



**Submission from the
Truth Justice and Healing Council**

**Royal Commission into Institutional Responses to Child Sexual Abuse
Issues Paper No. 1 | Working with Children Check**

12 August 2013



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Justice Peter McClellan AM
Chair
Royal Commission into
Institutional Responses to Child Sexual Abuse

Via email: solicitor@childabuseroyalcommission.gov.au

Dear Justice McClellan,

As you know, the Truth Justice and Healing Council (the Council) has been appointed by the Catholic Church to oversee the Church's response to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

On behalf of the Council I submit the Catholic Church's submission in response to the Royal Commission's first Issues Paper: Working with Children Check.

An essential focus of the Church is the care and support of children. Throughout Australia, the Church through its many institutions, agencies and services engages directly with children through parish, liturgical, education, health, welfare and other activities. The Council has consulted widely to ensure the expertise and wisdom of all of its constituents was taken into account in the preparation of this submission.

Yours sincerely

Francis Sullivan
Chief Executive Officer
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12 August 2013

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About the Truth Justice and Healing Council

The Catholic Church in Australia (the Church) is made up of many different organisations, bodies and agencies spanning social services, health, education and pastoral care. The Church, through its many separate manifestations, is the largest private employer in Australia.

The Truth Justice and Healing Council (the Council) was established by the Church leadership in February 2013 to oversee the Church's overall response to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

The Council provides independent advice to a Supervisory Group comprising the Permanent Committee of the Australian Catholic Bishops Conference and representatives of Catholic Religious Australia.

The 13-member Council, chaired by the Hon Barry O'Keefe AM QC, includes eminently qualified and committed people. Their expertise spans child sexual abuse, paedophilia, trauma, mental illness, suicide, education, public administration and governance.

The Council oversees the Church's engagement with the Royal Commission, including by:

- Speaking for the Church in matters related to the Royal Commission and child sexual abuse
- Coordinating the Church's legal representation at the Royal Commission
- Identifying any systematic institutional failures that have impeded the protection of children, and
- Advocating to the Royal Commission the procedures that have been put in place by Church organisations over the past 25 years to deal with allegations of sexual abuse and to provide greater protection for children.

The Council's role extends to:

- Initiating research into best practice procedures, policies and structures to protect children;
- Making submissions to the Royal Commission about the procedures, policies and structures in place today and the improvements which might be made; and
- Promoting lasting healing for the victims and survivors of abuse.

Executive Summary

An essential focus of the Catholic Church (the Church) is the care and support of children. Throughout Australia, the Church engages directly with children through parish, liturgical, education, health, welfare and disability services, and a range of other child-related activities.

The Church in its work with children across this range of settings aims to support and protect children and to provide them with a safe and nurturing environment. The Church is, through its many separate manifestations, the largest private employer in Australia, and is a major provider of social, health, and education services nationally.

Against this background, the Church recognises its responsibility to children to have safeguards in place to ensure they are protected.

The Working With Children Check (WWCC) is a required, important element of a comprehensive and effective system to protect children. However, the Church recognises that the WWCC is but one part of the overall system that needs to be in place to create safe environments for children.

On behalf of the Church, the Council welcomes this opportunity to comment on the issues raised by the Royal Commission. The Council would welcome the opportunity to be involved in discussion and more detailed analysis of the workings of a best practice WWCC scheme.

Church organisations have long engaged in child protection initiatives and the development of child protection systems in Australia. Through its constituent bodies, the Council is well placed to draw on the Church's national experience in order to identify issues within the existing legislative frameworks, and also to provide insights into how current WWCC legislation, procedures and practices are working in practice in various jurisdictions.

The Council is strongly of the view that there should be a national WWCC in Australia. While acknowledging that the establishment and implementation of a national WWCC scheme presents a challenge for governments, the calling of this Royal Commission signals a significant opportunity to review and combine efforts and expertise to move forward and establish an effective, national WWCC.

A national WWCC should identify and implement best practice, with the paramount interest being the safety and well-being of children. In this context, those States and Territories with well-developed WWCC schemes will not accept dilution of those standards. The best practice model needs to be thoroughly and rigorously developed drawing on evidence-based research in consultation with key stakeholders and other experts in the area. These key stakeholders should include non-government organisations, because appropriate consultation with relevant bodies is a principle which should underpin a rigorous and successful WWCC.

To assist the Royal Commission, the Council has drawn on the experience of its constituents, operating across Australia, to identify the key elements of an effective WWCC (see below).

The submission then provides a response to each of the numbered issues set out in Issues Paper 1 of the Royal Commission.

No	Element	Recommendations
6.	Who pays for WWCCs?	Paid workers pay an application fee for WWCC (they may be reimbursed by their employer for this expense) WWCC is free for volunteers.
7.	Who administers the WWCC?	Governance by a national regulatory body. Implementation by the national body, or via the States and Territories.
8.	What records or information does a WWCC take into account?	<p>A variety of national records/information including:</p> <ul style="list-style-type: none"> ■ national adult criminal history records for relevant offences, including court records ■ national juvenile criminal history records for serious offences (of a sexual, drug-related or violent nature), including court records ■ national findings of employment or disciplinary proceedings conducted by employers, institutions and professional bodies that relate to the sexual misconduct, physical assault, ill-treatment, neglect or psychological harm of a child ■ certain apprehended violence orders (for example, those made out where a child is present), and ■ national information received from designated reporting agencies, including for example, NSW Ombudsman and equivalents, Department of Community Services, Federal, State and Territory police, and other bodies including designated employers, agencies and Church organisations which may have intelligence relevant to the risk that a worker presents to children in child-related work. <p>[Note these records/information are to be considered in a WWCC risk assessment, but will not necessarily lead to barring of a person.]</p>
9.	How is the risk assessment process conducted?	<p>By competent persons/teams engaged or trained by the national regulatory body, who will:</p> <ul style="list-style-type: none"> ■ have the requisite skill and expertise ■ be informed by a clear framework and be provided with policy and guidance ■ strive for consistency and transparency, and ■ be able to assess a pattern of behaviour and other risk indicators based on the information that has been collected.
10.	Are certain workers or volunteers automatically barred?	Yes, those who have been convicted of certain serious criminal offences.

No	Element	Recommendations
11.	Is a barred person prevented from re-applying for a WWCC?	No, a barred person can re-apply after a specific number of years. The particular number of years to be determined following further research and consultation.
12.	Are there different classes of WWCCs?	No.
13.	After applying for a WWCC, how soon afterwards can a worker commence work?	Only after receiving the WWCC, subject to the exceptions outlined in the submission, for example in an urgent/emergency situation, provided that a WWCC application is submitted, supervision is in place, and the needs of the children are prioritised.
14.	Who can verify the WWCC?	Employers, organisations engaging volunteers and parents (where the parent is engaging the worker) can verify an individual's WWCC through an online facility to access the database. This database would maintain a record of those bodies/persons who have verified a worker to be notified if there is a change in a worker's WWCC status.
15.	For how long is a WWCC valid?	A WWCC is valid for a period of three to five years, depending on further consultation. Having said this, any relevant information/records as defined will be continually monitored, and could result in a change in that individual's status (see 16 below).
16.	How is an individual's WWCC monitored?	<p>The regulatory body is responsible for:</p> <ul style="list-style-type: none"> ■ continually monitoring changes to relevant national records ■ requiring employers, organisations engaging volunteers, professional bodies and relevant government and non-government bodies to inform it of relevant information (see 17 below) ■ barring/interim barring a person as relevant records/information is received by the regulatory body ■ notifying bodies/person who have verified workers if that individual subsequently becomes barred, or a risk to children is identified, and ■ taking enforcement action against individuals and organisations in breach of the WWCC scheme.
17.	What is reportable to the regulatory body?	Reportable information is the information employers, organisations engaging volunteers, professional bodies and relevant government and non-government bodies are to report to the national regulatory body to ensure that the records and information taken into account when granting a WWCC (see 8 above) are valid and up to date.

No	Element	Recommendations
18.	How should information be shared?	<p>The regulatory body will develop guidelines to assist with the determination as to when intelligence should be shared. These guidelines should be publicly available to ensure transparency and consistency.</p> <p>The guidelines will provide a clear process outlining what information should be shared, when, in what circumstances, with whom and on what basis after proper consultation with relevant stakeholders.</p> <p>The regulatory body will use the guidelines to make a determination on a case by case basis as to when to share intelligence relating to people who are not barred but carry a risk to children, so that bodies/ persons who have verified a worker's WWCC clearance can properly manage the risk.</p> <p>The regulatory body should be central to facilitating the exchange of information/intelligence from and between organisations which have significant intelligence about workers who carry a risk to children.</p>
19.	Can you appeal a WWCC decision?	<p>Yes, decisions refusing WWCCs are subject to a merits review. Decision makers should be given a set of structured and coherent guidelines that set out the type of considerations to be taken into account when determining an individual's WWCC. These guidelines should be publicly available to ensure transparency and consistency.</p>
20.	Enforcement and review	<p>The regulatory body will require an enforcement arm, to conduct inspection and review of the operation of and compliance with the system, to ensure that:</p> <ul style="list-style-type: none"> ■ Organisations employing workers in child-related work are ensuring their workers have valid WWCC clearances ■ Individuals working in child-related work have WWCC clearances
21.	Education	<p>Organisations/persons should be educated about the risk workers may present, in order to put in place processes, structures or strategies to ensure the safety and well-being of children. There should also be a public education and information campaign about the nature, importance and limitations of the WWCC scheme for bodies/ persons who have verified a worker themselves, and targeted information campaigns directed at managing changes to WWCC in particular jurisdictions.</p>

1 Should there be a national Working With Children Check (WWCC)?

1.1 There should be a national WWCC

- 1 The Council is strongly of the view that there should be a national WWCC. An effective WWCC is one significant tool which can assist organisations to provide a safer environment for children. The current State and Territory-based WWCC schemes lack consistency and rigour and there are deficiencies in the legislation.¹ As a result of the inconsistency, it is possible that people who pose a risk to children may nevertheless be cleared to work with children.

1.2 Working towards a national WWCC

- 2 Since 2005, the Community and Disability Services Ministers Conference (CDSMC) and, more recently, the Council of Australian Governments (COAG) have been taking steps towards a nationally consistent approach to the WWCC system. As the work of CDSMC and COAG demonstrates, there has for some years been a recognition that a national, or at least a harmonised, WWCC scheme is a necessary and important step to advance and increase the safety of Australian children.² This has occurred against a background in which COAG is implementing the *National Framework for Protecting Australia's Children 2009-2020*.
- 3 The reasons that efforts to establish a national WWCC scheme, or a harmonised WWCC scheme, have not succeeded to date include:
 - (a) Successful implementation requires proactive participation from State and Territory governments and stakeholder organisations, many of which are very resource constrained.
 - (b) Legislative reform and alignment of checking practices is only one part of a broader legislative and systems response to child protection. Other initiatives such as mandatory reporting and intervention strategies will continue to operate at a State and Territory level. Challenges and potential inefficiencies or conflicts arise from an approach that isolates the WWCC scheme from these other aspects of child protection, or considers each piece of legislation in isolation from the others.
 - (c) As demonstrated in Attachment A, the rigour and structure of current State and Territory-based WWCC schemes vary greatly. The implementation of a national scheme will therefore require significant initial investment, although cost savings and efficiencies would ultimately be achieved through a national WWCC once established.
 - (d) Appropriate consultation would need to occur with all relevant stakeholders, as well as evidence-based research, in order to determine the key elements of an effective WWCC scheme in Australia.

