can appeal the decision to issue a negative notice</td>
<td>• A person can appeal the decision to not issue a clearance notice, to revoke a clearance notice or to place conditions on a clearance notice</td>
<td>• A person can appeal the issue of an interim refusal to register (proposed negative), the refusal of registration (negative notice), conditions of a conditional registration and the decision to suspend or cancel registration</td>
<td>• A person can apply for an internal review of their risk assessment decision</td>
<td>• If the person is unhappy with their internal review, they can seek assistance from the Ombudsman and the Human Rights Commission</td>
</tr>
</tbody>
</table>

| Appeal body | Queensland Civil and Administrative Tribunal | NSW Administrative Decisions Tribunal | Western Australia State Administrative Tribunal | Victorian Civil and Administrative Tribunal | Local Court of the Northern Territory | ACT Civil and Administrative Tribunal | Department of Communities and Social Inclusion (internal review) |

- A consistent appeal framework would need to be determined in order to implement a national system.

### The administrative model

It is evident that there are a number of other administrative issues to resolve in implementing a national system:

#### Validity period

- It is evident from a review of the requirements across jurisdictions that the validity period differs across states.

<table>
<thead>
<tr>
<th>Table 10 – The validity period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Validity period</td>
</tr>
<tr>
<td>Validity period</td>
</tr>
</tbody>
</table>

- A consistent approach to a renewal period would need to be determined in order to implement a national system.

#### Fee structure

- The fee structures for a WWCC also differ across jurisdictions:
  - some jurisdictions process volunteer applications for free, while others charge a nominal fee;
  - the fees charged differ across jurisdictions depending on the structure of the system and level of investment state governments have determined they are prepared to make.
Table 11 – The fee structures

<table>
<thead>
<tr>
<th>Fee for...</th>
<th>QLD</th>
<th>NSW</th>
<th>WA</th>
<th>VIC</th>
<th>NT</th>
<th>ACT</th>
<th>SA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Volunteers /Students</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Fee for...</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>QLD</td>
<td>$10.50</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NSW</td>
<td>$5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WA</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>VIC</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>NT</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>ACT</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>SA</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Paid employees /business operators</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>QLD</td>
<td>$76</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NSW</td>
<td>$80</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WA</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>VIC</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>NT</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>ACT</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>SA</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

- Implementation of a national system would require a consistent fee structure to be implemented.

**The basis of an application**

- Some jurisdictions, such as Queensland and Western Australia, limit applications to individuals who are engaged or proposed to be engaged by an organisation. In other jurisdictions, such as Victoria, an individual can make an application for a WWCC without the requirement to be linked with an organisation.

Table 12 – Who makes the application?

<table>
<thead>
<tr>
<th>Applicant or employer driven?</th>
<th>QLD</th>
<th>NSW</th>
<th>WA</th>
<th>VIC</th>
<th>NT</th>
<th>ACT</th>
<th>SA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant or employer driven?</td>
<td>Employer</td>
<td>Applicant</td>
<td>Applicant</td>
<td>Applicant</td>
<td>Applicant</td>
<td>Applicant</td>
<td>Employer</td>
</tr>
</tbody>
</table>

- A national system would require a uniform approach to when a person could make application for a WWCC. This would require detailed financial modelling of the potential costs.

**The outcome of a WWCC application**

- The outcome of a WWCC varies across jurisdictions, in some jurisdictions a physical card is issued (in some jurisdictions with a photograph), and in others a registration number is issued.

Table 13 - The model

<table>
<thead>
<tr>
<th>Positive outcome product</th>
<th>QLD</th>
<th>NSW</th>
<th>WA</th>
<th>VIC</th>
<th>NT</th>
<th>ACT</th>
<th>SA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Card issued (no photo)</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Electronic clearance number (no card)</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

- Implementation of a national scheme would require a consistent approach to issuance/non-issuance of a card and inclusion/non-inclusion of a photograph.

1.4.3. Outcomes for children and young people

The implementation of a national system will potentially impact on the safeguards for children and young people in the following ways:

- as can be seen from the above analysis, the operation of WWCC systems varies significantly across jurisdictions. A national system would require agreement being reached across a broad range of policy issues. This will inherently involve changes to current state based operations. While this could significantly improve safeguards for children in some states, there is also a risk that safeguards will be diminished in some systems in order to achieve national consistency. For mature
systems, such as Queensland, this is concerning and it may be difficult to garner the support of stakeholders

- there are potentially significant costs associated with the development of the infrastructure and frameworks to support a national system. When considering this in light of the fact that most states have an effective screening system in place, it is arguable that these resources could be better spent on investing in building awareness and educating the community about how to identify and manage risks for children in regulated environments. Research clearly identifies this as an effective mechanism to improve safeguards for children (see the response to Questions 13 and 14 on pages 56-60).

- depending on the model adopted, state and territory governments may need to adjust the level of investment required to support state based processing units under a national system, including possible contributions to fund an overarching national body. It is questionable whether investing additional funding on more bureaucracy will improve safeguards for children, or whether these funds could be more effectively spent on greater education and capacity building for organisations to develop and implement risk management strategies, and

- current state based WWCC operators have invested significant amounts of time and resources in building partnerships and engaging with key stakeholder groups. As a result, in mature systems like Queensland, stakeholders have invested heavily in the operation of the system and in some cases have spent significant resources building technology solutions to help them manage their obligations. Implementing a national system would be a significant change for stakeholder groups and require significant government investment in communication and change management strategies. In addition, stakeholders themselves would need to invest in complying with the new requirements. The implementation of a national system may therefore divert resources away from core activities (for example, complying with existing WWCC requirements, including risk management) which positively improve safeguards for children.

2. **Mutual Recognition**

An alternative option to a national system is the development of a system of mutual recognition for WWCCs.

2.1. **A proposed model**

The basic premise of most mutual recognition schemes is that once a person has been issued with a licence/clearance in one jurisdiction they can apply to be issued with a comparable licence/clearance in another jurisdiction.

There are already mutual recognition schemes operating within Queensland for the registration of teachers and the issuing of public passenger driver authorities which can be looked to as a guide of how a mutual recognition scheme for WWCCs may operate. Common aspects of these schemes are:

- Operation under the *Mutual Recognition (Qld) Act 1992* and the *Trans-Tasman Mutual Recognition (Qld) Act 2003*
- lodgement of an application for mutual recognition
- confirmation of a person’s identity
- payment of a fee to apply for mutual recognition
- an assessment of a person’s criminal history
- validation of the interstate registration/authority before the new registration/authority is granted in Queensland
- an examination of any special conditions imposed in relation to the registration/authority, and
- the issue of a Queensland product evidencing the registration/issue of an authority.

Accordingly, a national mutual recognition scheme for WWCCs would presumably operate on the basis that:

- a person would need to lodge an application for a WWCC clearance on the basis of their previous WWCC to be granted in the host jurisdiction
• a person would need to evidence their identity
• a person would pay a prescribed fee to apply for mutual recognition
• a person who has obtained a WWCC in one jurisdiction could be granted a WWCC clearance in another jurisdiction without further consideration of their eligibility to work with children, and
• validation of a WWCC obtained in another jurisdiction would occur and an ability to identify ongoing changes in the person’s status would be put in place.

2.2. Benefits of a mutual recognition system

There are a number of identifiable benefits to implementing a national WWCC mutual recognition scheme:

2.2.1. Minimising red-tape and reducing costs

Implementation of a mutual recognition scheme may minimise red-tape and costs by:
• allowing a person to be issued with a WWCC clearance on the basis of a previous WWCC in another state and minimising the need for them to be engaged in multiple assessment processes
• improve processing times by not requiring additional criminal history checks and assessments
• reducing the need to incur the costs associated with mutual criminal history checks across jurisdictions, and
• reducing the costs of multiple criminal history assessments across jurisdictions.

2.2.2. Achieving a basic level of national consistency while recognising the autonomy of the states

Adopting a system of mutual recognition would not require the same level of uniformity across jurisdictions in relation to such a wide range of matters and would leave more scope for jurisdictions to maintain aspects of their own current system if desired. For example, it would allow individual jurisdictions to continue to determine matters such as:
• the appropriate scope of their system within their own state (i.e. whether the system should include legislated risk management requirements)
• the scope of screening under the system (i.e. the range of occupations covered by screening requirements, the conditions to be met before screening is required or the circumstances in which an individual will be exempt from screening)
• the fee structure supporting the system
• the validity period of a check under the system
• the premise for an application (i.e. whether the person needs to be engaged with an organisation before they can apply), and
• the outcome of an application (i.e. whether or not a physical card (with or without a photo) is issued as an outcome of the application).

Importantly, it also enables states to continue to seamlessly consider state based information (such as relevant professional registration information, child protection offender reporting and prohibition requirements and child protection information) as part of WWCC assessments.

However, the Queensland Children’s Commission is of the view that there would need to be a set of minimum standards agreed to by participating states in order to ensure safeguards for children were maintained:
• a consistent disqualification framework so that individuals with the most serious types of criminal histories (i.e. convictions for child-related sex offences, child pornography and murder of a child) were excluded from each system and could not inadvertently gain access to a system where they would otherwise be excluded through a mutual recognition framework
• consideration of a consistent basic range of information (i.e. all convictions, charges and investigative information) in assessing a person’s eligibility to work with children
• a consistent decision making framework to ensure that individuals are appropriately identified as posing a risk of harm to children and excluded from the system, and
• consistent daily monitoring by each jurisdiction to ensure immediate action is taken to cancel, suspend or otherwise notify an organisation where necessary to ensure safeguards for children are maintained where a person has a relevant change in their eligibility status.

This is a significant benefit as it achieves a basic level of consistency of screening across jurisdictions which assists to build safeguards for children and young people.

2.3. Challenges of a mutual recognition scheme

The following are identified issues with implementation of a mutual recognition scheme:

• it achieves minimal reduction of red-tape for individuals as they are still required to make an application for mutual recognition
• while it achieves cost savings for organisations it does not minimise application fees for individuals who may still be required to pay a fee to process an application for mutual recognition, and
• the issuing of a WWCC authority on the basis of an application for mutual recognition infers that a WWCC has been carried out by the jurisdiction issuing the authority. This is concerning given that the jurisdiction will not have considered the same range of information as is usually assessed as part of a WWCC in that jurisdiction. It may mean that a person is issued with a WWCC clearance in their state that has not taken into account relevant information (for example disciplinary information or investigative information) within that jurisdiction.

3. National consistency and implementation of an exemption scheme

A further option identified by the Queensland Children’s Commission is to achieve national consistency across an identified set of core elements. This would support the current proposed implementation of an exemption scheme where a person is not issued with a WWCC clearance in the host jurisdiction but is simply exempt from screening in prescribed circumstances.

3.1. Background

3.1.1. Current exemptions in place across jurisdictions

Table 14 below outlines the current exemption arrangements in place across jurisdictions for interstate visitors.

<table>
<thead>
<tr>
<th>Table 14 – Exemptions for interstate visitors</th>
</tr>
</thead>
<tbody>
<tr>
<td>QLD</td>
</tr>
<tr>
<td><strong>Current exemptions for interstate workers</strong></td>
</tr>
<tr>
<td>• Volunteer guests of a school or recognised body – depends on frequency, size of event and whether contact is supervised</td>
</tr>
<tr>
<td>• Volunteers at a national or state event (sporting, cultural etc.) – depends on frequency, size of event and whether contact is supervised</td>
</tr>
<tr>
<td>• Paid employees working infrequently with</td>
</tr>
<tr>
<td><strong>Interstate visitors working at a one-off event, if this event is the only child-related work carried out in NSW that year and the work is no longer than 30 days.</strong></td>
</tr>
<tr>
<td><strong>Interstate visitors working at a one-off event, if this event is the only child-related work carried out in NSW that year and the work is no longer than 30 days.</strong></td>
</tr>
<tr>
<td><strong>Short term visitors if they are only working for 2 weeks after their initial arrival and for no more than 2 weeks in any 12 month period.</strong></td>
</tr>
<tr>
<td><strong>People who usually live and work in another state or territory and are visiting Victoria to engage in child-related work.</strong></td>
</tr>
<tr>
<td><strong>Volunteer visitors whose work is for 14 days or less per year.</strong></td>
</tr>
<tr>
<td><strong>Volunteers working for a short-term event or activity of less than 10 days duration or for no more than 1 day in any month.</strong></td>
</tr>
<tr>
<td><strong>People whose work is not more than 3 days in any 4-week period, or 7 days in any 12-month period.</strong></td>
</tr>
<tr>
<td><strong>People screened in another jurisdiction working in similar regulated activity for 28 days or less.</strong></td>
</tr>
</tbody>
</table>

\(^{34}\) WA have advised that drafting instructions are currently being finalised to implement the 30 day exemption for national events and tours

\(^{35}\) With the endorsement of the national exemptions – the exemption will operate in the following way - a person who does not reside in Victoria working with children at a one-off event or tour for less than 30 days in a calendar year will not need a Victorian WWCC and a visitor working with children on a regular basis but for less than 30 days in a calendar year must have a WWCC from their own state or territory but is not required to have a Victorian WWCC

\(^{36}\) NT have advised that the 30 day exemption is scheduled for implementation in late 2013

\(^{37}\) Note: These exemptions have been summarised for the purposes of this table and there may be additional conditions which apply before these exemptions can be utilised.
As outlined above, in October 2011 the Standing Council on Community, Housing and Disability Services agreed to introduce, by late 2012, national exemptions to WWCCs for paid employees and volunteers who are required to cross state or territory borders for work related purposes. The exemption was proposed to operate in circumstances where a person was providing services for up to 30 days in any 12 month period. The concept was that people could work/volunteer on a short term basis across jurisdictions without the need for a further check on the basis that they had already been checked in their own jurisdiction. Jurisdictions were supportive of this approach and some have already implemented schemes to give effect to the policy intent. Other jurisdictions have advised they are in the process of implementing the exemption.

Table 15 below sets out the status of implementation of this exemption across jurisdictions:

<table>
<thead>
<tr>
<th>Exemption implemented</th>
<th>QLD</th>
<th>NSW</th>
<th>WA</th>
<th>VIC</th>
<th>NT</th>
<th>SA</th>
<th>ACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exemptions for interstate workers 15</td>
<td></td>
<td></td>
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<tr>
<td>• Volunteer guests of a school or recognised body or a volunteer at a national or state event (sporting, cultural etc.) – depends on frequency, size of event and whether contact is supervised</td>
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<tr>
<td>• Paid employees working infrequently with children – depends on frequency</td>
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<td></td>
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<tr>
<td>• Interstate visitors working at one off event, if this event is only child-related work carried out in NSW that year and work is no longer than 30 days.</td>
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<tr>
<td>• Interstate visitors who hold an interstate WWCC and whose child related work in NSW is no more than 30 days in any calendar year.</td>
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<tr>
<td>• Health practitioners working in NSW from outside the state for up to 5 days in any 3 month period.</td>
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<tr>
<td>• Short term visitors if they are only working for 2 weeks after their initial arrival and for no more than 2 weeks in any 12 month period.</td>
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<tr>
<td>• A person from another state or territory who does not ordinarily live and engage in child-related work in Victoria but who wishes to do child-related work</td>
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<tr>
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<td>• People screened in another jurisdiction and working in similar regulated activity for 28 days or less.</td>
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<td></td>
</tr>
</tbody>
</table>

42 WA have advised that drafting instructions are currently finalising to implement the 30 day exemption for national events and tours.
43 Victoria has advised that with the endorsement of the national exemptions – the exemption will operate in the following way - a person who does not reside in Victoria working with children at a one-off event or tour for less than 30 days in a calendar year will not need a Victorian WWCC and a visitor working with children on a regular basis but for less than 30 days in a calendar year must have a WWCC from their own state or territory but is not required to have a Victorian WWCC.
44 NT have advised that the 30 day exemption is scheduled for implementation in late 2013
45 Note: These exemptions have been summarised for the purposes of this table and there may be additional conditions which apply before these exemptions can be utilised.
3.1.2. The Exchange of Criminal History Information for People Working with Children (ECHIPWC)

In November 2008, the Council of Australian Governments (COAG) agreed that, within 12 months, governments would take whatever legislative and administrative action necessary to expand the range the criminal history information they provide each other for child-related employment screening, to better protect children.\(^46\)

Implementation of this action item required the co-operation of WWCC operators, policy development units and various government agencies across jurisdictions. The model adopted to support implementation of the policy intent was:

- COAG agreement in principle to a framework to support the exchange of information (including the removal of any legislative or administrative barriers to the exchange)
- the endorsement by COAG of a set of implementation actions
- the establishment of a project implementation committee, led by the Queensland Department of the Premier and Cabinet, to prepare for the exchange, oversee implementation and evaluate and report to COAG on the outcomes of the trial
- the endorsement of an implement plan, and
- the development and signature by COAG Senior Officials of a Memorandum of Understanding to:
  - facilitate a 12 month trial of the information exchange based on a set of participation requirements with which jurisdictions need to comply
  - provide for an evaluation of the trial and a report to COAG on the outcomes of the trial, and
  - provide for the preparation of an intergovernmental agreement to govern the continuation of the exchange on a permanent basis following the trial period.

The trial period for the ECHIPWC scheme has concluded and jurisdictions are currently in the process of negotiating the intergovernmental agreement to provide for the operation of the scheme on a national basis.

The ECHIPWC scheme is a good example of how a project has been implemented successfully at a national level in respect of WWCC schemes. The model adopted for implementation of ECHIPWC achieved an appropriate balance between achieving a level of national consistency in relation to an identified problem and enabling jurisdictions to maintain autonomy over the operation of key aspects of their system.

3.2. A proposed model

It is the view of the Queensland Children’s Commission that the most appropriate response to the identified issue is to:

- achieve national consistency across a set of core elements of WWCC system to improve safeguards for children, and
- continue implementation of an exemption scheme to address the issues of cross-border activity.

3.2.1. Achieving national consistency

As is outlined above at Section A, paragraph 4.1 (at page 13) it is evident that there is basic consistency across jurisdictions in relation to some of the critical elements of a WWCC system, but more can be done to achieve greater consistency.

It is the view of the Queensland Children’s Commission that it is desirable to reach a nationally consistent approach in relation to the critical elements of a WWCC outlined at Section A, paragraph 4.1 (at page 13).

This will:

- improve safeguards for children and young people by achieving consistency across the most important components of a WWCC system

address issues of different risk management requirements across jurisdictions, thereby creating a simpler system for organisations and individuals to comply with, and provide a solid foundation for the introduction of an exemption scheme to address identified issues with cross-border activities and reduce red tape for individuals and organisations.

3.2.2. An exemption model

In 2012, the following exemption model was agreed by jurisdictions:

- **Exemption 1 - One-off national events and tours**
  Workers may work with children in a national event and/or a tour without needing a WWCC from the host state or territory, for one event or tour of 30 days or less duration per calendar year.

- **Exemption 2 - Regular interstate activities**
  Workers may work with children in interstate activities for up to 30 days, cumulatively in a calendar year without needing a WWCC from the host state or territory as long as they have a WWCC from their home state or territory.

The operation of these exemptions was dependent on the following criteria being met:

- the relevant organisation is a recognised body
- the relevant organisation is responsible for implementing the exemptions in accordance with statutory rules, including:
  - verifying the length of engagements
  - verifying home jurisdiction WWCCs (where applicable for Exemption 2)
- the relevant organisation developing a strategy to promote child safe workplaces
- the relevant organisation would require a WWCC for paid workers and volunteers not captured by Exemptions 1 or 2.

It is the view of the Queensland Children’s Commission that an exemption model as outlined above will significantly assist to alleviate issues associated with individuals carrying out cross-border activities as the available data indicates it is generally people engaged in short-term activities who are currently inconvenienced.

It is also the view of the Queensland Children’s Commission that the implementation of the exemption scheme should be:

- on a trial basis for 12 months, in order for the effectiveness of the exemption to be evaluated
- supported by a Memorandum of Understanding which specifies the intended policy framework and participation requirements for jurisdictions.

3.3. The benefits of achieving national consistency and implementing an exemption model

There are a number of identifiable benefits to working towards national consistency and implementing an exemption model:

- it improves safeguards for children by achieving national consistency across critical elements of a WWCC
- it represents a proportional response to the identified issues as:
  - it deals with the identified issues in relation to individuals engaging in short-term cross-border activities and achieves maximum red tape reduction for organisations and individuals as it does not require:
    - an application to be lodged in order for the exemption to apply
    - the payment of any fee (given that no additional checks or assessment are being undertaken and no application is being processed)
  - it does not require significant disruption to established state based systems in which significant investments have been made and which have the support and engagement of stakeholders
it does not require significant financial investment by states to implement allowing them to continue to direct resources into building community awareness and education in relation to the importance of risk management
- the Standing Council on Community, Housing and Disability Services has already agreed to the implementation of an exemption scheme and accordingly this indicates that states are supportive of this generally as an approach
- it achieves an appropriate balance between addressing the identified issues and allowing states to retain autonomy over the operation of their systems, and
- a similar approach of building on the strength of current state based systems has been used successfully to address identified issues at a national level in relation to the operation of WWCCs (for example, the ECHIPWC scheme).

3.4. The challenges of achieving national consistency and implementing an exemption model

The following are identified issues with achieving national consistency and the implementation of an exemption scheme:

- it does not achieve national consistency across the entire spectrum of issues relating to a WWCC, which may have been desirable if this were a greenfield project and significant resources had not been invested establishing state based WWCCs
- the model as proposed currently is really only suitable for implementation for a short-term exemption model as it is premised on a point in time validation of the WWCC rather than ongoing notifications of any cancellation or suspension of the WWCC clearance issued to the person. If it becomes apparent that a solution beyond a short term exemption was required alternative models for implementing an exemption scheme could be considered, including the issue of an actual exemption notice (similar to the system in place in Queensland for teachers and police officers47), and
- it relies on agreement being reached on the policy framework and minimum participation requirements as well as the implementation of legislative changes in some jurisdictions. This may not be a significant impediment given the willingness that states have previously exhibited to implement an exemption scheme.

3.5. Next steps

It is the view of the Queensland Children’s Commission that in order for this model to be effective it is imperative there is a strong governance framework put in place to support the work to be undertaken to achieve national consistency and progress and monitor implementation of the exemption scheme.

This would involve:

- a strong leadership role from the Commonwealth Government Department of Families, Housing Community Services and Indigenous Affairs
- COAG endorsement of a clear set of deliverables and associated timeframes, and
- the development of a Memorandum of Understanding (or similar document) to record the expectations and agreement reached by jurisdictions.