¹ Attachment A provides a summary of the operation of the current WWCC schemes across Australia.

² See Department of Families, Housing, Community Services and Indigenous Affairs, (2011) *Toward a Nationally Consistent Approach to Working with Children Checks* viewed 22 July 2013 <<http://www.fahcsia.gov.au/our-responsibilities/families-and-children/publications-articles/a-nationally-consistent-approach-to-working-with-children-checks-2011>>

- (e) Any national scheme would require enforcement, monitoring and evaluation in order to be effective.
- 4 The scale of these challenges cannot be underestimated. Nonetheless, the establishment of the Royal Commission is indicative of the groundswell of public and political support for improved child protection initiatives. The challenges would need to be addressed collaboratively and cooperatively.
- 5 The Royal Commission presents an opportunity to mobilise efforts to identify and design a national WWCC regime that considers all factors that are relevant to an effective WWCC, with the primary concern of protecting children, whilst also managing responsibly the fiscal and operational challenges involved in the design and administration of such a regime.

1.3 The benefits of a national WWCC

- 6 Despite the obstacles, the Council is of the view that there should be a national WWCC, incorporating the best features identified from State, Territory and overseas experience, other relevant research and consultation with key stakeholders.
- 7 It is important to establish best practice in a national scheme and not to settle on what is the lowest common denominator among already existing State and Territory schemes merely because this approach could yield a less complicated implementation of a national scheme. The goal of improving children's safety must be paramount.
- 8 Some organisations operating in child-related areas have well-developed, high quality due diligence and vetting systems in place for engaging their workers³. Ideally, all organisations operating in child-related areas would utilise such systems. However, some organisations do not have the capacity or resources to implement sophisticated probity systems. Given these different levels of capability, it is important that the WWCC scheme in Australia is the best that it can be and is easily accessible to those who would benefit from it.
- 9 The benefits of a national, high-quality WWCC for children, workers, organisations and the community include, but are not limited to:
 - (a) the consistent application of high standards which provide greater clarity and security for people working with and protecting children
 - (b) removal of the risk of a person 'falling through the gaps' between State and Territory checking requirements and standards
 - (c) continuous checking of all convictions and other relevant records across the country, not just in a particular jurisdiction
 - (d) the ability for workers to travel across State and Territory boundaries without having to undergo new checks - portability across the country

³ In this submission, the Council intends the word 'worker' to have its widest possible meaning, including but not limited to an employee, priest or other religious, volunteer, contractor, self-employed person, trainee and any other person who has a relevant role or is engaged to work /volunteer in a child-related workplace.

- (e) organisations understanding the tests that have been applied to every person with a WWCC clearance who seeks to work with them, not just those coming from within their own State/Territory
 - (f) portability and recognition of WWCC nationally
 - (g) removal of convoluted sections in legislation dealing with burdensome record-keeping requirements in relation to the number of days of interstate visits in child-related work, and
 - (h) removal of the difficulties of compliance with different laws faced by organisations and institutions which cross jurisdictions.⁴
- 10 It is vital however, that organisations that work with children do not rely on a WWCC to the exclusion of other preventative measures and risk management protocols. A WWCC clearance checks only certain aspects of a person's suitability to work with children. Fundamentally, working with children requires the demonstration of suitability and not merely meeting a requirement not to have previously harmed or put a child at risk of harm.
- 11 Whatever outcome is finally decided upon, it will be necessary to educate members of the public and organisations that rely on the WWCC (in particular those that are less resourced or experienced) of the limitations associated with the WWCC. Education will need to focus on:
- (a) informing organisations that work with children and the public about which records are included in the check and which are not
 - (b) the provision of information to effectively explain and manage changes to existing State and Territory WWCC systems brought about as a result of introducing a national WWCC scheme, and
 - (c) ensuring the reliance that organisations, parents and other members of the public may place in the WWCC is realistic and not overstated.

⁴ For example, the region covered by the Archdiocese of Canberra-Goulburn spans the ACT and part of NSW, and is therefore subject to both the laws of the ACT and NSW. Cross jurisdictional issues also arise in this way for many religious institutes.

2 What features should be included in any national scheme?

2.1 How would a national scheme be administered?

- 1 A national WWCC scheme requires joint responsibility to be taken by the Commonwealth and State and Territory governments. It should be structured so that each jurisdiction promulgates legislation to facilitate the application of a standard set of legislative provisions in that jurisdiction and so that any gaps that currently exist in the State and Territory schemes are overcome. It would be feasible to split the overall governance of the national scheme from its operation in a cost-effective way.

2.2 The features of a national scheme

- 2 The WWCC is based on an understanding that history is an important predictor of the future.⁵ A national WWCC scheme would have access to a significant quantity of information, and should operate as an intelligence-driven risk management tool rather than merely being focused at the top-end criminal and quasi-criminal findings that result in a person being barred.⁶
- 3 It is important that a high-risk person is prevented from working with children. This is achieved when such a person is barred through a WWCC process. However, the Council is also concerned about those people who are not barred under the WWCC system but still carry a risk to children.

Key features

- 4 A key feature of a national WWCC scheme is that it should:
 - (a) successfully identify and bar those people who should not work with children under any circumstances, and
 - (b) successfully identify those who may carry some risk and whose involvement with children needs to be appropriately limited.
- 5 A further key feature is how the regulatory body which administers the WWCC utilises and shares its large intelligence database relating to people who are not barred but carry a risk to children, so that organisations can properly manage the risks.
- 6 In some jurisdictions, a focus on managing risk through the WWCC represents a shift in thinking about the capability, purpose and use of the WWCC scheme.

⁵ In its report *Creating Safe Environments for Children* (2006) the CDSMC noted that 'checking the past behaviour of an individual can provide an indication of the possible future behaviour of that individual (Schedule 2 – Evidence based guide for risk assessments, p2) viewed 31 July 2013 <[http://www.dcp.wa.gov.au/Resources/Documents/Policies and Frameworks/Schedule2AnEvidencebasedGuideforRiskAssessmentandDecisionmaking.pdf](http://www.dcp.wa.gov.au/Resources/Documents/Policies%20and%20Frameworks/Schedule2AnEvidencebasedGuideforRiskAssessmentandDecisionmaking.pdf)>

⁶ This follows from the approach outlined by COAG in *Protecting Children is Everyone's Business*, the National Framework for Protecting Australia's Children (2009-2020), where it was noted that '*Australia needs to move from seeing 'protecting children' as merely a response to abuse and neglect to one of promoting the safety and wellbeing of children*' (at p7), viewed 31 July 2013 <<http://www.fahcsia.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business>>

- 7 In addition to the elements identified in response to Issue 1, the following should be addressed in order to establish a high-quality national WWCC scheme:
- (a) Consideration of specific criminal records and of relevant employment/disciplinary proceedings conducted by employers, institutions and professional bodies across the nation. When findings in these proceedings indicate that a person may be a serious risk to children, the matter should be reportable to the regulatory body and carefully considered in the national scheme.
 - (b) Identification of the types of conduct investigated in relevant employment/disciplinary proceedings that are reportable to the regulatory body and considered by that body in applying the WWCC. This is examined in more detail at Issue 9.⁷
 - (c) Development of an effective transparent mechanism for sharing intelligence, through:
 - (i) reaching agreement nationally that there is benefit in sharing information with organisations about people who pose a risk in working with children but who do not reach the level which would have them barred under the WWCC
 - (ii) ascertaining which organisations need to be made aware of the information, and
 - (iii) identifying an appropriate mechanism to effect the sharing of information, which needs to be designed to close gaps.
 - (d) In this context, it is also important to recognise the tension between the privacy of individuals and the protection and care of children. The regulatory body would be central to the sharing of information, as it is the single body that knows:
 - (i) who applies for a WWCC, and
 - (ii) which employers are actively verifying their workers' WWCC.
 - (e) The regulatory body should act as a repository and sharer of information, for the following reasons:
 - (i) For an organisation (without the assistance of the regulatory body) to exchange information (either provide information or seek information), it needs to know that there is information to request and from whom, or alternatively the organisation with information needs to know to whom the information should be given. It is highly unlikely that an organisation will know where the worker is going to seek new work. The regulatory body on the other hand is able to facilitate sharing of appropriate information transparently and effectively.
 - (ii) The regulatory body is in a position to know when a person is engaged to work with another organisation since that other organisation is required to verify that person's

⁷ The important point here is to recognise that ill-treatment, neglect and behaviour that causes psychological harm to a child is potentially as damaging in terms of harming behaviour as well as sexual misconduct and serious physical assault. Legislation such as the *Children and Young Persons (Care and Protection) Act 1998* (NSW) recognises that these forms of behaviours can put a child at significant risk of harm. However, findings that these serious behaviours occurred are not included in the new NSW WWCC which commenced in June 2013, which is of significant concern to the Catholic sector.

clearance with the regulatory body. Thus the regulatory body is in the best position to know which other organisation 'needs to know'.

- (iii) An important part of keeping children safe is putting information and intelligence together so that cumulatively a more complete picture of a person can be formed and appropriate action taken. As the regulatory body would register those applying for a WWCC and those organisations verifying a WWCC, it is logical that it play a key role in receiving and sharing information held by organisations including employers, government agencies (such as the Ombudsman (in NSW), Children's Guardians and Commissions for Children and Young People), community services, care agencies, Church agencies and others, so that they may all work together for the safety of children.
- (f) As part of this process, it is critical that the WWCC legislation itself provide the regulatory body with the capacity to exchange information with any organisation that is required to verify a person's clearance for child-related work, rather than relying on another piece of legislation to assist in that area (often inadequately). There needs to be a process within the WWCC legislation which outlines the basis upon which the regulatory body will share information. The sharing of information held by the regulatory body should be built into its legislation to ensure that it includes those organisations that deal with children.⁸ This area is a key feature of a successful national WWCC scheme and requires consultation and analysis to ensure it is framed effectively.
- (g) A reduction in the types of child-related work and particular categories of people and occupations that are exempted from being checked under the WWCC. Under the present State and Territory legislation, this aspect raises significant concerns. This is further dealt with in Issue 8.