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47 In Queensland, teachers and police officers working in child-related employment outside of their professional duties are required to notify the Queensland Children’s Commission and obtain an exemption card e.g. a registered teacher who works as a children’s soccer coach for a sporting club. This enables the Queensland Children’s Commission to notify any relevant employing organisations of any changes to their WWCC eligibility. To process an exemption, the Queensland Children’s Commission exchanges information with the Queensland College of Teachers and Queensland Police Service to verify the person’s status as a teacher or police officer and also, to ensure that the Queensland Children’s Commission is notified if the person ceases to be a teacher or police officer.
Section D – Response to Issues Paper

1. Should there be a national WWCC?

1.1 Relevant factors to consider

- It is the view of the Queensland Children’s Commission that in assessing the feasibility of a national WWCC consideration should be given to:
  - identifying the issues underpinning the call for a national WWCC
  - the data available to provide context to the size and extent of the identified issues (and if necessary undertaking further survey work to better determine the size and extent of the issue)
  - the desirability of implementing a national WWCC system given:
    - the impacts on safeguards for children and young people
    - the investment which has been made in current state based WWCC systems
    - the costs of developing a national system
    - the current disparity of policy frameworks which form the basis of state based WWCCs
    - the investment by stakeholders in the current state based WWCC systems
  - the alternative options available to address the identified issues (including a mutual recognition or exemption scheme)
  - an assessment of the benefits and challenges associated with all identified options (including a national WWCC system), and
  - the governance framework necessary to support the development and implementation of the preferred option.

1.2 The issues

- There are two identified issues in relation to national consistency:
  - the safety of children and young people is not being safeguarded to a consistent level across jurisdictions, and
  - individuals and organisations operating across borders are subject to multiple checks and multiple system of regulation.

1.3 The recommended solution

- It is the view of the Queensland Children’s Commission that the available data does not indicate that the issue is so widespread that implementation of a national system can be justified in light of:
  - the potential costs associated with implementing a national system, including necessary infrastructure development to support a national system
  - the investment already made by state governments to implement state based WWCC schemes
  - the investment by stakeholders in engaging with and implementing state based WWCC schemes
  - the disparity of the policy frameworks underpinning WWCCs operating across jurisdictions, and the large range of matters which would need to be negotiated in order to implement a national system (with the effect of potentially diminishing safeguards embedded in existing stated based WWCC schemes), and
  - the fact that many current WWCC schemes gather a range of information from state based sources which would be extremely challenging to replicate at a national level.

- It is the view of the Queensland Children’s Commission that the preferable approach is to achieve national consistency across the core elements of a WWCC system and implement a consistent exemption scheme for the reasons set out above in at Section C, paragraph 3.3 (page 32).

2. What features should be included in any national scheme?

If it were considered desirable to implement a national WWCC scheme, the following features should be included:
2.1 **Risk management**
- It is the view of the Queensland Children’s Commission that a WWCC system without a legislated requirement for organisations to develop, implement and regularly review a risk management strategy would not adequately manage risks of harm for children and young people.
- As a minimum a risk management strategy should include:
  - policies for identifying and reporting disclosures or suspicions of harm
  - an employee register to assist in keeping track of all WWCC clearance holders in an organisation
  - a code of conduct
  - procedures for recruitment, management and training of staff
  - procedures for managing breaches of the risk management strategy
  - risk management plans for high-risk activities and special events
  - procedures for complying with any applicable WWCC legislation
- See the response to Questions 13 and 14 (at pages 56-60) for more information about the importance of risk management.

2.2 **Daily monitoring and ongoing criminal history assessments**
- It is the view of the Queensland Children’s Commissioner that daily monitoring and associated ongoing assessment of a person’s police and disciplinary information is an essential component of a WWCC system in order to provide sufficient safeguards for children and young people.
- There have been over 1850 cases in which the Queensland Children’s Commission has removed a high risk individual from the blue card system as a result of a change in criminal history.
- The below de-identified case examples demonstrate the importance of ongoing criminal history monitoring and assessments.

**Applicant A**
An applicant was an adult household member in a home where foster/kinship care was being provided to children. The Queensland Children’s Commission was subsequently notified the applicant had been charged with a number of child-related sexual offences including maintaining an unlawful sexual relationship with a child, unlawful sodomy with a person under 18 years, indecent treatment of children under 16 years and carnal knowledge of children under 16 years. The Queensland Children’s Commission immediately suspended the applicant’s blue card. The charges were later finalised and the applicant was convicted and sentenced to imprisonment. As the applicant was a relevant disqualified person, the Queensland Children’s Commission was required to cancel their positive notice and blue card and issue them with a negative notice. The Department of Communities, Child Safety and Disability Services was notified of the decision.

**Applicant B**
An applicant was a Priest and had been issued with a blue card on the basis of having no criminal or disciplinary information. The Queensland Children’s Commission was subsequently notified the applicant had been charged with nine counts of indecent dealing of boys and immediately suspended the applicant’s blue card. The charges were later finalised and the applicant was convicted and sentenced to imprisonment. As the applicant was a relevant disqualified person, the Queensland Children’s Commission was required to cancel their positive notice and blue card and issue them with a negative notice. The applicant’s religious organisation was notified of the decision.
Applicant C
An applicant was a Priest and was issued with a blue card on the basis of having no criminal or disciplinary information. The Commission was subsequently notified that the applicant had been charged with making and possessing child exploitation material. The applicant’s blue card was immediately suspended. The applicant’s religious organisation was notified of the decision.

Applicant D
An applicant was an adult household member in a home where foster/kinship care was being provided to children. The applicant was issued with a blue card on the basis of having no criminal or disciplinary information. The Queensland Children’s Commission was subsequently notified the applicant had been charged with indecent treatment of children under 16 (expose) child under 12 years and indecent treatment of children under 16 (expose) and indecent in any place with intent to insult or offend any person. The ages of the complainant children were 10 and 12 years respectively. In relation to the indecent treatment charges, a nolle prosequi was entered; however, the applicant was convicted and sentenced to 6 months imprisonment for the indecent act offence. The Queensland Children’s Commission was satisfied that there was an exceptional case and cancelled the suspended positive notice and issued a negative notice. The Department of Communities, Child Safety and Disability Services was notified of the decision.

- The implementation of a national WWCC would require the development of a national daily monitoring system to monitor applicants and clearance holders to ensure that in the event of a change to the person’s criminal history a reassessment could be undertaken of the person’s eligibility to hold a clearance and appropriate action could be taken.

2.3 A requirement for validation and registration of an organisation as a notifiable entity
- It is the view of the Queensland Children’s Commission that the validation of a WWCC and the ability to notify an organisation in the event of a change in the person’s eligibility is a critical component of a WWCC system. This should extend not only to employers of the person but also to governing bodies (for example, being able to notify the religious organisation a priest is associated with).
- The above case examples at paragraph 2.2 demonstrate the importance of this process.

2.4 A disqualification framework
- A national WWCC should automatically disqualify a person from holding a WWCC if they:
  - have been convicted of a serious child-related sexual or pornography offence or child murder
  - are subject to a child offender reporting order in any state
  - are subject to a child protection prohibition order in any state, and
  - are subject to a disqualification order made by a court.
- This ensures that individuals with the most serious types of criminal histories are excluded from obtaining a WWCC.

2.5 Broad range of information to be considered
- It is the view of the Queensland Children’s Commission that a broad range of information should be considered as part of a WWCC.
- See the response to Question 9 on page 42 for a comprehensive outline of the information which should be considered as part of a WWCC.

2.6 The decision making framework
- A clear decision making framework would need to be articulated in legislation.
In addition, a national decision making guide would need to be implemented to ensure consistency of decision making. Such guide should be informed by a sound evidence base providing for consideration of factors relevant to an employment screening risk assessment process, such as offence typologies, significance of particular offending to working with children, overall criminal history and patterns of offending, age of the person at relevant times, commission of the most recent offence or alleged offence, rehabilitation etc.

2.7 An appeal/review
- It is important to have an appeal/review mechanism as part of any WWCC scheme.
- See the response to Question 10 on page 49 for a comprehensive outline of the critical components of the appeal/review process.

2.8 A renewal period
- It is essential that a WWCC is subject to a renewal period.
- See the response to Question 4 below for an outline of the relevant issues in relation to renewal periods.

2.9 A strong compliance and enforcement framework
- A national WWCC should also include a strong compliance and enforcement framework that:
  - imposes serious penalties for non-compliance
  - includes education and capacity building to assist organisations and individuals to achieve compliance and identify and manage risks of harm to children within their organisation
  - monitors and audits organisations’ compliance with the WWCC requirements.

2.10 Unconditional working with children checks
- Any national WWCC should be unconditional. This enables a WWCC to be easily transferable across all categories of child-related work. There should not be any legislative provisions allowing clearances to be issued subject to conditions. For example, conditions that the person’s contact with children be supervised or that the clearance is only valid for a certain type of employment or suitable for working with children above or below a certain age. Conditional approval is too hard to supervise effectively with the result that it makes it easier for people who pose a risk of harm to have access to children.

3. If there is no national scheme, should there be minimum requirements for each state and territory?

3.1 This is really dependent upon any alternative model identified to resolve the current issues associated with individuals requiring multiple checks across jurisdictions.

3.2 The minimum requirements for an exemption scheme are set out in Section B, paragraph 4.1 (at page 13).

4. How long should any clearance be granted for?

4.1 It is important that a WWCC clearance is valid for a finite period. Having an end date and a requirement to go through a renewal process, if the clearance is still required, is important for the following reasons:
- the records of the screening unit are able to be updated with current contact and employment details of WWCC applicants – this enables action to be taken quickly in the event of a change in police information, including notification of the change to all relevant employers and governing bodies where there is an identified risk to children
- individuals who no longer require a WWCC are removed from this system ensuring that ongoing monitoring of criminal history of individuals is only carried out for those who are continuing to provide regulated services to children. If there were no requirement for a renewal period indefinite monitoring of a person’s criminal history would need to be
undertaken, unless the WWCC operator was advised the person was no longer engaged in regulated activities. This has privacy and resource implications

- it provides an opportunity to undertake a fresh national criminal history check. Currently this is essential as daily criminal history monitoring is not available on a national basis, so a renewal provides the only opportunity to identify any changes to inter-state criminal history. A review of changes to interstate criminal history indicated that in a very small number of cases, the Queensland Children’s Commission was provided with interstate criminal history on renewal (relating to offences committed while the person was a blue card holder) which then resulted in the person being issued with a negative notice. Examples of the types of interstate offences that were revealed on renewal include child sex offences, child pornography offences and violent offending. The below de-identified case examples demonstrate circumstances in which a change in criminal history has been detected on renewal:

<table>
<thead>
<tr>
<th>Applicant A</th>
</tr>
</thead>
<tbody>
<tr>
<td>An applicant was issued with a blue card on the basis of having no criminal or disciplinary information. The applicant’s blue card expired and they then applied to renew their blue card. A new national police check conducted during the renewal process revealed that the applicant had been charged with child-related sexual offences in another state. The offences included carnal knowledge of a girl under 10 years and gross indecency with a girl under 16 years. As Queensland Children’s Commission received this information in relation to a current application and the applicant was not a current holder of a blue card, the Queensland Children’s Commission withdrew the applicant’s renewal application. The applicant was self-employed so the Commission referred the matter to Queensland Police Service for action to ensure the applicant ceased activities and was not continuing to run a regulated business.</td>
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</table>

<table>
<thead>
<tr>
<th>Applicant B</th>
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</thead>
<tbody>
<tr>
<td>An applicant was issued with a blue card on the basis of no criminal or disciplinary information. The applicant applied to renew their blue card. A new national police check conducted during the renewal process revealed that the applicant had been charged with indecent dealing with a girl under 13 years in another state. The applicant had been arrested in relation to these charges while they were a current blue card holder. The Queensland Children’s Commission immediately suspended the applicant’s blue card. The Queensland Children’s Commission later cancelled the applicant’s blue card. The applicant’s employer was notified of the decision.</td>
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</tbody>
</table>

4.2 The current validity period in Queensland is 3 years. In other jurisdictions it ranges from 2-5 years. The Queensland Children’s Commission considered that a 3 year renewal period is appropriate for the following reasons:

- a longer renewal period requires a corresponding fee structure to support the administration of the system. Unless governments are prepared to increase their investment, a 5 year renewal period requires the imposition of a higher fee for those paying for their WWCC in order to support the operation of the system (as revenue is not being received as regularly). A shorter renewal period allows for a more reasonable fee structure in light of the fact that a large proportion of individuals may not renew their WWCC. For example, in Queensland 40% of people do not renew their blue card after its 3 year expiry. This means that 40% of people may pay a higher fee to support a 5 year system when they could pay a lower fee for a shorter period of time

- given that a high proportion of individuals may not renew their WWCC a shorter renewal period ensures that criminal history monitoring only occurs where it is necessary and that the costs associated with ongoing monitoring (and subsequent reassessments of a person’s criminal history) are not incurred unnecessarily
• if the application process is streamlined and automated, a renewal need not be a lengthy or
time consuming process. The Queensland Children’s Commission is currently exploring
opportunities to streamline and automate the blue card application process, including
renewals.