Other features

8 Further features of a national scheme should include:

- (a) the threshold to bar people has to be clearly set, identified and communicated so that adequate risk assessments can be undertaken by organisations
- (b) the information on which judgments are based has to be reliable to a reasonable standard of proof, to guard against the possibility of malicious and ill-founded reports of behaviour
- (c) changes to police and other criminal and non-criminal investigative information that impact on a worker's risk profile must be of a high standard and efficiently notified to the regulatory body, with clear procedures as to when the notification requirement arises and the manner in which the information is to be shared
- (d) identification-related changes (for example, change of name) have to be immediately notified to the regulatory body by relevant State and Territory Births, Deaths and Marriages offices (or the offices responsible for recording such changes)

⁸ For instance, Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) allows sharing of information between some organisations only. Some organisations can provide and receive information and some cannot. This can be a significant, practical impediment in the sharing of relevant information which may help to protect a child.

- (e) organisations which are required to have workers checked have to be required to notify to the regulatory body all relevant employment/disciplinary proceedings when those findings indicate a risk to children
- (f) the regulatory body must have the ability to immediately notify employers and those organisations which verified a worker's WWCC of changes to that worker's WWCC risk profile, which would stem from its continuous monitoring of changes to relevant records nationally
- (g) high-quality risk assessments have to be consistently performed by the regulatory body, according to a well-defined and published set of criteria
- (h) the regulatory body has to have the power to track where a person is engaged to work or volunteer with children and to notify all organisations which have verified that worker, if that worker subsequently becomes barred, or a risk to children is identified
- (i) there needs to be a mechanism for the flagging to other organisations of risks to children that are posed by workers engaged in those organisations
- (j) the regulatory body has to be able to track where the person is engaged in child-related work via the process whereby the employer/organisation verifies that the worker has a current WWCC clearance, thus helping to facilitate further contact with that employer/organisation if warranted for the protection of children
- (k) there need to be clear, unambiguous definitions of child-related work that identify who should be checked
- (l) there needs to be guidance about how to define and identify behaviour, short of criminal conviction, that indicates a risk to children
- (m) all people who work and volunteer with children need to be checked and particular groups should not be exempted from the WWCC because of cost or other reasons
- (n) the WWCC needs to be the responsibility of the worker rather than the employer or government, with responsibility for verification of the WWCC resting with each employer
- (o) parents who employ or contract with workers directly to work with their children (such as tutors) need to have the power to verify the WWCC clearance of the worker through the regulatory body
- (p) terms and definitions in the legislation need to align with terms/definitions across different pieces of child protection legislation
- (q) there needs to be timely and constructive consultation with key stakeholders before the scheme is agreed upon, and continuing as the scheme becomes operational and as the effect of the scheme is experienced.

2.3 Other considerations

Overseas criminal history

- 9 Although this is a matter not without difficulty, the Council submits that any national WWCC system should obtain, or require the provision of, information about relevant overseas offences committed by workers entering Australia. This is further discussed in Issue 9.
- 10 Another aspect is consideration of whether the WWCC system might be used to prevent people barred from working with children in Australia from moving to an overseas country to work with children.⁹

Indigenous people

- 11 It is a matter of public record that indigenous people are over-represented in the criminal justice system for many reasons, including poverty and social disadvantage. Subsequently, the recruitment and employment of indigenous workers to provide organisations with cultural competence to support and work with indigenous people is a crucial service delivery issue. From a social justice and service efficacy viewpoint, as well as for the protection of children, consideration should be given to how best to address this situation of disadvantage. Actions to tighten current WWCC procedures must result in better outcomes for children, and not further marginalise indigenous people by inadvertently creating barriers to the employment of indigenous people in community services. The WWCC risk assessment process needs to strike the appropriate balance.¹⁰

Vulnerable people

- 12 Although outside the Royal Commission's terms of reference, it is submitted that the WWCC system should be given broader scope. Rather than being limited to those who work with children, the scheme might be used nationally to check people who work with vulnerable people in our community. This logical extension of the WWCC would recognise that vulnerable adults (such as those with intellectual disabilities, the frail, elderly and homeless, adults with mental health, physical and/or intellectual disabilities) are just as vulnerable to exploitation and abuse as children.
- 13 Consideration should be given to the question of whether proceedings involving vulnerable adults should be reportable to the regulatory body as a relevant record for the WWCC. It is also important to consider an integrated system, rather than considering risks to children and risks to vulnerable adults separately, as the issues, the risks and the relevant background are likely to be similar.¹¹

⁹ This might be achieved via interaction between the WWCC regulatory body and Crimtrac which administers the Australian National Child Offenders Register (ANCOR) and Managed Person System (MPS): see <http://www.crimtrac.gov.au/our_services/ChildProtectionServices.html> viewed 25 July 2013.

¹⁰ In the ACT, the regulatory body is required to appoint an Aboriginal or Torres Strait Islander person as one of seven experts who may advise the regulatory body about the risk assessment for particular WWCC applicants: *Working with Vulnerable People (Background Checking) Act 2012 (ACT)* s34. A national WWCC scheme might involve the National Indigenous Intelligence Task Force (NIITF) in relation to WWCC for indigenous people. The role of the NIITF is described here: <<http://www.crimecommission.gov.au/publications/other/national-indigenous-intelligence-task-force-niitf-fact-sheet>>

¹¹ The *Working with Vulnerable People (Background Checking) Act 2012 (ACT)*, which is being implemented between 2013 and 2018 will require checks for those who work with vulnerable people, including children.

2.4 Balancing the interests of privacy and natural justice

- 14 In responding to the sometimes competing interests of privacy and natural justice:
- (a) guidelines would need to be developed in relation to the kind of information that can (or should) be communicated to the regulatory body under a national WWCC, setting out appropriate information sharing practices and an endorsed decision making process in relation to information sharing¹²
 - (b) limits would need to be imposed on the use that the regulatory body, or any other person or organisation in possession of information communicated to it under a WWCC, could make of the information, and
 - (c) statutory protections would need to be introduced to facilitate the safe exchange of information and to ensure that employers and other organisations and persons who communicated information to the regulatory body or other proper persons or organisations in good faith were shielded from claims such as breach of privacy, defamation, breach of confidence and/or discrimination.

¹² See for example Ombudsman of South Australia (2008) *Information Sharing Guidelines for promoting safety and wellbeing*, viewed 22 July 2013 <http://www.ombudsman.sa.gov.au/wp-content/uploads/information_sharing_guidelines.pdf>

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

- 1 The Council is strongly of the view that there should be a national WWCC. However, the Council recognises that political and practical realities may delay the establishment of a national scheme. In the absence of the immediate establishment of a national scheme, the initial approach for the Royal Commission should be to recommend the imposition of agreed standards in the State and Territory-based WWCC schemes, in order to improve and harmonise those schemes and facilitate their integration into a national WWCC scheme over the longer term.
- 2 The purpose of agreed standards for State and Territory WWCC schemes is to provide a starting point. Minimum standards enable organisations to know the basic information they have and do not have and steps they must take to apply appropriate risk management strategies where required. However, to the extent that minimum standards might adopt the lowest common denominator in the area of child protection, they should not be tolerated. Instead, a best practice approach is required.
- 3 If there is no national WWCC scheme, the minimum requirements for each State and Territory scheme should still provide a degree of consistency and reflect the key features discussed at Issue 2 above. Other minimum requirements include:
 - (a) there needs to be agreement as to which records/offences should automatically bar or disqualify a person from working with children, and which trigger a risk assessment. Consistent thresholds need to be agreed between the States and Territories for barring a person when it is not pursuant to an automatic barring offence
 - (b) identification of relevant disciplinary/employment proceedings that should be included in the records which are checked pursuant to the WWCC need to be identified. The particular types of misconduct/findings that are considered to be relevant in employment/disciplinary proceedings should be both comprehensive and consistent across the States and Territories
 - (c) reporting of relevant disciplinary proceedings from professional associations (for example, medical practitioners, psychologists) and police needs to be a requirement
 - (d) reporting of relevant findings by other child-related organisations, including Church bodies needs to be a requirement
 - (e) consistent language/definitions/terms across State and Territory borders need to be agreed and implemented, and
 - (f) consistent thresholds need to be agreed between the States and Territories as to where the threshold is for notifying organisations if there is a risk to children posed by a particular person but the person is not barred.
- 4 An issue that needs to be addressed with the State and Territory-based WWCC schemes is portability, and the practical difficulty of administration at the State and Territory level, particularly for operators of national services.

- 5 For example, it is a legislative requirement that people working with children in Western Australia apply in person for a WWCC clearance. This is impracticable for staff in a national service, such as BoysTown, which provides telephone and online counselling for children and young people in WA from a counselling centre in Brisbane.

- 6 A further example relates to the Catholic Education Office of the Archdiocese of Canberra-Goulburn, which operates schools in NSW and the ACT. These jurisdictions have vastly different WWCC, mandatory reporting and information sharing requirements. While reporting and information sharing protocols under the *Ombudsman Act 1974* and Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* in NSW are clear, the system remains informal in the ACT. There is clear potential for similar factual scenarios to generate inconsistent outcomes depending on whether conduct occurred in the ACT or NSW and therefore which law is applicable. This is not desirable. Further, the lack of ability to share information in a Chapter 16A-like context can delay or prevent conscientious investigation of child abuse issues.

4 For how long should any clearance be granted?

- 1 The WWCC schemes currently operating in the States and Territories provide for several different validity periods before it is necessary for the holder to reapply for a WWCC. The relevant WWCC legislation requires WWCC holders to be checked, or seek renewal of their clearance every two years (NT), three years (ACT, QLD, SA, WA), or five years (NSW, Vic).
- 2 It would be preferable for a WWCC to be valid for the same period of time nationally.
- 3 Requiring holders to reapply for clearance at certain intervals means that their history of records will be searched and their suitability will be reviewed regularly.
- 4 Similarly, where employers are required to verify with the regulatory body that the worker has renewed their WWCC and has a current WWCC, the regulatory body is able to maintain up to date records of where the person is working. This is an important aspect of the continuous monitoring and helps to ensure the regulatory body has up to date records of the organisations that need to know if the WWCC is subsequently withdrawn. It also keeps the importance of child-safe systems and workplaces in the minds of the organisation and the workers.
- 5 The Council notes, however, there may be no need for a maximum period of validity for a WWCC if there were nationally consistent obligations requiring:
 - (a) the holder of a WWCC clearance to provide updated identification (for example, verification of any change of name) and contact information
 - (b) the holder of a WWCC clearance, and/or relevant reporting bodies, to provide all new reportable information (for example, relevant employment/disciplinary proceedings) to the regulatory body
 - (c) the regulatory body to review WWCC clearances as soon as any new information from across the country is received, and
 - (d) the establishment of an online database access for organisations and others operating in regulated sectors, which provides the ability to both –
 - (i) obtain up to date verification of an individual's WWCC status when required, and
 - (ii) be notified by the regulatory body if there is a change in the person's WWCC status.
- 6 This is not currently the case in any jurisdiction. If there is no national scheme, it will be necessary to regularly renew the WWCC.¹³
- 7 A further but related issue is the length of time that people barred from working with children following a WWCC process are prevented from reapplying.¹⁴ Currently, some jurisdictions place such an embargo for a minimum period (for example, three years from the date of refusal in the ACT, and five years in NSW). Only after the expiration of this time may the person submit a fresh application.

¹³ The Council also notes that renewal of WWCC with an associated fee for workers would provide a revenue stream for the WWCC scheme on a 'user pays' basis.

¹⁴ This is in contrast to the ability to appeal a decision refusing clearance, which is discussed in Issue 10.

- 8 The Council supports this approach and submits that it should be a requirement nationally. Such a requirement:
 - (a) ensures that refusal of a WWCC clearance will not necessarily operate indefinitely
 - (b) enables individuals who are unsuccessful to reapply on the basis of up to date evidence at a later time, so that (in the absence of history leading to an automatic WWCC refusal) a refusal decision does not necessarily operate as a lifetime ban
 - (c) may discourage any potential for 'jurisdiction shopping' by individuals seeking to avoid the requirement for a WWCC in a particular State or Territory.
- 9 If a person was permitted to reapply after a specific time period (rather than there being a lifetime bar), a regulatory body may be more prepared to bar the person at that point in time.

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

- 1 In most States and Territories, WWCC legislation provides a limited mechanism, or grants an employer organisation the discretion, to allow a person to commence work without a WWCC clearance.¹⁵ This operates only in circumstances where the person has submitted an initial WWCC application or has applied for renewal of their WWCC clearance. In Queensland, it is not possible for a worker to apply for a WWCC until a contract of employment is in place.¹⁶
- 2 It is the experience of most Catholic organisations operating in child-related work nationally that the length of time required to complete a WWCC can vary, particularly when the person may have a relevant record requiring risk assessment. However, with increasingly highly automated processes, the regulatory body should be able to process large numbers of WWCC applications in a timely manner.¹⁷
- 3 The Council is concerned about the risk associated with allowing a person who has not obtained a WWCC clearance to commence in child-related work, even where they have submitted a current WWCC application.
- 4 Commencement in paid employment is not something that usually happens quickly, and it is reasonable to expect that in most cases a clearance should be able to be obtained before commencing in child-related work.¹⁸ When this does not occur, for example if a person moves within an organisation from a role not involving children to a role requiring direct contact, there may need to be provision for a fast-tracking system for urgent applications.¹⁹
- 5 However, obtaining a WWCC clearance for all relevant people working in child-related roles is but one part of the overall strategy organisations need to have in place to ensure that they provide a child-safe environment. Best practice requires that organisations develop procedures to ensure that, wherever reasonably practicable, the WWCC clearance status of potential workers can be established prior to commencing work.²⁰ That said, the Council is of the view that the regulatory body, whether national or State and Territory-based, should have in its governing legislation a provision specifying service standards including the time period for completion of a WWCC, for example, within seven working days.

¹⁵ See Attachment A, item 32.

¹⁶ This requirement, and the time taken to process applications once submitted (see note 17 below) means that there is greater need for workers to start work while their WWCC is still pending in Qld. Allowing workers to submit WWCC applications before they are employed would alleviate this.

¹⁷ This is dependent in some cases on the efficiency and backlog of the regulatory body, which in turn is dependent on that body's resourcing. Anecdotally, the Council is aware that average time for processing of a WWCC clearance nationally varies greatly. Under the new NSW scheme which commenced in June 2013, clearances are being provided in 1-2 days. In SA the average clearance time is 7-10 days. In contrast, in WA and Qld average time for clearance to be provided following application is more than four weeks. Currently in the ACT there is a processing delay of some weeks for WWCC applications, due to the fact that the ACT is implementing its WWCC scheme for the first time. WWCC clearance for people in child-related employment is not a requirement until 8 November 2013. With this in mind, Church organisations including the Catholic Education Office in the ACT are encouraging all relevant staff and volunteers to submit applications as soon as possible, to avoid a situation where clearance is not obtained prior to 8 November 2013.

¹⁸ WWCC should be included as a requirement in the position advertisement and description, so that applicants are on notice and may take appropriate steps to obtain a WWCC during the application process.

¹⁹ These cases would not arise if the WWCC scheme required anyone working in a child-related workplace to be checked, regardless of their level of direct contact with children. This is further discussed at Issue 6.

²⁰ Particular issues arise for people coming from overseas to work in Australia, including priests and members of religious institutes, who need to be able to apply for WWCC on arrival: see paragraphs 2.39 and 9.16.

6 How should child-related work be defined?

- 1 An appropriate, clear and consistent definition of 'child-related work' is central to a successful WWCC scheme. Various elements need to be included in the definition:

6.1 Contact

- 2 Direct contact - interaction between worker and child in a physical environment, and
- 3 Indirect contact - this should include those people who work by having contact with children via indirect means such as the internet or telephone, for instance, telephone counsellors, internet or telephone teachers or coaches. This includes people who use technologies to work with children in such a way that may enable them to develop inappropriate relationships with children.

6.2 Child-related roles

- 4 The Council submits that the definition of 'child-related work' should include child-related roles (even though they may not fit the definition of direct/indirect contact). Checking leaders and managers of organisations that operate child-related services is important, for a number of reasons referred to at Issue 7.

6.3 Child-related work

- 5 The designated areas of work need to be well thought out and clearly defined. It is important that the sectors and services which the legislation purports to define are the subject of consultation so that definitions that are relevant to the particular sector or service are appropriate and accurate.²¹ All priests, clerics and members of religious institutes should be checked.²²

6.4 Child-related workplaces

- 6 The Council submits that there should be an additional limb to the definition of child-related work, to include 'child-related workplaces'. This definition should focus on the purpose of the workplace and the environment in which the person is working, not merely on the type of work and/or the position description of the particular role they hold.
- 7 This definition would cover those workplaces which are child-related workplaces but may have a small number of workers whose job description or job requirements do not require the person to be working directly with children.

²¹ The *Child Protection (Working with Children) Act 2012* (NSW) contains headings of child-related work which are not obviously linked to the words which are supposed to explain them. An example is 'Child Development' the clarification given under the heading is 'mentoring and counselling services to children'. The link needs to be correct and appropriate for the sector or service. Consultation will assist in increasing accuracy and clarity.

²² This is in contrast to the variable application of the current WWCC schemes to priests and religious. Some jurisdictions deem all work with religious organisations to require a WWCC, while others require certain minimum contact with children before a WWCC will be required: see Attachment A, item 10.

- 8 While this approach would relieve organisations of the task of determining which roles within their workplaces are child-related and which are not, the most significant benefit is that it increases the safety of children. This occurs because the greater access a person has to a child in an environment where the child feels safe, the more potential risk there is to the child, even if the job description itself is not one requiring extended contact with children. Community expectations are that only 'suitable' people would be working in child-related workplace settings.
- 9 An example relevant to this definition is a school's regular maintenance person or gardener, or the administration officer at a child-care centre. The job description for these roles would not require or expect them to work directly with children. However, these workers are located in the workplace and on an ongoing basis may have a degree of access to children and may regularly interact with children. This familiarity with, and accessibility to, children in the child-related workplace can present a risk and create a greater vulnerability for a child.
- 10 Further, individuals responsible for the management and operations of organisations providing child-related workplaces should also be included in the WWCC system.
- 11 The Council submits that all persons who work in a child-related workplace (that is, a significant purpose of the workplace involves children) should be checked. Regular contact with children, or a regular presence in a child-related workplace regardless of contact, should mean that a worker is required to be checked.

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

- 1 There should be active consultation with child-related sectors so that accurate and appropriate definitions are drafted.²³ The focus of the drafting should be on the risk to children in the particular setting. This includes the risk of an offence being committed against a child in a particular setting, and the risk of inappropriate relationships (grooming) being established.
- 2 In addressing the question of how to define 'child-related sectors', it may be helpful to consider elements such as:
 - (a) the type of work
 - (b) the nature of the service, and/or
 - (c) the workplace setting as a whole.

²³ The current NSW legislation now covers the concept of the sectors well following consultation. For instance, 'child/family welfare services' was included as a sector which needed to be checked as a result of consultation. This addition reflects the benefit of consultation.

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 General

- 1 The current exemptions to the requirement to have a WWCC vary between jurisdictions.²⁴ In most States and Territories, most volunteers in schools are not checked because they fall within a parent/close relative volunteer exemption.²⁵
- 2 However, there is a community perception that the WWCC applies very broadly to people who come into contact with other people's children through working or volunteering. If the WWCC exemptions are too broad or inappropriate, the safety of children will be compromised. This also compromises the safety of children less directly, as communities tend to believe incorrectly that all people who work with children have been subject to the WWCC.²⁶ Significantly, people who have been barred will still be allowed to work with children if that work/role is exempted from the WWCC.
- 3 The Council submits that if a person is barred under the WWCC, or would be barred if that person applied for a WWCC clearance, that person should not work or volunteer with children at all. Exemptions should not allow this loophole, or any other loophole, to be created. Removing exemptions such as these would not interfere in the relationship between a parent and his/her own child but would achieve the greater goal of barring people who pose an unacceptable risk from volunteering with other people's children. This prohibition (not to volunteer or apply to volunteer when barred) needs to be set in legislation with a consequence for a person who breaches the prohibition. This prohibition previously existed in NSW legislation, until the new WWCC scheme came into effect in June 2013.
- 4 Another important aspect of the issue of exemptions is the message that is being sent to organisations, potential perpetrators, the community and children if significant numbers of volunteers are being exempted from the WWCC.
- 5 One way that organisations and the community send out the message that they are committed to child protection is by requiring working with children checks. Sending a strong message to the community that people who work with children may be checked may increase the likelihood that people who have a relevant record of having harmed children will then not try to work with children, because they realise they will be checked and could be barred. If a person who poses a risk to children chooses to self-select out of a child-related workplace because of the prospective WWCC process and other child protection measures in place, this would be a good result.

²⁴ See Attachment A, items 5-12.

²⁵ See Attachment A, item 8.

²⁶ The Church in NSW has been so concerned about the gaps in protection of children that have been created because of exemptions from the WWCC for volunteers that it has advocated with government for the introduction of a statutory declaration to be signed by volunteers who are exempt (and new volunteers not yet checked because of the phase in period). This statutory declaration requires volunteers to state that they have not been barred and have not been found guilty of a barring offence. This has been recognised by the NSW government as a positive initiative of the Church to assist in the protection of children.