5. **Should a person be able to commence work before the check is completed?**

5.1 Whether or not a person should be able to commence work before a check is completed is really
a question of whether the risk of an inappropriate person gaining access to children is being
managed appropriately.

5.2 In Queensland a person is able to commence paid work while their application is being processed,
but a volunteer is subject to a “no-ticket, no-start regime”. This system prevents a person from
being financially disadvantaged while their application is being processed. However this is based
on the following established safeguards to protect children:

- a legislated requirement for organisations to develop and implement child focused risk
management strategies which include appropriate recruitment and selection processes,
training on child protection issues, codes of conduct and policies and procedures for handling
suspicions or disclosures of harm
- a disqualification framework which prevents specific high individuals from applying for a blue
card and therefore excludes them from working while their application is being processed, and
- appropriate legislative provisions enabling immediate action to be taken where there is
concerning information on the person’s criminal history or a person has a change in criminal
history while their application is being processed.

5.3 In other states, the risk of a person working while their application is being processed is managed
via the ability to issue an interim negative notice.

5.4 The Queensland Children’s Commission is of the view that there are a number of different models
which could be implemented to appropriately manage risks of harm for children. For example, a
viable alternative is the implementation of a no-ticket, no-start regime for all applicants. This
means that until a person’s check and assessment is complete they are unable to provide services
to children. This is the most preferable model for the following reasons:

- it ensures safeguards for children by preventing individuals from providing services to children
until they have been subject to an appropriate check and assessment
- it prevents the circumstance arising where a person has been providing services to children for
a period of time and is then removed from the environment on the basis they pose a risk of
harm, and
- it prevents the situation where a person is issued with an interim negative notice and removed
from employment and subsequently issued with a WWCC.

5.5 However, this model is reliant on short processing timeframes to ensure the people are not
prevented from earning income for unreasonable amounts of time while their application is being
processed. With a streamlined and automated system it would be possible to achieve short
processing times which could facilitate the introduction of a no-ticket, no-start regime for
everyone.

6. **How should child-related work be defined?**

6.1 The scope of the Queensland WWCC system is currently limited to screening people providing
services to children in specified environments. The rationale underpinning the Queensland
system is that Government has a role in assisting parents to create safe environments for children
where they are receiving certain types of services:

- mandatory services - services that children are required by law to attend (for example school,
foster care, youth detention)
essential services - services that are regulated by law (for example, child care centres), and
developmentally focused services - where government has indicated it wants to support and foster children’s involvement in activities which are good for their development (for example sporting, spiritual, cultural and recreational activities).

6.2 These are often environments where because of the nature of the service being provided (e.g. school or child care) parents are unable to exercise parental responsibility to ensure the safety of their children.

6.3 Other environments, such as amusement parks, where children receive services which are not essential and/or developmentally focused are not within the scope of the blue card system as they have been seen to be areas in which parents can and should exercise parental responsibility.

6.4 The Queensland Children’s Commission is of the view that limiting screening to individuals providing services within mandatory, essential and developmentally focused environments achieves an appropriate rationale for screening and an appropriate balance of government assistance with parental responsibility. In Queensland, WWCCs were never intended to substitute for appropriate parental responsibility and supervision.

7. **How should child-related sectors and roles be defined?**

7.1 In determining whether or not a role is child-related the primary consideration should be the assessment of the risk that a person in the particular role could pose to a child.

7.2 It is the view of the Queensland Children’s Commission that the following should be considered child-related roles where screening should be required:

- individuals who are in a position to pose a direct risk of harm to a child
- individuals who have access to sensitive information in relation to a child, and
- individuals who are engaged in decision making capacities and have the ability to determine matters relevant to the safety and wellbeing of children.

7.3 In determining the scope of roles captured under the first category consideration should be given to the frequency and type of contact a person is having with a child. Screening should extend to individuals who are having regular physical, oral and written contact, but not incidental contact.

7.4 The Queensland Children’s Commission is of the view that where persons are engaged in professional roles which involve a rigorous screening regime such as doctors and teachers, it is not necessary to duplicate the screening process by requiring a WWCC where the person is carrying out the duties of that role and are being monitored by the relevant professional body.

8. **Are current exemptions for a WWCC adequate or appropriate – in particular, should a WWCC apply to those:**

a. living in the homes of children in out-of-home care?

b. parent volunteers?

8.1 Attachment 1 provides a summary of the exemptions which apply across jurisdictions.

8.2 As demonstrated by Attachment 1 there are a number of consistent exemptions across jurisdictions, but there are also significant differences in the policy framework related to exemptions.

8.3 Generally, it is the Queensland Children Commission’s view that it is appropriate for an exemption to be put in place where:

- there is adequate comparable screening undertaken by another entity, and
- the contact is of short term duration, and the risks are adequately managed by other mechanisms.
8.4 **Exemption for individuals living in the home of children in out-of-home care**

- Children in out of home care represent a highly vulnerable and high priority subset of children. The Queensland Children’s Commission is of the view that it is imperative that appropriate checks, including criminal history and child protection checks, are carried out to determine the suitability of carers and those residing in their home.

- In Queensland adults living in the home of children in out-of-home care require a blue card. Their inclusion in the blue card screening regime in 2006-07 has ensured that the adult household members are subject to the same independent, robust, evidence based and child-focused employment screening assessments as those undertaken for individuals providing other essential and developmentally focused services to children and young people.

- The following information demonstrates a strong evidence base for this view:
  - since 2006-07, 26.97% of child protection applications\(^\text{48}\) have returned criminal history information, compared to all applications in that period, for which 10.83% returned criminal history information
  - while child protection applications make up only 3.7% of total applications processed by Queensland Children’s Commission, of the 2,785 negative notices issued since 2006-07, 301 (10.8%) were issued to child protection applicants
  - of all negative notices issued since 2006-07, the proportion of child protection applicants being issued with a negative notice (0.56%) is three times higher than that for all applicants (0.17%)
  - since 2006-07:
    - 57 negative notices have been issued to carer applicants on initial application. Of these, 78.95% related to offences of violence or drug related offending, 12.28% related to child-sex offences and 5.26% related to child-related offences of violence;
    - 75 negative notices have been issued to adult members of foster and kinship carer homes. Of these, 92% related to offences of violence or drug related offending, 5.33% related to child-sex offences and 2.67% related to child-related offences of violence;
    - 89 carers have had their blue card cancelled or suspended. Of these, 44.94% related to offences of violence or drug related offending, 30.34% related to child-sex offences, 3.37% related to child pornography or internet offences and 2.25% related to child-related offences of violence, and
    - 58 adult members have had their blue card cancelled or suspended. Of these, 70.69% related to offences of violence or drug related offending, 22.41% related to child-sex offences, and 1.72% related to child-related offences of violence.

- As the figures above demonstrate, more adult members than carers were issued with negative notices. A significant number also had their blue cards cancelled or suspended. Of concern is the fact that 22.41% of these cancellations and suspensions related to child-related sex offences.

8.5 **Should a WWCC apply to parent volunteers?**

- Currently in Queensland volunteer parents are exempt from the requirement to obtain a blue card when they are providing services to children in some essential and developmentally focused service environments. This exemption is based on the rationale that the involvement of parents in their children’s lives is critical and should not be discouraged.

- However, there are a number of identified issues with the current volunteer parent exemption:

\(^{48}\)This includes foster and kinship carers and their adult household members and people working in licensed care services.
- if a person has been issued with a negative notice or their blue card has been suspended because they have been screened in their capacity as a paid employee (or other capacity unrelated to their volunteer parent duties) there is nothing to prohibit them continuing to provide services as a volunteer parent
- many organisations in the sporting and recreation industry have reported to the Queensland Children’s Commission that they find the exemption difficult to apply in the context of their service environment, and are of the view that it does not adequately manage risks within their service environment, and
- it provides an opportunity for a person who may otherwise be excluded from the system to access children in environments where Government is seeking to promote and create safeguards.

- When consulted, some stakeholders have provided advice to the Queensland Children’s Commission that they do not consider the exemption to pose a risk of harm to children and young people as risk management strategy sufficiently manages the risks associated with a volunteer parent. However, these stakeholders are in the minority, and the majority of stakeholders consulted by the Queensland Children’s Commission believe the volunteer parent exemption created too much risk for children and young people.
- As an advocate for children and in the interests of ensuring a sufficiently robust screening system, the Queensland Children’s Commission considers that this group should be subject to a WWCC when undertaking a role where screening would otherwise be required.

9. What records should be included in the check? For example, should the check include juvenile records?

9.1 A common criticism of WWCC systems is that the absence of a criminal history does not mean that a person will not offend in the future. Research is often cited that most child-sex offences are committed by people without prior histories.

9.2 An extensive and robust information base (not limited to criminal histories) for the assessment process will mitigate this issue. The information base of a WWCC assessment process should be sufficiently broad to provide a satisfactory level of confidence in determining the level of risk a person may pose to children and should be complemented by ongoing monitoring of that individual’s police and disciplinary information.

9.3 The following information is considered as part of a blue card assessment and it is the view of the Queensland Children’s Commission that a WWCC should include consideration of such information:

9.4 Convictions:
- All conviction information should be included in a WWCC assessment, including spent convictions and circumstances where a conviction was not recorded.
- The following de-identified case examples demonstrate the importance of considering such information.

**Applicant A**

An applicant was issued with a blue card on the basis of having no criminal or disciplinary information. On renewal and following implementation of the ECHIPWC scheme in 2010 allowing the Queensland Children’s Commission access to interstate spent convictions, the Queensland Children’s Commission became aware that the applicant had a discontinued charge for child abuse and multiple spent convictions for assault. Both charges arose from the same incident. The complainant children were aged 9, 10 and 11 years old respectively. The assault convictions related to the applicant smacking and caning their children for sexual gratification. The Queensland Children’s Commission was not satisfied that the applicant demonstrated an exceptional case and issued a negative notice.
Applicant B
The applicant lodged an eligibility declaration application. The applicant’s criminal history contained a conviction for indecently dealing with a child under 12 years and discontinued charges of rape and indecent dealing with a child under 12 years. At the time of the offence, the applicant was aged 20 years and the complainant child was aged 6 years. The applicant resided in the same area as the complainant’s family. The applicant indecently dealt with the child during a local community event. The applicant was convicted but no conviction was recorded. The applicant was sentenced to probation with conditions to undergo medical and psychiatric and psychological treatment as directed. The discontinued charges relate to the same child for which the applicant was charged from the bench during committal proceedings. These charges were discontinued following a plea of guilty to the initial indecent dealing charge. The Queensland Children’s Commission was not satisfied there was an exceptional case and the application was refused.

Applicant C
The applicant lodged an eligibility declaration application. The applicant’s criminal history contained a conviction for indecent dealing with a girl under the age of 16 years. At the time of the offence, the applicant was 42 years old and the complainant child was 14 years old. The applicant was the parent of the complainant child. The police material referred to a similar act committed on the child by the applicant three years prior, as well as other regular acts of sexual abuse committed on almost a daily basis. The applicant explained that their behaviour arose out of frustration and not being able to have normal sexual relations with their spouse. The applicant was convicted and sentenced to a good behaviour bond, with no conviction recorded. The Queensland Children’s Commission was not satisfied there was an exceptional case and the application was refused.

9.5 Charges and Investigative Information:

- All charge information should be included in a WWCC assessment, including pending charges, charges that have been withdrawn or subject to a nolle prosequi, a no true bill, a submission of no evidence to offer or any other circumstance in which a person is dealt with by a court which does not result in a conviction.

- In Queensland the Police Commissioner may provide information in relation to police investigations into allegations of serious child-related sexual offences for the purpose of a WWCC assessment, even if no charges were laid (if the matter was fully investigated and the only reason it did not result in a charge was because the child was unwilling or unable to proceed with the matter).

- The rationale underpinning the inclusion of charge information and investigative information is that abuse cases are among the most difficult criminal cases to investigate and prosecute. Delayed reporting, lack of forensic evidence, the desire to protect child witnesses from the trauma of court processes, issues relating to the child’s credibility and a multitude of evidentiary issues can create inherent difficulties in successfully prosecuting offenders.

- The following de-identified case examples demonstrate the importance of considering such information:

Applicant A
An applicant was issued with a positive notice at a time when the Queensland Children’s Commission was aware that the applicant had a single conviction for assault occasioning actual bodily harm. The Queensland Children’s Commission was subsequently notified of new investigative information as the applicant was a suspect in an investigation of the indecent treatment of a child and the rape of a child. The child was 13 years of age and was known to the applicant. When questioned by police, the
applicant had some recollection of committing the alleged offences; however, could not recall particular details due to being intoxicated at the time. The child subsequently withdrew their complaint before the applicant could be formally charged. The Queensland Children’s Commission was satisfied that there was an exceptional case and cancelled the applicant’s positive notice and issued a negative notice.

**Applicant B**

An applicant was issued with a blue card on the basis of having no criminal or disciplinary information. The Queensland Children’s Commission was subsequently notified of investigative information as the applicant was a suspect in an investigation of the indecent treatment of a child aged 13-15 years old. The applicant was a family friend and was considered a mentor for the child. It was also alleged that the applicant gave the child cannabis prior to the sexual acts. The police investigator believed there was sufficient evidence to commence court proceedings; however, the complaint was withdrawn. The Queensland Children’s Commission was satisfied that there was an exceptional case and cancelled the applicant’s positive notice and issued a negative notice.

**Applicant C**

An applicant was issued with a blue card on the basis on having minor criminal history. The Queensland Children’s Commission was subsequently notified of investigative information as the applicant was a suspect in the investigation of an alleged rape and indecent treatment of a 14 year old. The complainant child was intellectually impaired. The applicant was 55 years old at the time of the alleged offence. The applicant was known to the child and it was alleged that the offence was committed in company with two other adults. Charges were not laid against the applicant solely because of concerns relating to the welfare of the complainant child and not because of any identified deficiencies in the evidence against the applicant. The Queensland Children’s Commission was satisfied that there was an exceptional case and cancelled the applicant’s positive notice and issued a negative notice. The Queensland Children’s Commissioner’s decision to issue a negative notice was upheld by the Children’s Services Tribunal (the predecessor to QCAT).

9.6 **Juvenile criminal history information:**

- In Queensland, juvenile criminal history information is considered as part of the WWCC assessment process.

- Research confirms that the problem of child-related sexual offending is not restricted to adult offenders. Children make up a significant proportion of sexual offenders. Adolescent males are responsible for approximately one fifth of adult female rapes and approximately one third to half of child-related sexual assaults.49

- One study found that approximately 31% of all offenders commence offending before 17 years of age.50

- In relation to sexual offending by juveniles, most juveniles who commit a sexual offence will cease this type of offending by the time they reach adulthood, and the recidivism rate for sexual offending as an adult is approximately 9%. The recidivism rate for non-sexual offences is significantly higher at approximately 61%.51

- The relatively low rate of sexual offence recidivism in juvenile sex offenders may be partly influenced by the fact they are still developing patterns of sexual behaviour – distorted thoughts, beliefs and behaviours are less deeply ingrained and more susceptible to change.


The early detection and treatment of juvenile sex offenders is therefore a significant factor in reducing the risk of recidivism.\footnote{Richards, K. (2011).}

- While the risk of sexual offence recidivism is relatively low, this risk should be balanced against the seriousness and impact of such re-offending on a child victim’s life.
- Accordingly, the Queensland Children’s Commission considers that it is still essential that juvenile history is assessed in conjunction with adult offending as part of the decision making framework.
- This is to ensure that the decision maker can make a more informed assessment as to whether a person with concerning juvenile criminal history has put appropriate protective mechanisms in place to reduce the risk of recidivism.
- Where the offence of concern identified in an applicant’s police or other information is identified as having been committed as a juvenile, the Queensland Children’s Commission allows due consideration to the following factors:
  - insight into offending and consequences for victim/others
  - desistance from offending
  - demonstration of moving away from deviant peers versus continued association with other offenders
  - family support and stability, and
  - education and/or employment opportunities/social bonds
- The following de-identified case examples demonstrate the importance of considering this type of information to ensure a holistic assessment of the person’s eligibility to work with children is undertaken:

<table>
<thead>
<tr>
<th>Applicant A</th>
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<tbody>
<tr>
<td>An applicant applied for an eligibility declaration. As a juvenile, the applicant was convicted of two counts of ‘indecent dealing’. In relation to the first count, the applicant was placed under the care and supervision of the Department of Children Services for 12 months. In relation to the second count, the applicant was placed under care and control for 2 years and recommended to be detained for 2 months. The applicant was 13 and 15 years of age respectively at the time of the offences. The complainant children were 2 and 3 years of age respectively.</td>
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</table>

The applicant commenced offending at the age of 13 years of age and continued offending into adulthood. The applicant’s criminal history was extensive and demonstrated an escalating pattern of violent behaviour over a period of approximately 22 years. He had convictions for 19 extremely violent offences. The applicant’s eligibility application was refused.

<table>
<thead>
<tr>
<th>Applicant B</th>
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<tbody>
<tr>
<td>An applicant applied for an eligibility declaration. As a juvenile, the applicant was convicted of ‘indecent treatment of children under 12 years’. At the time of the offence, the applicant was 14 years old and the complainant child was 14 months old. The applicant was indefinitely referred to a youth justice conference. The applicant proceeded to offend as an adult and at the time of assessing their application, the applicant was facing multiple charges including a charge of ‘arson’. The applicant’s eligibility application was refused.</td>
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<tr>
<th>Applicant C</th>
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<tbody>
<tr>
<td>The applicant applied for a blue card and during the national police information check, it was determined that the applicant had a number of convictions for offences of violence against children and adults and multiple convictions for drug related offending,</td>
</tr>
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\footnote{Richards, K. (2011).}
including supplying heroin to an adult in the presence of a child.

The applicant had an extensive criminal history spanning 11 years. The applicant commenced offending as a 13 year old and continued offending into adulthood. The applicant’s criminal history demonstrated a pattern of violent, aggressive, threatening and abusive behaviour. The Queensland Children’s Commission was satisfied that there was an exceptional case and issued a negative notice.

9.7 **Disciplinary information:**

- In Queensland disciplinary information held by certain professional organisations (oversighting teachers, child care licensees and foster carers) is considered as part of the WWCC.
- In the Queensland Children’s Commission’s experience this type of information can be essential to an assessment of a person’s eligibility to be issued with a blue card. The following de-identified case examples demonstrate the importance of considering this type of information:

<table>
<thead>
<tr>
<th>Applicant A – Child care</th>
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<tbody>
<tr>
<td>An applicant was issued with a blue card on the basis of having no criminal or disciplinary information. The Queensland Children’s Commission was subsequently notified that disciplinary action had been taken against the applicant by the Office for Early Childhood Education and Care. The applicant was a student on vocational placement at a child and development centre and it was alleged that the applicant had sexually assaulted a three year old at the child care centre. The matter was investigated and the applicant admitted to the allegation in an interview. The applicant was not criminally charged but was issued with a prohibition notice by the Office for Early Childhood Education and Care. The Queensland Children’s Commission was satisfied that there was an exceptional case and cancelled the applicant’s positive notice and issued a negative notice.</td>
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</table>

<table>
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<tr>
<th>Applicant B - Teacher</th>
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</thead>
<tbody>
<tr>
<td>An applicant was issued with a blue card on the basis of having no criminal or disciplinary information. The Queensland Children’s Commission was subsequently notified that the applicant had been charged with a child-related sexual offence and immediately suspended the applicant’s blue card. The Commission was also notified of disciplinary information about the applicant by the Queensland College of Teachers who advised that the applicant’s teacher registration had been cancelled as the teacher had engaged in grooming behaviour and engaged in indecent, obscene and inappropriate conversations with students. The charge was not proceeded with at the request of the complainant child (who was 14 years old at the time of the offence). The request was made due to the complainant child’s emotional state and inability to proceed and give evidence in court. The Queensland Children’s Commission was satisfied that there was an exceptional case and cancelled the applicant’s suspended positive notice and issued a negative notice.</td>
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<tr>
<th>Applicant C – Kinship care</th>
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<tbody>
<tr>
<td>An applicant was issued with a blue card on the basis of having no criminal or disciplinary information. The applicant was a kinship carer. The Queensland Children’s Commission received a complaint that the applicant and their partner had been providing kinship care to children and that one of the children had made an allegation of sexual abuse and other concerning behaviours. The Queensland Children’s Commission ordered a national police check but no police information was received. The Queensland Children’s Commission was subsequently notified of disciplinary information from the Department of Communities, Child Safety and Disability Services that the applicant’s and the applicant’s partner had their carer authorities cancelled</td>
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</table>
and that outcomes of emotional harm and risk of emotional harm were recorded in relation to the children in the applicant’s care. The children were removed from their care. The Queensland Children’s Commission was satisfied that there was an exceptional case and cancelled the applicant’s positive notice and issued a negative notice.

9.8 **Confidential children’s evidence**

- Under s. 93A of the *Evidence Act 1977* (Qld) statements made by a child or an intellectually impaired person in relation to a criminal matter before a court proceeding are generally protected and it is an offence to have possession of such a statement.