- 6 The Council is of the view that there should be an overarching section in WWCC legislation, preventing a person from volunteering or working with children if they are barred, or would be barred if they applied for the WWCC. If there were no such provision, it is possible that a person who is barred from working in paid employment could continue to volunteer, for instance, at their child's school.²⁷ (This is further discussed at 'Parent Volunteers' below).

8.2 Adults living in the homes of children in out-of-home care

- 7 The Council does not support exemptions. Whilst recognising the complexity of the issue, the Council maintains that the welfare and safety of children is paramount, and there should not be an exemption in this area.
- 8 The Council is of the view that all adults living in the homes of children in out-of-home care should be subject to a WWCC. The risk is too high not to check these people as having children living in the home increases a person's access to the child.
- 9 This requires clear guidelines that would help to carefully discern and distinguish 'visit' periods from 'living in'. For example, the new partner of a foster carer who is in the home twice a week, every week, should be regarded as 'living in' and should therefore be checked. They should be checked even though they are not spending large blocks of time, or living permanently in the home.

8.3 Parent volunteers

- 10 Again, the Council does not support exemptions. Whilst recognising the complexity of the issue, the Council maintains that the welfare and safety of children is paramount, and there should not be an exemption for parent volunteers.
- 11 The Council understands and appreciates the role of volunteers (including parent volunteers) who provide generous assistance in many areas of Church life and works. The Council further understands the concern that requiring parent volunteers to undergo a check may result in fewer parents volunteering. As with any change, it would be important to build understanding of the reasons behind the change. The Council submits that if there are volunteers who self-select out of volunteering with children, because they may be barred, this will be a positive step forward in the protection of children.
- 12 In submitting that there should be no exemptions for volunteers, the Council considers it of utmost importance that people are not dissuaded from undertaking volunteer roles in the myriad of activities in which volunteers play so vital a part in Church, sporting and community organisations and other organisations today. There is a risk that if the WWCC scheme is not simple and cost effective to administer, many small organisations that have minimal funding and which rely heavily on volunteer participation may struggle to meet their obligations in a timely and comprehensive way and may even find the process such a burden that the ultimate effect is to reduce the services that they currently provide.

²⁷ It is of concern that under the new WWCC scheme in NSW there is no legal barrier to a barred person who is a parent or close relative of a student enrolled at a school from volunteering in activities with their child and other people's children at the school, nor any penalty for doing so.

- 13 It is crucial that the Royal Commission ensure that the WWCC scheme which it recommends be constructed efficiently and cost-effectively so that inclusion of volunteers within it does not have the effect of burdening any organisation that relies on volunteer participation or dissuading people from undertaking voluntary work.
- 14 In terms of managing risk, under current legislation in several jurisdictions an organisation will not know if a parent volunteer is barred because they are not required to undergo a WWCC in most circumstances. Therefore, the organisation cannot take steps to respond to the obvious risks posed by a barred person.
- 15 For example, in NSW a distinction has been drawn between parent volunteers who work in their child's schools or educational institutions (these parents are exempt) and parent volunteers who work in a non-school programme or other activity (who are required to be checked if their child is not involved in that activity). The exemption applies much more broadly in the school setting. In Queensland, if a parent undertakes volunteer work with a group of children including one of their own children they are exempt. However, if they volunteer regularly (as defined) with a group of children that does not include their own child they do need a WWCC.
- 16 Distinctions of this kind are questionable. They are cumbersome for organisations to apply and the reasoning behind them needs to be closely examined.
- 17 Further, for parent or close relative exemptions to be maintained, the definition of 'parent or close relative' needs to be examined to see how wide the definition should be. A wide definition further extends the impact of the exemption and will also be more difficult for an organisation to monitor.
- 18 The Council submits that the benefit to children of the removal of this exemption far outweighs any inconvenience or administrative burden. While a requirement to be checked places an obligation on volunteers, for the vast majority this will be limited to some possible inconvenience in applying for clearance, which is provided for volunteers at no, or very low, cost.
- 19 For these reasons, the Council submits that all parent volunteers should undergo a WWCC. The Council does not accept that merely because a volunteer is a parent or close relative the potential risk posed by that person to other people's children is minimised.
- 20 The Council recognises that a change to require parent volunteers to be checked will be seen as a significant change in some jurisdictions and that will require careful change management through the provision of information and education. If the reasons are carefully explained, most volunteers will accept the change because they will understand the associated benefit of improving child safety.
- 21 In the event that the Royal Commission does not accept the submission that there should be no exemptions for volunteers that work with children (whether in their capacity as parents, relatives or otherwise), the Council would be grateful for the opportunity to provide further submissions in relation to the form and application of any volunteer exemptions. The Church's experience with volunteers and volunteer reliant organisations makes it well placed to assist the Royal Commission in the design of exemptions if it is ultimately determined that some exemptions are to apply.

- 22 For the reasons expressed above, the Council submits that exemptions should not be based on the volunteer's familial relationship with a particular child. Instead, any volunteer exemptions would ideally be determined based on known and determinable risk factors, including whether or not the volunteer role involves unsupervised access to children, or contact with particularly vulnerable categories of children.
- 23 If the view is ultimately taken that all parent volunteers are not checked, it is important to recognise specific high-risk roles undertaken by parent volunteers and ensure that those at least are checked. Such roles would include volunteers involved in mentoring children, and volunteers involved in the provision of intimate personal care services to children (such as bathing and toileting).²⁸ Other areas of high-risk include parent volunteers who attend overnight excursions such as camps. The Council submits that if these volunteering roles are undertaken by parent/close relative volunteers they must be checked and not included in any parent volunteer exemption from the WWCC.

8.4 Other exemptions

- 24 There are a number of other exemptions which need to be considered.

Working in child-related workplaces

- 25 The Council understands that concern has been expressed about checking every person who works in an organisation, whether or not they have direct contact working with children. NSW has an exemption whereby if a worker provides administrative, clerical, maintenance or other ancillary services and the work does not ordinarily involve contact with children for extended periods of time, these people are exempt from the WWCC.
- 26 The Council submits that a person working in administration, for instance, has access to children which could impact on the safety of children if they work in a child-related workplace such as a child care centre. An administrative assistant or finance person's work may not require face-to-face contact with children for extended periods of time. However, a child can still come into regular contact with those workers in a school, child care centre or other child-related organisation. The Council submits that the whole of the organisation workplace/structure should be considered. Further, if a workplace is a child-related workplace, for example, a child care centre or a school, all people who work in that workplace should be checked to ensure they are suitable people to be working in that child-related workplace: they should not be exempted from the WWCC.

Checking of persons under the age of 18 years in certain roles

- 27 The Council submits that the age of a person to whom the WWCC applies should be carefully considered and researched.²⁹ Below are three examples of specific areas of concern to the Council in relation to under 18 volunteers:

- (a) Persons under 18 who act as mentors to younger children.³⁰

²⁸ These roles were in fact identified by the *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (Wood Special Commission Report) as roles that should be subject to WWCC.

²⁹ NSW has recently changed its scheme so that only persons 18 and above are checked, consistent with Victoria, Queensland and SA. In the ACT and NT this exemption is limited to children aged 16 years and over and 15 years and over respectively. In contrast, in WA children under 18 years must be checked if they are working in relevant paid roles. See Attachment A, item 7.

- (b) Situations where people under the age of 18 supervise younger children in situations where there is limited adult supervision, including on overnight camps.
- (c) Work experience carried out in areas that would otherwise be considered child-related work.³¹
- (d) The Council submits that all workers, even those under the age of 18, should be checked if they are undertaking roles of this nature.

Exemptions for certain professions

- 28 Although it is not consistent across Australia, most States and Territory WWCC schemes provide for some workers who are members of certain professions to be exempt from WWCC. This includes police officers, teachers, health professionals, and in some cases, corrective service officers and transport workers.³² The rationale for exempting these workers is that they are subject to screening or other professional requirements through a professional registration body.
- 29 The Council submits that these exemptions should be reviewed, to examine:
- (a) the extent and sufficiency of the checking that occurs for these exempt professions, and
 - (b) the rationale for continuing these exemptions rather than simply requiring members of the relevant professions to have a WWCC.

Inconsistent interstate exemptions

- 30 It is also necessary to consider other legislated exemptions in relation to interstate workers who are checked in another State or Territory. This would not be an issue if the WWCC scheme were national.

8.5 Cost

- 31 It has been suggested that a reason why there are so many exemptions to the WWCC scheme is cost. However, in the majority of jurisdictions a WWCC is free, or low cost, for volunteers, and provided at minimal cost to employers and workers.³³
- 32 While there may be a significant start-up cost in obtaining, or indeed providing, WWCC for all workers, the individual cost of each WWCC will be low unless risk assessment or barring occurs. Increasing automation will mean that where there is no relevant conduct, WWCC will become more and more streamlined. Checks that require risk assessment and barring will take more time and effort and will therefore always involve heavier cost to the system to process, but they are the very checks that warrant the cost.
- 33 The direct and indirect economic, emotional, psychological and physical cost resulting from abuse of children is significant. The Council submits that it is sound financial logic to fund a scheme to assist in preventing harm to a child. Prevention will stem any future significant economic and other unquantifiable costs to individuals and society as a whole.

³⁰ Mentors were specifically identified in the Wood Special Commission Report as roles posing a high risk to vulnerable children.

³¹ Consider for instance, a person under the age of 18 with a history of engaging in abusive sexual behaviour who then seeks to carry out work experience in child-related work, such as work at a child-care centre.

³² See Attachment A, item 5

³³ The current cost of WWCC applications in each State and Territory is provided at item 48 of Attachment A.

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

- 1 The records that are checked in the course of conducting a WWCC are clearly critical as they form the basis of an effective WWCC. If the records on which a WWCC is based are incomplete or not sufficient, the check will not be adequate, even if every other aspect of the check is done well.
- 2 A further critical aspect is the nature, quality and transparency of the risk assessment tool used by the regulatory body to conduct the WWCC. This is discussed further at Issue 12 below.
- 3 The Council's comments in relation to this issue focus upon the types of records that should be available to be considered as part of a WWCC process. They include:
 - (a) adult criminal history records
 - (b) findings in relevant employment/disciplinary proceedings
 - (c) information received from designated reporting organisations
 - (d) relevant juvenile criminal history records.

9.1 Relevant adult criminal history records

- 4 It is well accepted that relevant offences committed as an adult should be considered as part of the WWCC process, and that in the context of a WWCC such offences are excluded from the operation of legislation relating to spent convictions.
- 5 The current State and Territory WWCC legislation prescribes the range of offences that will be considered in the course of a WWCC. It is important that there is consistency across the jurisdictions as to the types and nature of the convictions (and charges/investigative information more broadly) that will be relevant to a WWCC.
- 6 As raised in Issue 2, the current WWCC legislation is inconsistent in relation to whether offences committed overseas will be considered in the course of a WWCC.³⁴ It is important that, as far as possible, WWCC legislation include the ability for equivalent offences committed overseas to be taken into account as part of the WWCC nationally.³⁵

9.2 Findings in employment and other disciplinary proceedings and information received from designated reporting organisations

- 7 Findings in employment and other disciplinary proceedings must be included nationally in all WWCC processes as records to be checked. Current legislation in most States and Territories either:

³⁴ Currently, consideration of overseas offences is dependent on accurate disclosure by an applicant via personal disclosure or statement, in some jurisdictions only: see Attachment A, item 26.