- The Queensland Children’s Commission is permitted to access s.93A statements and use these statements as part of a blue card assessment. This information can provide critical information about the substance of allegations, particularly in relation to charges which did not proceed to a conviction as is demonstrated by the following de-identified case examples:

<table>
<thead>
<tr>
<th>Applicant A</th>
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<tr>
<td>The applicant was issued with a negative notice on the basis of numerous charges against 3 boys, all aged 11 to 12 years of age. The offending occurred in separate incidences over a number of years. The applicant was a foster carer who looked after the complainants on a temporary and intermittent basis. One of the complainant children provided a s.93A statement to police detailing sexual touching and observations of inappropriate and concerning sexual behaviour but was very embarrassed and did not want to pursue a complaint. A <em>nolle prosequi</em> was entered when the complainant did not appear to give evidence at trial and could not be located. The brothers the subject of the more recent incidents provided detailed statements alleging a pattern of regular sexual abuse. The younger brother made two s.93A statement to police alleging numerous acts of sexual touching. The applicant was found not guilty of these allegations following a trial. The older brother, who was intellectually impaired, provided three detailed s.93A statements alleging sexual touching, oral sex and attempted sodomy. On the morning that the matter was listed for pre-recording of his evidence, however, he appeared in a distressed state and was unable to provide evidence. This resulted in a <em>nolle prosequi</em> being entered and the charges being discontinued. The applicant’s positive notice was suspended as a result of the allegations. The Queensland Children’s Commission was subsequently satisfied that there was an exceptional case supported by the fact there were separate complainants who made allegations of a similar nature and accordingly a negative notice was issued.</td>
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<table>
<thead>
<tr>
<th>Applicant B</th>
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</thead>
<tbody>
<tr>
<td>An applicant was issued with a positive notice on the basis of no criminal history. He was subsequently charged with sexual touching of a 7 year old boy. The first trial resulted in a mistrial, the second in a hung jury. The Crown ultimately entered a <em>nolle prosequi</em> and the matter was discontinued. The applicant was then charged with indecently dealing with an intellectually impaired adult while working as a carer for high-needs clients. The intellectually impaired complainant provided a s.93A statement which articulated the incident of concern and highlighted her mental disability and high level of vulnerability. A <em>nolle prosequi</em> was entered in relation to the charges following inconsistencies in the complainant’s evidence during cross-examination. The Queensland Children’s Commission was satisfied there was an exceptional case supported by the fact there were two separate complainants who made allegations of a similar nature and accordingly a negative notice was issued.</td>
</tr>
</tbody>
</table>
Mental health information:

- In Queensland in specified circumstances the Commissioner is able to request a person undergo a mental health assessment or obtain information from the Mental Health Court or Mental Health Review Tribunal in relation to a person.

- This information can be an essential component of assessing a person’s criminal history, as is demonstrated by the below de-identified case examples.

### Applicant A

The applicant applied for a blue card and during the national police information check, it was determined that the applicant had been convicted of minor offences and charged with attempted carnal knowledge of a dog and indecent dealing with a child under 12 years. In relation to the indecent dealing with a child charge, the applicant was 24 years old and the complainant child was 3 years old. Both the attempted carnal knowledge of a dog and the indecent dealing with a child charges were dismissed by the Mental Health Tribunal (now known as the Mental Health Court). The applicant was found to be of unsound mind at the time of the offences and the applicant was detained as a restricted patient, however full community leave was granted on conditions.

The Queensland Children’s Commission requested material from the Mental Health Court with the applicant’s consent. The material received included a psychiatric report. The psychiatric report stated that the applicant suffered from a psychiatric condition but was in full remission, at the time of the offending the applicant had been in psychosis and that there was always a risk of future relapse. The material also indicated that the applicant had previously required psychiatric care after suffering a drug induced psychosis.

The applicant did not provide any independent evidence that the applicant had appropriate support and monitoring regimes in place to reduce the risk of relapse. Additionally, the applicant’s submissions indicated that they lacked insight into the severity of their offending and the harmful effects of such behaviour on children. The Queensland Children’s Commission was satisfied that there was an exceptional case and issued a negative notice.

### Applicant B

The applicant applied for a blue card for the purposes of providing child care in their home. During the national police information check, it was determined that the applicant had been charged with attempted murder alternatively wounding and similar acts. The complainants were the applicant’s adult children. The applicant placed a number of prescription medications in the food that they then fed to their children. The applicant then called Emergency Services and confessed. The Queensland Children’s Commission requested material from the Mental Health Court with the applicant’s consent. The applicant was found to be of unsound mind at the time of the offences.

The material received from the Mental Health Court indicated that the applicant had a significant and recurrent history of depressive disorder and an unwillingness to take responsibility for their own actions. The material also indicated that the applicant posed a risk to themselves and to others that were closest to them, which was a concern if those closest were children or young people placed in the care of the applicant.

The applicant did not reflect any insight or remorse into the offending behaviour towards their children. The Queensland Children’s Commission was satisfied that there was an exceptional case and issued a negative notice.
9.11 Relevant orders or reporting obligations:

- In Queensland there are a number of orders/obligations which are created under different pieces of legislation that have the intention of protecting children, including:
  - child protection prohibition orders which prohibit an individual, in circumstances where they have specified convictions, from undertaking certain activities in order to protect children (for example, living or residing in certain proximity to places where children frequent)
  - a 'disqualification order' made by a court prohibiting a person from applying for or holding a blue card, and
  - the imposition of reporting obligations under the Child Protection (Offender Reporting) Act 2004 or Dangerous Prisoners (Sexual Offenders) Act 2003, requiring individuals to provide specified information to police.

- In Queensland individuals subject to these types of conditions are prohibited from making application for a blue card. It is imperative that a person subject to these types of orders/obligations is identified and able to be excluded from a WWCC system.

10. How should an appeal process operate?

10.1 In Queensland, the exclusionary framework of the eligibility declaration process prohibits some people up-front from applying for a blue card. Those people whose police information demonstrates they pose the highest risk to children (for example, those with convictions for disqualifying offences for which they were sentenced to imprisonment) are banned for life from obtaining a blue card. This is a mandatory decision and for which there is no right of review. Although a right of review is an important function in any administrative decision-making process, the automatic and permanent exclusion of a person from the WWCC system is justified in the most serious cases to provide appropriate safeguards for children.

10.2 In the cases where a person is a disqualified person and the Queensland Children’s Commissioner can make a discretionary decision, the gates around employment remain closed to that person until a decision has been made which allows them to work with children. This, in essence, provides a quasi review process, in that the person has an opportunity to present their case for consideration by the Commissioner notwithstanding their initial exclusion by virtue of their prima facie classification as a disqualified person. If the Commissioner refuses the application, there is no further review of that decision under the Commission’s Act, although the potential avenue for judicial review remains open.

10.3 In all other cases where the Queensland Children’s Commissioner can make a discretionary decision to issue a negative notice the person has a right of review to Queensland Civil and Administrative Tribunal (QCAT), and this provides an important review mechanism for these decisions. In Queensland, QCAT is bound to apply the same decision-making framework as that which applies to the Queensland Children’s Commission under the Queensland Children Commission’s Act. However, a full merits review process (rather than a judicial review process) is provided for in Queensland. A merits review has the following advantages:

- QCAT can access information or material which may not have been available to the Commission or to which the Commission may not have legislative access. Also, the applicant may be able to provide additional information which may influence QCAT’s assessment, such as evidence of rehabilitation through the provision of a psychological or psychiatric report, and

- a tribunal process provides an avenue which is more accessible, less formal, more cost effective and provides a more timely resolution for an applicant than would be potentially afforded through a judicial review process in the Supreme Court.

10.4 A full merits review process also has the following issues associated with it:

- some applicants do not engage with the initial assessment process which means that all information is not before the original decision maker and accordingly the correct decision is
not made in the first instance. It is preferable to ensure that the initial decision maker has all relevant information (where possible) to make the best possible decision at the earliest possible opportunity. Accordingly, it may be desirable to ensure that an applicant is not able to exercise an appeal right on the basis of new information, without that information first being considered by the initial decision maker, and

- in some cases it is an expensive and time-consuming process to confirm the initial decision where it is absolutely clear that a person poses a risk of harm to children.

10.5 The Commission has had the benefit of experiencing review processes through both QCAT and its predecessor, the Children Services Tribunal. It is the view of the Queensland Children's Commission that it is essential to have a specialist division which provides for hearing of child-related matters. This is the case in Queensland and it ensures the knowledge in relation to the increasingly significant area of WWCC employment screening is developed and retained within that review body. This is important given the complexities inherent in the WWCC framework and the discretionary decision-making process, which has been recognised by QCAT, for example in the regular appointment of legal members to case manage and hear WWCC matters and allowing officers of the Commission to appear on behalf of the Commissioner as legal representatives. In the Commission's experience, the QCAT internal review mechanism of the QCAT Appeals Tribunal has also served as an effective filter to reconsider matters which may otherwise be required to be heard before the Queensland District Court or the Queensland Court of Appeal.

10.6 The Commission's Act provides that where a person applies to QCAT for a review of the decision to issue them with a negative notice, QCAT cannot stay the operation of the Commissioner's decision. This provision is significant as it ensures that the intended 'gates around employment' remain intact and that persons deemed ineligible by the Commissioner to engage in child-related employment cannot commence employment until the review of the Commissioner's decision has been finalised.

11. What issues arise from the current regime of records that result in automatic barring of a person from working with children?

11.1 In Queensland the disqualification framework operates to prohibit a 'disqualified person' from applying for a blue card if the person:

- has been convicted of a serious child-related sexual offence (including a pornography offence) or child murder irrespective of the penalty imposed
- is a reportable offender with current reporting obligations under the Child Protection (Offender Reporting) Act 2004
- is subject to a child protection offender prohibition order under the Child Protection (Offender Prohibition Order) Act 2008
- is subject to a disqualification order from a court prohibiting them from applying for or holding a blue card,
- is subject to a sexual offender order under the Dangerous Prisoners (Sexual offenders) Act 2003.

11.2 A disqualified person is instead able to apply to the Commissioner for an 'eligibility declaration'. A person who has lodged an application for an eligibility declaration is not able to commence work while their application is processed. If their application is approved, they may then apply for a Queensland WWCC.

11.3 The Commissioner is not permitted to issue an eligibility declaration if the person:

- has been convicted of a serious child-related sexual offence (including a pornography offence) or child murder and sentenced to a period of imprisonment
• is a reportable offender with current reporting obligations under the Child Protection (Offender Reporting) Act 2004
• is subject to a child protection offender prohibition order under the Child Protection (Offender Prohibition Order) Act 2008
• is subject to a disqualification order from a court prohibiting them from applying for or holding a blue card,
• is subject to a sexual offender order under the Dangerous Prisoners (Sexual offenders) Act 2003.

11.4 The disqualification framework is supported by strong penalties, including a fine of up to $55,000 or the imposition of 5 years imprisonment for a disqualified person who signs an application for a blue card or commences work in a regulated environment without having been issued with an eligibility declaration.

11.5 The operation of the disqualification framework under the Queensland system has a number of identifiable benefits:
• it supports the operation of provisions which allow paid employees to commence employment while their application is being processed by ensuring that those individuals with the most serious criminal histories are not able to begin providing services to children while their application is processed;
• it enables decisions to be made quickly in circumstances where an assessment of a person’s eligibility is not required because:
  – the nature of the offences and the penalty imposed clearly indicate a person is not eligible to be issued with a blue card; and
  – the person is subject to an existing order or reporting obligation that indicates a person is not eligible to be issued with a blue card
• it removes individuals with convictions for child-related sex offences from the system, but in relevant limited and defined circumstances (such as historical cases of unlawful carnal knowledge convictions against young men for having a sexual relationship with an underage girlfriend), it allows a person to provide information to justify why they do not pose a risk of harm to children such that they should be given the opportunity to apply for a blue card.

11.6 An issue that can arise from a disqualification framework is that it limits discretion, which can inadvertently exclude some individual who may be able to demonstrate they do not pose a risk of harm to children and should be given the opportunity to apply for a blue card. This is why it is important to have a process which is able to identify these cases.

11.7 In Queensland, since 2 June 2008, there have been 140 relevant outcomes reached on eligibility applications:
• 43 applications resulted in a refusal to issue an eligibility declaration
• 62 applications resulted in the issue of an eligibility declaration (the majority of these related to historical unlawful carnal knowledge offences)
• 35 applications were withdrawn

11.8 This data demonstrates the importance of maintaining a process to enable consideration of such matters, whilst excluding such individuals from providing services to children while their application is processed.
The following de-identified case examples demonstrate the importance of this process:

**Eligibility declarations refused**

<table>
<thead>
<tr>
<th>Applicant A</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicant lodged an eligibility declaration application. The applicant’s criminal history included convictions for indecently assaulting a person under 16 years. At the time of the offending behaviour, the applicant was 28-29 years of age and the complainant child was the applicant’s daughter aged 5-6 years old. It occurred over a five month period. The applicant was convicted and sentenced to community service (deferred upon entering into a good behaviour bond). The applicant submitted that the offending occurred during a time of stress and arose out of a need for control and affection. The Commission was not satisfied there was an exceptional case and the application was refused.</td>
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<table>
<thead>
<tr>
<th>Applicant B</th>
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<tbody>
<tr>
<td>The applicant lodged an eligibility declaration application. The applicant’s criminal history included two sets of convictions and charges for wilfully exposing a child under the age of 12 years to an indecent act. At the time of the offences, the applicant was aged between 38 – 42 years and the complainant children were aged 10 years. The applicant masturbated on multiple occasions in the presence of the complainant children. The applicant was considered a parental figure for one of the complainant children. It was also alleged that the applicant watched a pornographic video in the presence of a child however no charges were laid in relation to this incident. The applicant was fined $200 and no conviction was recorded. The Commissioner was not satisfied there was an exceptional case and refused the application.</td>
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<table>
<thead>
<tr>
<th>Applicant C</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>The applicant lodged an eligibility declaration application. The applicant’s criminal history included a conviction for using a carriage service for child pornography material. The applicant’s sentence included a term of 12 months imprisonment, with a conviction recorded. The applicant was a <em>relevant disqualified person</em> and the Commission was bound to refuse the application.</td>
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<tr>
<th>Applicant D</th>
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<tbody>
<tr>
<td>The applicant lodged an eligibility declaration application. The applicant was subject to reporting obligations under the <em>Child Protection (Offender Reporting) Act 2004</em>. As a reportable offender, the applicant was a <em>relevant disqualified person</em> and the Commission was mandated to refuse the application. The applicant also had a conviction in another state for committing an act of indecency with a person under 16 years for which the applicant was fined and placed on a good behaviour bond.</td>
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</table>

**Eligibility declarations issued**

<table>
<thead>
<tr>
<th>Applicant A</th>
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<tbody>
<tr>
<td>The applicant had a conviction for unlawful carnal knowledge of a girl under 17 years. The offence was committed 42 years prior to the applicant applying for an eligibility declaration. At the time of the offence, the applicant was 15 years old and the complainant was the applicant’s girlfriend. The applicant and complainant continued to be partners after the offence. The applicant was committed to the care and control of the Director of Department of Children Services for 2 years. The applicant’s criminal history contained only one other minor offence. The Commission was satisfied that there was an exceptional case and issued an eligibility declaration.</td>
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<table>
<thead>
<tr>
<th>Applicant B</th>
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<tbody>
<tr>
<td>The applicant had a conviction for unlawful sexual intercourse. The offence was committed 5 years prior to the applicant applying for an eligibility declaration. At the time of the offence, the applicant was 17 years old and the complainant was 15 years old. The complainant and the applicant were known to each other at the time of the offence. The</td>
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</tbody>
</table>
applicant was placed on a 6 month good behaviour bond. The applicant’s criminal history also contained non-conviction charges for assault offences. These matters were dismissed. The Commission was satisfied that there was an exceptional case and issued an eligibility declaration.

12. The adequacy of the risk assessment process?

12.1 The adequacy of a WWCC risk assessment process is primarily reliant on three things. These are:
- the range of information which is able to considered as part of the risk assessment (see the response to Question 9 at pages 42-49)
- legislative provisions which prescribe the risk assessment process and the factors which can be taken into account in determining the level of risk posed by an individual, and
- the framework underpinning the decision making process.

12.2 The potentially significant impacts of a WWCC decision on the safety and wellbeing of children and on a person’s fundamental right to employment demands that discretionary decisions are robust, evidence-based and defensible, and conform to sound administrative decision-making principles.

12.3 The Queensland Children’s Commission has a robust system for making decisions under the blue card system. The risk assessment process is legislatively prescribed and is administratively supported by an evidence-based written guide which strengthens the consideration of matters and formulation of decisions falling under the discretionary framework.

12.4 In the majority of matters where police or disciplinary information has been disclosed to the Queensland Children’s Commission, the Commissioner retains a very broad and largely unstructured discretion to decide whether a person should be issued with a positive notice or negative notice.53

12.5 The test to be applied to the discretionary assessment process is determined by the type of assessable information about the person of which the Commissioner is aware. There are two tests, prescribed by legislation, depending on the nature and seriousness of the information:
- that a negative notice must be issued, unless the Commissioner is satisfied it is an exceptional case in which it would not harm the best interests of children for a positive notice to issue; or
- that a positive notice must be issued, unless the Commissioner is satisfied it is an exceptional case in which it would not be in the best interests of children for a positive notice to issue.

12.6 Table 8 on page 24 compares the tests applied across WWCC jurisdictions. The test in Queensland is arguably broader than in other jurisdictions, as it is not necessary for the Commissioner to be satisfied that a person does or does not pose an unacceptable risk before being satisfied that an exceptional case exists. However, case study exercises conducted at various NOFs attended by WWCC jurisdictions have demonstrated that the decisions are broadly consistent between the jurisdictions notwithstanding differences between the legislative frameworks.

12.7 The Queensland Children’s Commission Act does not define ‘exceptional case’. Each case must be decided on its merits, having regard to the circumstances of each individual case and the legislative intent of the Act which is to protect children from harm. In deciding whether or not there is an ‘exceptional case’, the Act prescribes certain factors which must be considered, including:
- whether the offence/s are convictions or charges
- whether the offence is a serious offence or a disqualifying offence as defined by the Act

53 The Commissioner cannot issue a blue card to a person who has a conviction for a disqualifying offence for which they were sentenced to imprisonment (including wholly or partially suspended imprisonment or an intensive correction order), or are subject to a child protection offender prohibition order, or are subject to a disqualification order made by a Court, or are a reportable offender with current reporting obligations, or are subject to a sexual offender order.
• when the offence was committed or is alleged to have been committed
• the nature of the offence and its relevance to child-related employment or carrying on a child-related business
• any penalty imposed
• any decision relating to disciplinary information and the reasons for the decision.

12.8 The Queensland Children’s Commissioner may also consider any other information which is relevant to making a decision about a person’s eligibility to hold a blue card, including:
• type and number of convictions and/or charges;
• veracity of the evidence available (of particular significance where charges have been discontinued);
• seriousness of relevant offending or concerning behaviours;
• any evidence of identifiable attempts to change behaviour and address triggers for initial offending (eg medical or psychological treatment) since the relevant conduct occurred;
• whether there is a pattern of behaviour;
• whether there is a breach of trust or the victim was particularly vulnerable;
• whether the person’s circumstances have changed since the conduct occurred, and the nature and impact of any change; and
• whether information provided by the person sufficiently addresses and mitigates the risk factors of concern.

12.9 Complex applications can be multi-faceted and require consideration of a broad range of information relevant to the assessment process. For example, information from authorities can include:
• details of charges or convictions for offences in Queensland and interstate, including spent convictions and other historic offences
• discontinued charges, which may require a detailed analysis of the reasons for the discontinuance and analysis of any potential link that the offence or reason for discontinuance may have with a risk of harm to children
• investigative information in relation to child-related sexual offences for which the applicant was investigated by police but never charged
• transcript material in relation to sentencing submissions by prosecution and defence counsel, judges’ sentencing remarks, evidence given at trials and voir dire proceedings, recordings of children’s evidence in relation to allegations of child sexual offending
• mental health information provided in accordance with the Act, and
• other information which may not be admitted, or accepted by a court, as evidence in proceedings, but which may be relevant to an assessment of a person’s eligibility to hold a blue card.

12.10 In addition to any police or disciplinary information received in the first instance, information considered when deciding an application can also include:
• child protection information from the Department of Communities (Child Safety) provided with the applicant’s consent
• verbal or written submissions by the applicant
• personal or professional references
• medical, psychiatric or psychological reports or other information, or
• conflicting versions of events on which critical issues may turn.

12.11 The discretionary framework is underpinned by a comprehensive, purpose-designed risk assessment tool to provide a transparent, consistent, structured and evidence-based approach to decision-making. In 2010, the Queensland Children’s Commission implemented a Decision Making Guide, which is designed to:
• guide assessing officers through key steps in the assessment process
• consider the essential elements of the legislative provisions required to be considered when determining an ‘exceptional case’
• identify and analyse relevant risk and protective factors and how they apply to the case
• provide a framework in which the information can be comprehensively and logically analysed
• assist in the formulation of recommendations, and
• ensure proper documentation of decisions throughout the process including the reasons they were made.

12.12 The Queensland Decision Making Guide is strongly evidence-based both in terms of focusing on relevant information relating to particular charges or convictions, and the link between particular offending patterns and typologies and the potential risk of harm this may pose to children and young people. It has two foci:
• the circumstances of the police or disciplinary information, and
• the current risk, if any, posed by the person to children and young people in light of this information and any other relevant information identified during the assessment.

12.13 The Guide is supported by a comprehensive Literature Review summarising the extensive research in areas considered to pose the most significant risk for people working with children, such as sexual offences, violent offences, child-related offences, drug offences and other offences which breach community standards of decent and appropriate behaviour. The Literature Review also captured the mapping of significant practical experience developed by assessing officers over many years and this has also been incorporated into the Decision Making Guide.

12.14 The factors identified in the Decision Making Guide as important in assessing risk within the context of a blue card assessment include:
• the history and length of the person’s criminal offending
• whether there was an early onset of offending
• whether there was a history of juvenile offending
• the frequency and any escalation of the offending
• the presence of sexual deviancy
• any identifiable personality disorder or anti-social behaviour
• a person’s level of insight about their behaviour
• evidence of chronic substance abuse
• stability of employment
• any treatment a person may have had, and
• a person’s social/family support.

12.15 The principles of natural justice require that any person adversely affected by a decision should be given notice of the decision and the opportunity to participate in the decision making process.
The WWCC assessment process ensures that, if a blue card application may be refused, the applicant is afforded natural justice through the submission process (unless the Act dictates otherwise), providing the person with the opportunity to respond to any adverse information of which the Queensland Children’s Commissioner is aware before a final decision is made. This information is then considered in conjunction with the other evidence and legislative provisions outlined above, to determine whether to grant or refuse a blue card application.

12.16 The Queensland Children’s Commission’s approach to decision-making is consistent with the principles identified and supported at a national level as reflecting responsible risk assessment practices by ensuring ethical, evidence-based and defensible decision-making. As the most mature WWCC jurisdiction, the Queensland Children’s Commission has shared its Decision-Making Guide and Literature Review with other jurisdictions. However, as this area is relatively new and still developing, WWCC operators will need to ensure that decision making frameworks are updated as more evidence-based material becomes available to support strong and consistent decision-making.

13. To what degree should the WWCC minimise the need for institutions to establish clear processes for responding to inappropriate behaviour of staff in child-related positions?

13.1 While employment screening is an essential mechanism for preventing known offenders from infiltrating regulated child-related organisations, research increasingly suggests that the protection provided by employment screening programs is most effective when supplemented by child-focused recruitment policies within the organisation itself, as well as policies which restrict unsupervised access to children by employees.

13.2 A WWCC provides an assessment of a person’s eligibility to work with children. It is the responsibility of the employer organisation to identify and manage risks of harm to children in their service environment, including the appropriate management of staff conduct and behaviour.

13.3 Queensland has a legislated requirement that organisations within the scope of the blue card system develop a child and youth risk management strategy and update this strategy annually. These strategies must include the following eight minimum requirements:

1. Statement of commitment
2. Code of conduct
3. Procedures for recruiting, managing and training staff
4. Policies for identifying and reporting disclosures or suspicions of harm
5. Managing breaches of the risk management strategy
6. Policies for compliance with blue card legislation
7. Risk management plans for high-risk activities and special events
8. Strategies for communication and support.