³⁵ To qualify for most classes of working visa for entry into Australia, applicants must satisfy a character test which includes provision of information about their criminal history. This information might be able to be used by the regulatory body in conducting a WWCC: see <<http://www.immi.gov.au/media/fact-sheets/79character.htm>> viewed 29 July 2013. Further, the Teachers Registration Board of South Australia requires that intending applicants who have resided in United Kingdom for a specified number of years provide an international child protection certificate which relates to specific sex crimes against children in United Kingdom.

- (a) does not specifically include adequate employment/disciplinary proceedings and findings as relevant records that may be considered,³⁶ or
- (b) does not provide a clear mechanism for the reporting to, and consideration of, this information by the regulatory body.

9.3 Illustrative scenarios

Scenario 1 - NSW

- 8 A child-related workplace provides access to many children. In NSW, the *Ombudsman Act 1974* has assisted designated agencies, including Catholic organisations operating child-related workplaces, to identify and focus on behaviours of workers that put children at risk. The *Ombudsman Act 1974* requires that clearly defined reportable allegations involving employees (including volunteers) in such workplaces is notified to the Ombudsman and investigated subject to the oversight of the Ombudsman.
- 9 For over a decade in NSW, the WWCC included completed relevant employment/disciplinary proceedings, involving workers where there were findings relating to sexual misconduct, physical assault, ill-treatment, neglect or behaviour causing psychological harm to a child. However, recent amendments to the WWCC scheme in NSW resulted in a significant narrowing of the scope of the information that will be reported to and considered by the regulatory body by reporting bodies. The Council is concerned about this development.
- 10 Until the commencement of the new WWCC scheme in NSW on 15 June 2013, the types of behaviour reportable under the *Ombudsman Act 1974* and those that were included as relevant employment proceedings in records required to be checked in the WWCC were the same. The NSW legislation for the new WWCC scheme narrows the categories of behaviour that are reportable to the regulatory body, which is the Office of the Children's Guardian (the Children's Guardian). The effect of this is to now limit the types of behaviour which are reportable to the regulatory body, potentially limiting the records considered in a WWCC, even where there were findings in the employment proceeding of behaviour placing children at risk, and possibly already other relevant records relating to the same person.
- 11 A relevant scenario concerns findings made that a boarding master was treating a 15 year old boy inappropriately. It was found that the boarding master persistently humiliated the 15 year old, ridiculing him for being overly feminine. The boarding master hummed a particular tune in class when the student walked in and often criticised his physical appearance in front of the student's peers. The student came to the school in year 10 and there was no history of any difficulties with his behaviour or wellbeing. From the time he started at the school, there is evidence of him regressing and becoming withdrawn. He was referred to a clinical psychologist, who provided a report detailing the boy's claims as to his boarding master's behaviour towards him and provided a professional assessment that he was suffering acute depression and anxiety attributed to that. The further investigation at the school verified both the boy's claims about the boarding master as well as other examples of the boarding master demeaning the boy.

³⁶ Consideration should be given to whether relevant proceedings involving vulnerable adults should be reportable to the regulatory body as a record for checking.

- 12 Under the new NSW WWCC scheme, the findings made by the school that the boarding house master's conduct was behaviour that caused serious psychological harm are no longer reportable for a WWCC.
- 13 This narrowing of the types of employment/disciplinary proceedings that are reportable is attributed to disquiet about the standard of investigation in some cases, and in others the reporting of only minor matters. The narrowing is of concern to Catholic organisations operating child-related workplaces in NSW.³⁷

Scenario 2 - Victoria

- 14 In Victoria, the WWCC process provides for the regulatory body to consider some additional information, including employment related information. Further, the legislation identifies a number of professional organisations, including the Victorian Institute of Teaching, as prescribed bodies from which the regulatory body can consider information.
- 15 The Victorian legislation is relatively prescriptive in setting out the information that the regulatory body must consider in relation to a WWCC application. The legislation appears to distinguish between the organisations from which the regulatory body can seek information and those from which it can receive information. It is not clear that the current legislation would allow the regulatory body to consider information including the findings of employment/disciplinary investigations if it were to be submitted by the Church.
- 16 The Council is therefore concerned that:
 - (a) in the absence of an inquiry from the regulatory body, there is no requirement for other bodies, including Church organisations, to report relevant employment-related disciplinary findings or other relevant information to the regulatory body
 - (b) it is unclear whether the legislation allows the regulatory body to consider any information that is submitted to it by entities such as Church organisations in relation to an applicant for, or a holder of, a WWCC clearance, and
 - (c) the definition of those bodies required to report employment/disciplinary proceedings to the regulatory body should include all those bodies (including Church organisations) which are required to ensure that their workers undergo a WWCC. Otherwise, significant findings of misconduct involving children in employment proceedings will fall through the gap of not being reportable to the regulatory body and not considered in a WWCC. Other organisations, such as the police should also be included as reporting bodies.
- 17 As was stated in the submission made on 16 May 2013 by the Catholic Church in Victoria to the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Organisations, as the legislation currently stands in Victoria, if findings are made against an offender

³⁷ An organisation which can appropriately investigate a sexual misconduct matter would be just as capable of conducting an investigation into these other types of misconduct that are now excluded from being reportable. If investigative standards are not high enough, the focus should be on ensuring that organisations are appropriately resourced and up-skilled so as to improve these outcomes, rather than eliminating important probative findings of ill treatment, neglect or behaviour causing psychological harm to a child from being reportable to the regulatory body. It is some consolation that there is provision for the NSW Ombudsman to notify concerns to the WWCC regulatory body for inclusion in the WWCC.

through a Church investigative or disciplinary process but not investigated under criminal law, their WWCC proceeds without this information being received and considered by the regulatory body.³⁸

Conclusions from these scenarios

- 18 The issues raised by these scenarios need to be addressed.
- 19 From the scenarios, it seems that, almost by default, the main focus of the WWCC in most jurisdictions is on criminal history, specifically charges and convictions for relevant offences. The Council submits that to focus only on criminal history would be a serious shortcoming.
- 20 Findings made in an employment or other disciplinary proceeding regarding behaviour that may cause harm to children should also form part of the information that is made available to regulatory bodies, so that it may be considered and weighted appropriately as part of a risk assessment undertaken by a regulatory body conducting a WWCC.
- 21 The categories of behaviour that should be relevant are those relating to:
 - (a) sexual misconduct involving a child
 - (b) misconduct involving physical assault behaviour towards a child
 - (c) ill treatment of a child
 - (d) neglect of a child
 - (e) behaviour causing psychological harm to a child.
- 22 Sometimes a person with a concerning history of this type of misconduct with children will undergo a WWCC. However it is currently the case that information about findings of these categories of misconduct will not usually be made available to, or considered by, regulatory bodies conducting WWCC nationally.
- 23 Of course, the principles of natural justice and fairness need to be considered. Accordingly, it may be reasonable to limit consideration of information obtained in an employment disciplinary context to matters that indicate the person may be a serious risk to children.

9.4 Juvenile Records - should the check include juvenile records?

- 24 The juvenile or youth justice system in Australia deals with children and young people (generally those aged between 10 and 17) who have committed or allegedly committed offences. The juvenile justice system is maintained separately from the adult criminal justice system and is designed to provide offenders an opportunity to rehabilitate in adulthood.

³⁸ The submission proposed that the Victorian *Working with Children Act 2005* be amended to clarify that the regulatory body, the Department of Justice (DOJ) is empowered to take account of information submitted to it by the Church and like entities. Once DOJ received this information, all of its usual processes and powers would then be open to DOJ to suspend or remove a WWCC card held by a Church person who was the subject of an adverse finding but not convicted, and to refuse an application for a WWCC by such a person. See *Submission by the Catholic Church of Victoria to the Victorian Parliamentary Inquiry into the handling of child abuse by religious and other non-government organisations* (16 May 2013).

- 25 In line with this goal, some State and Territory legislation limits the retention of criminal records in relation to offences committed by and convictions recorded against children. It is generally the case that juvenile criminal records will be expunged after a certain period of time, or when the young person turns 18, whichever is earlier. It has been accepted, however, that records of certain offences, including sexual offences, should be excluded from this, because of the nature and seriousness of these offences, and the likelihood of re-offending.³⁹
- 26 The process associated with a WWCC involves checking the person's relevant history relating to risk to children and collection of information and intelligence about the person. This does not start when a person reaches the age of 18 years, and juvenile criminal behaviour is clearly relevant to the prediction of risk. For these reasons, it is important that all information, including relevant juvenile criminal history, is available for consideration during a WWCC.
- 27 It is important that juvenile convictions are carefully assessed prior to barring a person from future work with children, particularly if the decision is to be based on a juvenile record alone. Once available, the information will need to be carefully considered by the regulatory body as part of the WWCC risk assessment, and weighted appropriately by competent people⁴⁰ trained to conduct a risk assessment. To provide appropriate balance for these competing considerations, the WWCC risk assessment must be able to take into account individual circumstances including:
- (a) the nature of the offence
 - (b) the age of the juvenile at the time the offence was committed
 - (c) the time that has elapsed since and demonstration of rehabilitation, and
 - (d) any other relevant history up until the time of the WWCC.⁴¹
- 28 Accordingly, the Council submits that against this background, relevant offences from an applicant's juvenile criminal history, including in particular sexual offences, but also other serious offences, should be included in the information made available to the regulatory body, so that it is able to be taken into account in a WWCC.

³⁹ See ALRC Report 84 (1997): *Seen and heard: priority for children in the legal process*, Chapter 19, paragraph 19.123, viewed 11 July 2013 <www.alrc.gov.au/publications/19-sentencing/criminal-records>

⁴⁰ Such competency might include personnel with relevant clinical experience.

⁴¹ For example, offences committed while a juvenile against other juveniles, and offences committed while a juvenile that relate to 'sexting' (the act of sending sexually explicit messages and/or photographs, primarily between mobile phones which is prevalent among adolescents) may not, in the absence of subsequent or other behaviour, indicate that a person poses an ongoing risk to children in adulthood.