13.4 Combined, these risk management requirements of the Queensland blue card system ensure that organisations have formal policies and procedures in place to ensure that:

- there are clear expectations about the personal, professional and ethical conduct of employees and volunteers and the consequences if they fail to act accordingly
- the importance of protecting children from abuse and other mistreatment is integrated into the organisation’s culture
- staff respond as quickly as possible to an allegation or suspicion of harm

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54 As contained in Schedule: An Evidence-based Guide for Risk Assessment and Decision-making when Undertaking Background Checking, Community and Disability Services Ministers’ Conference, 2007
56 Sections 171 and 172 Commission for Children and Young People and Child Guardian Act 2000
57 Schedule 3 Commission for Children and Young People and Child Guardian Regulation 2011
• children and young people feel safe to and are supported in making a disclosure of harm to staff
• where there is immediate risk of harm to a child, all staff or volunteers are aware they can act immediately to protect that child and contact the authorities
• information is not accidentally mishandled during the internal reporting process, prior to the matter being reported to the authorities, and
• where breaches of the organisation’s risk management strategy occur, formal processes allow organisations to manage breaches in an accountable, supportive and consistent manner.

13.5 The impetus for establishing clear risk management policies and procedures for staff, in addition to a WWCC, is supported by research regarding organisational abuse which found that generally staff have “ignored signs of abuse and dismissed or failed to act upon disclosures by children”. 58 While various inquiries world-wide have found that “emotional, physical and sexual abuse was enabled by the indifferent collusion or even the active support of the institutional management structures”. 59

13.6 The blue card system requirement for organisations providing services to children to develop and implement a child-focused risk management strategy aligns with recommendations of the Forde Inquiry which identified a number of “risk” areas in organisations and highlighted the need for service providers to implement strategies to “inhibit attempts at organised abuse” of children. 60

13.7 Significantly, the blue card system has been in operation for more than a decade and the Queensland Children’s Commission has also found that stakeholders also regard risk management as an important tool within their organisation. This is supported by the following feedback from key stakeholder organisations in Queensland.

The [Risk Management] Strategy is important as it provides clubs with a structured and documented way of monitoring and managing the protection of children and youth within their care. The roll out of the strategy to clubs in QLD ensured state wide consistency and compliance which assists us as a state body meet our legislative requirements knowing that clubs have the tools to mitigate harm and manage breaches should they occur ...(Surf Life Saving Queensland).

[A Risk Management] strategy has the capacity to complement the blue card by identifying offenders who do not have a prior criminal record or other records which might declare them as unsuitable for working with children and young people. (Queensland Catholic Education Commission)

13.8 In addition, situational crime prevention research also suggests that risk management strategies that create child-focused environments through the implementation of “clear codes of conduct and induction procedures for staff that clearly spell out acceptable and unacceptable behaviour and leave no room for the exploitation of ambiguity … (and) providing formal opportunities for residents to make complaints if abuse occurs” can be effective in reducing environmental cues which increase the risk of harm to children. 61

13.9 Research shows that disciplinary practices, relationships and interpersonal factors are influenced by situational elements unique to the organisation, and occur within the wider context of an organisational culture. The development and implementation of code of conduct, as well as associated policies and procedures within a risk management strategy, are critical for mitigating the possibility of high-risk interpersonal factors, including the use of punitive or abusive

behavioural management practices or the development of inappropriate relationships between staff and young people.

13.10 The Queensland Children’s Commission views a WWCC as one important component of a wider child protection risk management strategy that identifies and reduces the risk of harm to children in service environments. However, employment screening alone cannot, and should not, minimise the obligation for organisations to proactively manage the behaviour of staff in child-related organisations. A WWCC system does not in any way minimise the need for organisations/institutions to establish clear processes for responding to inappropriate behaviour of staff in child-related positions.

14. How should the effectiveness of any existing WWCC be evaluated and/or monitored?

14.1 It is difficult to evaluate and monitor the effectiveness of a WWCC principally because there is no baseline data, or pre-implementation data, that can be used for this purpose. Further, the deterrent effect of the WWCC on future offending behaviour is difficult to measure.

14.2 While employment screening alone will not identify every individual who represents a risk to children and young people, it can reduce risks of harm to children by identifying and prohibiting individuals with known high-risk histories from working with children, as well as by acting “as a deterrent to certain offenders” who would otherwise be motivated to secure regulated employment in order to victimise children. Since its inception in Queensland in 2001, the blue card system has prevented more than 7000 high-risk individuals from engaging in regulated child-related employment.

14.3 Further, a key feature of the Queensland blue card system is that, in addition to high-risk individuals (those removed through the screening process), it disqualifies certain individuals (those with concerning histories) upfront from applying for a blue card to work with children i.e. people with convictions for child-related sex or pornography offences or murder of a child. However, the effectiveness of this disqualification framework is impossible to measure. That is, the number of possible offences against children that are prevented by disqualifying such individuals cannot possibly be measured.

14.4 The Queensland Children’s Commission notes that generally research into the extent to which predatory child sex offenders purposefully seek employment in child and youth-related organisations is rare. However, studies have consistently found that a subset of offenders in organisational settings exhibit a pre-existing motivation to sexually abuse children:

- a United States study of child sexual abuse by day care employees found that the majority of these offenders had deliberately sought employment which would provide them with access to potential child victims

- a small-scale study of offenders convicted of sexual abuse perpetrated against children in a range of child-related employment environments, including youth work and residential care, found some evidence that members of this cohort sought employment in such settings “with the knowledge that children placed (in these environments) are particularly vulnerable”

- a case study of British offenders found that child sexual abuse perpetrators targeted employment within education, private tutoring or volunteer positions in organisations that would provide contact with children and the opportunity to commit abuse for extended periods without detection

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• another British case study of “professional perpetrators”\textsuperscript{67} found that 92.5% of its offender cohort were aware of their sexual attraction to children prior to establishing their career in child-related environments, with 67.5% reporting that they had committed at least one contact sexual offence against a child prior to gaining their employment. Fifteen per cent of these offenders reported that their primary motivation in entering child-related employment was to gain access to potential victims, while 41.5% stated that this access was a partially motivating factor in choosing their profession, and\textsuperscript{68}

• prior to the implementation of the blue card system, a study of convicted child sex abusers in Queensland found that 18.9% of extra-familial offenders accessed child victims through youth-organisations,\textsuperscript{69} with 8% of these offenders reporting that gaining access to child victims was their main motivation in joining the organisation.\textsuperscript{70}

14.5 There may be a need for contemporary academic research to be undertaken in this area, for example, a contemporary study of convicted child-sex offenders such as that cited above. Such research may provide some evidence base on which to gauge the deterrent effect of WWCC systems. However, it should be noted that any such study would be inherently constrained as the sample would be limited to convicted offenders only.

14.6 Due to the limitations associated with measuring the effectiveness of the WWCC from a research perspective, the Queensland Children’s Commission has established three key outcome indicators focussed on measuring the value and contribution of the blue card system (at an organisational and community level) in reducing risks to Queensland children and young people in regulated service environments. These are:

1. **Awareness** - Stakeholder awareness about the requirements of, and participation in, the blue card system is essential to help safeguard children and young people and mitigate risks in child-related service environments.

2. **Building compliance** - Compliance with the requirements of the blue card system is critical in building and maintaining safeguards for children and young people in child-related environments.

3. **Creating safe child-related service environments** - The safety of children participating in child-related services and activities is strengthened by preventing access to children in these environments by high-risk individuals.

14.7 The outcome indicator based framework was developed by the Queensland Children’s Commission following consultation with stakeholders, including non-government peak bodies and key government agencies. Based on the outcomes of this consultation, the framework demonstrates:

• the value and importance of stakeholder investment in the blue card system

• the outcomes of stakeholder investment in relation to improving the safety of children and young people engaging in their services or activities, and

• how organisations (and children and young people) are protected by the blue card system (for example through the development and implementation of a risk management system).

14.8 The Queensland Children’s Commission also values stakeholder feedback as a key source of information to drive continuous improvement in the administration of the blue card system. Accordingly, to inform the outcome indicators, the Queensland Children’s Commission has developed and introduced a range of voluntary survey measures to gather data around stakeholder perceptions of the value of the blue card system in assisting to create safer service environments for children. The surveys are administered at various points across the service.

\textsuperscript{67} This term refers to child sex abuse offenders who utilise their employment through an agency or organisation to target and offend against children.


\textsuperscript{70} Wortley, R., & Smallbone, S. (2006).
delivery continuum (e.g., contact centre enquiries, web enquiries, compliance and community engagement activities).

14.9 Survey data for 2012/13 indicates that there is a high-level of community support for the blue card system, with

- over 99% of survey participants rating the importance of the Queensland Children’s Commission’s role in helping to provide safer environments for children and young people as ‘important’ or ‘very important’, and
- approximately 97% of stakeholders surveyed responding that they were satisfied with the contribution of the blue card system towards achieving this goal, including approximately 57% who rated the contribution of the system as “Excellent”.

14.11 The Queensland Children’s Commission routinely audits organisational compliance with the risk management strategy requirements of the blue card system. In order to build the capacity of audited organisations, the Queensland Children’s Commission further provides comprehensive written advice highlighting areas where the strategies can be strengthened. In 2012/13 a number of organisations who were provided with written feedback on their risk management strategy voluntarily took part in a survey to determine whether they found this feedback useful and how the feedback was used to increase the safety of children in regulated service environments. Of the organisations surveyed:

- 100% advised that they were satisfied with the risk management strategy advice service provided by the Commission, with 55% rating it as ‘excellent’
- 68% stated that they used the risk management strategy feedback provided by the Commission to either review or improve their child protection policies
- of the organisations who made changes to their risk management strategy after receiving feedback from the Commission, 61% reported that they implemented additional procedures designed to reduce the risk of harm to children and young people, and
- 95% of organisations who reported accessing risk management strategy resources and toolkits available on the Commission’s website stated that they found these resources helpful in improving their child protection policies.

14.12 Overall, measuring the effectiveness of employment screening is difficult from a research perspective. However, in Queensland the value of employment screening and the associated risk management framework can be measured in terms of the number of high risk individuals excluded from working with children and organisational and community support for, and participation in the system. To date, the Queensland Children’s Commission’s data in this respect is overwhelmingly positive and indicates the community values the role of employment screening as a mechanism to protect children and young people from harm.
# Table 16 Exemptions to screening

<table>
<thead>
<tr>
<th>People under a certain age</th>
<th>QLD</th>
<th>NSW</th>
<th>WA</th>
<th>VIC</th>
<th>NT</th>
<th>SA</th>
<th>ACT*</th>
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<tbody>
<tr>
<td>Volunteers under 18 years</td>
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<tr>
<td>People under 18 years</td>
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<tr>
<td>Volunteers or students on unpaid placements under 18 years</td>
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<tr>
<td>People under 18 years or 18/19 and volunteering at their school</td>
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<td>People under 15 years</td>
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- **Note** – does not include exemptions for interstate workers which is outlined in table above and this is a broad summary of the exemptions available and do not include the specific circumstances in which these exemptions may or may not be applied. This is not an exhaustive list of all exemptions available.

- The ACT system is a Working with Vulnerable People check and may include additional screening under other categories covering all vulnerable people.

- **Note** – in some jurisdictions, this exemption can only be used in very specific circumstances and there will be some instances where a volunteer parent requires screening.
### Other exemptions

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74 Note – does not include exemptions for interstate workers which is outlined in table above and this is a broad summary of the exemptions available and do not include the specific circumstances in which these exemptions may or may not be applied. This is not an exhaustive list of all exemptions available.

75 Note – an organisation cannot choose to use this exemption if they are legally obliged to have a check i.e. a school cannot say that a teacher is exempt. This exemption is very limited.