10 How should an appeals process operate?

- 1 Currently, most State and Territory WWCC legislation provides for merits review of most decisions refusing WWCC clearances. In general, merits review is undertaken by the relevant State or Territory civil and administrative appeals tribunal, but in the Northern Territory appeals are heard in the Local Court.
- 2 The Council considers that it is appropriate that, in general, decisions refusing WWCC clearances should be subject to a merits review process. Appeals need to be appropriately case managed and resolved expeditiously. There should also be the ability, as currently exists, for decisions made on review to be appealable to the Courts in the event of any error of law, under the normal administrative law arrangements in Australia.
- 3 The overriding goal in the design of appeal mechanisms for WWCC schemes should be consistency. Any situation that enables people to ‘jurisdiction shop’ for their WWCC clearance should be avoided.
- 4 Where the WWCC legislative scheme operates in such a way that the primary decision maker has a degree of discretion, it would be desirable for policy guidelines to be in place to indicate to decision-makers (both primary and on review) the considerations they should take into account when making decisions. This is not always the case currently. In some jurisdictions, for example, the considerations and weighting to be applied to certain information in the course of conducting a risk assessment are publicly available, and relatively clear, while in others they are less so.⁴²
- 5 Merits review provides the possibility of independent oversight of decisions made by regulatory bodies. It also provides for the legislative scheme and its interpretation by the regulatory body, which should reflect community standards, to be tested.
- 6 In some instances, current legislation provides for automatic refusal of a WWCC clearance. This generally applies to people who have been convicted of certain identified serious offences.⁴³ In some instances, these automatic refusal decisions are not reviewable.
- 7 In all cases, the rules for making primary decisions by the regulatory body need to be clear, and if there is no national system for the WWCC, jurisdictions need to provide for outcomes that are consistent with each other as far as possible, both at primary decision stage, and on review.

⁴² While it is a new, untested system, the Working with Vulnerable People (Background Checking) Risk Assessment Guideline 2012 (No 1) (ACT) which will operate in the ACT provides guidance as to the risk assessment process that will be followed by the regulatory body. In contrast, while the legislation in NSW and Victoria provides criteria for what may be taken into account, the risk assessment process, and the weighting being applied to available information, is a relative unknown.

⁴³ This is discussed further at Issue 11.

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

- 1 In some instances, current State and Territory legislation provides for automatic refusal of a WWCC clearance.⁴⁴ This generally applies to people who have been convicted of certain identified serious offences. Triggering offences for automatic refusal of a WWCC clearance include serious violence, sexual offending or drug offences against children and child pornography offences.
- 2 WWCC legislation is designed to identify risks posed to children, by examining the past behaviour of individuals seeking WWCC clearances. The WWCC legislation in most jurisdictions is formulated around the principle that past behaviour is an important indicator of potential future behaviour that may present a risk to children.⁴⁵
- 3 Accepting this principle, the Council supports the automatic barring of a person from working with children as a result of their conviction for certain serious triggering or disqualifying offences.
- 4 As has been discussed elsewhere in this submission, the Council would be concerned to ensure that in the context of automatic refusal of a WWCC clearance, there is consistency between the jurisdictions in regard to:
 - (a) the list of specified offences that result in an automatic refusal,
 - (b) the criminal history information considered by the regulatory body,⁴⁶ and
 - (c) the weighting given to all the records and information which are considered in a WWCC.

⁴⁴ See Attachment A, item 28.

⁴⁵ In 'A Guide to Working with Vulnerable People in the ACT' (2012) the ACT Government states: *'the premise of background checking is that past behaviour of an individual can provide an indication of the possible future behaviour of that individual'* (p6), viewed 31 July 2013 <http://www.ors.act.gov.au/resources/attachments/A_Guide_To_Working_With_Vulnerable_People_In_The_ACT.pdf>

⁴⁶ For example, there needs to be consistency between jurisdictions as to the criminal offences considered in general, and whether or not juvenile criminal history in particular, is considered in the course of a WWCC.

12 The adequacy of the risk assessment process.

- 1 The risk assessment process is another central element of a successful and effective WWCC. The following principles are relevant:
 - (a) Risk assessment must be carried out by people who are competent to do so.
 - (b) There must be a clear framework within which skilled persons are able to assess risk. Once there is a skilled workforce, there needs to be consistency in applying the risk assessment to similar facts.
 - (c) It is important for child-related organisations to know how a risk assessment is conducted and significantly, where the threshold for barring a person is set.
 - (d) It is important that the bar is set at the correct level to minimise risk to children. If the bar is set too high, fewer people will be barred and people who present a substantial risk may get a clearance regardless.
 - (e) Reportable conduct should be clearly defined with supportive fact sheets and guidance material readily available.
 - (f) See also the discussion of risk assessments in the particular context of consideration of juvenile criminal behaviour in response to Issue 9.
- 2 The Catholic sector has significant experience in dealing with these principles and would welcome the opportunity to join with other key stakeholders in consultation in this area.
- 3 An important aspect of the WWCC is the fact that the regulatory body holds a significant amount of intelligence about workers. Therefore, it is important that the regulatory body that holds or accesses this information does not dismiss, discard or undervalue the information/intelligence it holds. The real issue lies in how to deal with such intelligence. Police and many other agencies receive 'intelligence' about alleged crimes even if the victim is not identified because over time that intelligence may indicate a pattern. Similarly, intelligence held by the WWCC regulatory body may also indicate a pattern of behaviour which is very relevant to considering potential risk and assessing risk.
- 4 There will be many instances where the risk assessment for a person does not quite reach the barring threshold. The person will be issued a clearance, which on its own does not give any indication to the organisations where the person works that there are any concerns in respect of that person. Organisations need to have information about the risk that workers present, in order to put in place processes, structures or strategies to reduce vulnerability and help ensure safety if the person is to work with children.

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?

- 1 The WWCC does not eliminate or minimise the need for institutions to establish clear processes for responding to inappropriate behaviour of staff in child-related positions.
- 2 The WWCC is an important mechanism for pre-employment checking and throughout employment if there is continuous monitoring by the regulatory body of relevant records, but it is only one of the tools organisations must utilise to assist in the protection of children.
- 3 Clear, transparent, high-quality processes are required by all organisations and institutions to create safe environments for children and to properly respond to inappropriate behaviour of workers. However, the better the WWCC scheme, the greater assistance it will afford to organisations as they seek to appropriately manage people who would present a higher risk. While this should reduce the incidence of inappropriate behaviour by persons who are engaged in child-related positions, it does not eliminate the risk of inappropriate behaviour by them. Organisations must be proactive about this risk, be prepared to respond to concerns regarding inappropriate behaviour of workers and be committed to taking action to protect children.
- 4 The very fact that the WWCC would not eliminate the need for organisations to establish clear processes for responding underlines its importance in assembling and sharing intelligence so as to help protect children. Organisations need to know that a person does have a relevant history, what intelligence is held and how to access it.
- 5 This challenge does not arise when a person is barred. That response is clear as it is legislated that the person may not work with children (unless there are circumstances that satisfy a legislated exemption).⁴⁷ The question, if the person is not barred but there is information held that is concerning, is how that information is able to be shared and then used by organisations to proactively protect children.

⁴⁷ For instance, a volunteer parent or close relative in some jurisdictions: see the discussion in Issue 8.

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

- 1 The overall aim of a WWCC system is to contribute to the development and maintenance of a safe environment for children. A WWCC system would not of itself generate child-safe environments. However, it would assist in achieving this if the WWCC is effective, and used in conjunction with child safety policies and other risk management strategies designed to eliminate or minimise the chance that children will be placed at risk of harm.
- 2 Auditing compliance is one of the most significant aspects of an effective WWCC scheme. Adequate funding and resourcing needs to be provided to the regulatory body to ensure that compliance can be regularly and effectively audited.
- 3 As discussed further below, the following aspects should be considered in the course of evaluating and monitoring the effectiveness of a WWCC process:
 - (a) Public awareness and information campaign
 - (b) Consistency in risk assessments and WWCC outcomes
 - (c) Statistics and auditing
 - (d) Compliance reviews and enforcement action
 - (e) Measuring deterrent value.
 - (f) Information sharing

14.1 Public information campaign

- 4 Ideally, the WWCC system should be reinforced by a public education and information strategy which particularly informs organisations and individuals conducting child-related work, as well as those persons required to obtain a WWCC, of the requirement. This information campaign should inform the public about the requirements of the WWCC, the reasons for the WWCC, and of their right to expect people working with their children to have WWCC clearances.
- 5 Given that WWCC systems in various jurisdictions would undergo changes due to nationalisation of the process, particular campaigns in particular regions would need to focus on publicising the reasons for the change and the anticipated benefits.⁴⁸
- 6 The effectiveness of information campaigns is measurable through surveying relevant individuals about their knowledge of the WWCC system and its requirements, and, following from that, individual and organisational compliance with the WWCC system where relevant.

⁴⁸ For example, in jurisdictions which currently exempt volunteers, a change to require a WWCC for volunteers, will need to be accompanied by a positive information campaign.

14.2 Consistency in risk assessment and WWCC outcomes

- 7 Consistency in risk assessment and WWCC outcomes should be a consideration in any evaluation of the WWCC system.
- 8 As has been discussed elsewhere in this submission, it is vital that the risk assessments conducted where relevant conduct is identified are consistent both within and across jurisdictions, so that clearance outcomes are also consistent. To this end, policy and guidance for decision-makers, and risk assessment procedures should be consistent and transparent, to ensure that the outcome of a WWCC is consistent and reliable and may be used as a basis for risk management of employees and others working with children.

14.3 Statistics and auditing

- 9 There are many statistical measures that could be examined in the course of evaluating the effectiveness of any WWCC system, or indeed a universal national WWCC system. Measures might include assessment of:
 - (a) the number of checks performed
 - (b) whether those being checked fell within an appropriate definition of child-related work (Issue 6 and 7) working directly with children (and so required checking) or not
 - (c) the number of WWCC applications for which additional information was requested
 - (d) the number of checks resulting in a risk assessment being necessary due to relevant records and information being identified
 - (e) the number of WWCC clearances and refusal decisions made
 - (f) detail about conduct that led to a bar or interim bar
 - (g) the number of decisions appealed, and of those appeals, the number that were successful in having decisions overturned
 - (h) timeliness, administrative costs, and a cost-benefit analysis of the system.

14.4 Compliance reviews and enforcement action

- 10 Another part of the WWCC system that should be monitored and evaluated is the extent to which regulatory bodies are resourced to undertake, and actually do undertake, investigations to review compliance with WWCC requirements, and enforcement action taken against individuals and institutions that are found to have breached the legislation.
- 11 There are some strong penalties in WWCC legislation in some of the States and Territories. Ideally, compliance should be measured, and enforcement action taken where non-compliance is identified, to publicly reinforce the importance of the WWCC system.

14.5 Deterrent value

- 12 Although more difficult to measure, if Australia were to have a national WWCC system and provide for greater sharing of relevant information, the deterrent value of the WWCC system would increase as some individuals who pose a risk to children self-select out of child-related work in order to avoid the scrutiny of the WWCC.

14.6 Information sharing

- 13 There are often many agencies involved in responding to behaviour of workers that causes harm to a child. These include the police, the employing agency involved, possibly previous agencies for whom a person has worked, community services, and in some cases, organisations such as the Ombudsman in NSW.
- 14 Privacy implications and the integrity of information management need to be considered, and an effective mechanism needs to be found to enable the information held in different places to be shared appropriately. It is imperative that information about a person's past behaviour in a variety of relevant contexts, including criminal and professional history, is able to be shared with the WWCC regulatory body by a range of relevant organisations, including law enforcement, professional registration bodies, identified employers, service providers and Church organisations.

CONCLUSION

The Catholic Church has significant involvement in the lives of many children across Australia through its ministry in child-related sectors such as parish life, education, health and social services. The Church is convinced that it is of paramount importance that the WWCC, as a crucial part of the overall approach to child safety, is effective in helping to check that persons who are clearly unsuitable to work with children do not do so.

The usefulness of the WWCC can be maximised if its purpose includes information sharing for appropriate risk management rather than only being aimed at identifying those persons who should be barred from working with children.

On behalf of the Church, the Council is grateful for the opportunity to make a contribution in considering what the WWCC currently does in the various States and Territories, but more importantly, what role it *could* play in protecting children in the future if improvements were to be made.

Ideally, the WWCC should be national. However, whether national or State and Territory-based, the Council advocates for a consistent, integrated and rigorous WWCC that requires organisations to work together to share relevant information and to maximise the contribution the WWCC makes to the overall system of child protection in Australia.

The Council would value the opportunity to work collaboratively with others to strengthen the WWCC scheme and engage with the Royal Commission further in its consideration of the issues raised in this submission.

Attachment A – Existing working with children check legislation in Australia

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
1. Is there existing legislation?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
2. Title of legislation	<i>Child Protection (Working with Children) Act 2012</i>	<i>Working With Children Act 2005</i>	<i>Commission for Children & Young People and Child Guardian Act 2000 (Chapter 8,8A)</i>	<i>Children's Protection Act 1993</i>	<i>Working with Children (Criminal Record Checking) Act 2004</i>	Currently there are no legal requirements for people working with children to undertake a	<i>Working with Vulnerable People (Background Checking) Act 2011</i>	<i>Care and Protection of Children Act 2007</i>
3. Title of regulations/ guidelines/ determination	Child Protection (Working with Children) Regulation 2013	Working with Children Regulations 2006	Commission for Children and Young People and Child Guardian Regulation 2011	Children's Protection Regulations 2010 (SA) Child Safe Environments: Standards for dealing with information obtained about the criminal history of employees and volunteers who work with children (July 2012)	Working with Children (Criminal Record Checking) Regulations 2005	WWCC or police check. Comments below relate to the police check that is required for all State government employees working with children and available to other employers on a voluntary basis	Working with Vulnerable People (Background Checking) Regulation 2012 Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2012 (No 1)	Care and Protection of Children (Screening) Regulations

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
4. Are there criteria of contact with children over given period?	No	Yes, must satisfy definition of <i>child-related work</i> and have prescribed types of contact with children (s9)	Yes, must satisfy the definition of <i>minimum frequency for regulated employment</i> (Sch 7)	Yes. Exempt if undertake work for an event or activity that takes place over not more than 10 consecutive days or not more than 1 day in any month (r14(d))	Yes. It is defensible not to have a check if contact is less than 5 days in a calendar year (s22(6))	No	Yes, exempt if person is engaging in regulated activity for less than 3 days in any 4 week period, and 7 days in any 12 month period (s12(2)(b))	Yes, exempt if individual is not a resident of NT, volunteers for no more than 14 days (whether or not consecutive) in a 12 month period (s186(c), r4).
5. Are there exemptions for people with professional registration bodies?	Exemptions for some categories of workers and employers including police officers, health practitioners if they do not ordinarily treat children without other adults present (r20)	Exemption for registered teachers, police, AFP officers, some transport workers (ss30-31A)	Exemption for registered teachers, lawyers, police, corrective services, ambulance officers, and health practitioners (s173, sch 1 part 3)	Exemption for registered teachers (Teachers Registration Board currently screens all teachers)	WWCC required for any person whose usual duties involve contact with a child in particular categories of work, and will cover a broad range of health and educational professional who have registration bodies.	Checks are completed for people employed in government educational institutions or child health services. Checks may be obtained by other employers on a voluntary basis	Exemptions for some categories including police officers, health practitioners, registered health professionals, lawyers (s12(2)(i))	A person employed in educational facilities for children, and wards of public or private hospitals in which children are ordinarily patients, is required to seek screening.
6. Are volunteers required to be checked?	Yes (s12)	Yes (s9)	Yes (s188)	Yes (s.8B(1))	Yes (s4 (definition of 'child-related employment'))	Yes	Yes (s9)	Yes (s185(5))

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
7. Are there exemptions for children/ students?	Exemption for children under 18 (r20(1)(g)) and students completing clinical placement in health service (r6)	All children U18 years, and students under 20 years performing volunteer work or work as part of placement are exempt (s29)	Exemption for children U18 who are volunteers, except students required to work in regulated employment for their studies (s160, 162)	Exemption for children under 18 years old who are volunteers (r14(1)(c))	Volunteers U18 are exempt, but children U18 are require check if they are carrying out paid roles in the categories covered	No	Exemption for children U16 (s12(2)(a)) and school students on work experience or completing practical training (s12(2)(g))	Persons under the age of 15 years are exempt (s186(b))
8. Are there exemptions for people related to the child?	Exemption where the person is a close relative of each child taking part, or of a child who attends the school when volunteering for activities of the school, volunteer for a program or other activity in which the child usually participates (r20(1)(d), (e), (f)) unless providing personal care or mentoring services (r20(2))	Exemption for parent who volunteers for activity in which their child usually participates (s27), the person is a close relative of each child taking part and for family day carers and relatives caring for children if all children in their care are closely related to them (s28)	Exemptions in some categories for parents who volunteer their services or conduct activities where their child is involved in the activities or is a recipient of the services (Sch 1 Part 1)	Exemption for volunteer who provides service in capacity as parent or guardian of the child (r14(b))	Yes and note that there are exemptions for parents volunteering in certain activities in which their child participates will be provided for in regulations (Regs Sch 1)	Yes	Exemption where the person is a close relative of each child taking part in the regulated activity, or person is engaged as a volunteer, is a close relative of a child taking part, and a close relative of each child taking part in the activity is expected to be engaged in the activity (s12(2)(d),(e))	Exemptions for parents who volunteer in children's services, body with significant child membership where work does not involve an overnight stay, volunteers are working under the direct supervision Ochre Card holder, and employer does not require them to hold a clearance notice (s186(a))

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
9. Are self-employed people required to be checked?	Yes following the expiration of their child-related employment certificate, or as specified in the Regulation (s4)	Yes	Yes, by reason of their business being a regulated business (Sch 1 Part 2)	Yes. All agents, contractors and sub-contractors need an assessment of their criminal history undertaken (s.8B(1))	Yes	Yes	Yes	Yes
10. Are priests, religious and others employed by or working for religious organisations required to be checked?	Yes, work will be child-related work (s6) where person is a minister, priest or other like religious leader, or role in the organisation involves activities primarily related to children, including youth groups, youth camps, teaching children, child care (r13)	Yes, child-related work includes work as a minister of religion or as part of the duties of a religious vocation (s9)	Yes, a person who is a religious representative will be engaged in regulated employment or a regulated business if involved in providing services or activities directed mainly towards, or involving, children (Sch 1)	Yes, criminal history check must be obtained prior to employment of a person by non-government organisations that provide health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children (s8A)	Yes, child-related employment includes work which involves, or is likely to involve contact with a child, carried out by an individual as a minister of religion or in any other capacity for the purposes of a religious organisation (ss4,6)	Only checked on a voluntary basis	Yes, a person who is part of a religious organisation will be engaged in a regulated activity if involved in providing services or activities directed mainly towards, or involving, children (Sch 1, 1.23)	Yes, child-related employment includes work that involves or may potentially involve contact with children in connection with religious organisations and work performed by a minister of religion or as part of a religious vocation (s185)

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
11. If person is registered, or exempt from registration, under a corresponding law (a law of another State or Territory) will they be checked?	No, provided person is not engaged in child related work in NSW for more than 30 days in any calendar year (Regulation 20(1)(n))	Persons ordinarily resident outside of Victoria are exempt (s32)	Not addressed	Employer has discretion about whether to accept a criminal history assessment undertaken as part of employment with another agency (within the previous 3 years).	Not addressed	Only checked on a voluntary basis	No, provided activity is substantially similar to regulated activity person is allowed to engage in under corresponding law and person is not engaged in activity more than 28 days in any 12 month period (s12(2)(c))	Not addressed
12. Other comments	Adult persons residing with authorised carers and persons providing home care services and potential adoptive parents must obtain clearance (ss10,11)		Person must have contract of employment before they may apply for clearance		The 'exemptions' at items 4-11 above are expressed as defences to charges rather than exemptions per se: ie having a valid WWCC application is a defence to a charge of working with children without clearance		Scheme also applies to those who work with vulnerable people	

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
13. Verification of ID	The identity of applicants must be verified as per requirements for a NSW drivers licence (Regulation 18)	The identity of applicants must be verified (s2A)	The identity of applicants must be verified (by employer or volunteer coordinator or by the prescribed person)	The identity of applicants must be verified: 100 point check required.	The identity of applicants must be verified	The identity of applicants must be verified	The identity of applicants must be verified. Evidence of identity, eg 100 points of identification, required (s18(1))	The identity of applicants must be verified. Documents for 100 point check for ID must be original or certified by a qualified person.
14. Does check include convictions? (criminal history), recorded charges, acquittals (non-conviction information)	Yes (s33)	Convictions and pending charges	Yes	Yes	Yes. Convictions, recorded charges and charges	Yes	Yes (s28(2)(a),(b))	Yes
15. Does check include a National Criminal Record (CrimTrak) Check?	Yes (s34)	Yes	Yes (s320)	Yes	Yes	Yes	Yes	Yes
16. Does check include crimes against adults?	Yes	Yes, generally serious sex, drug or violence offences (s13)	Yes	Yes	Yes	Yes	Yes see below	Yes

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
17. Does check include apprehended violence orders?	Yes	No unless info obtained under s11(1)(c) which allows for information to be sought from any person or source the Secretary thinks fit	No	Yes	No	Yes	Yes, part of other information that may reasonably be considered (s28(2)(e) Risk Assessment Guidelines)	Yes
18. Does check include juvenile criminal history?	Yes serious juvenile offences are an assessment trigger	Yes, because summarised juvenile offences and court outcomes are included in Crimtrak information	Yes, because summarised juvenile offences and court outcomes are included in Crimtrak information	Summarised juvenile offences and court outcomes	Yes, because summarised juvenile offences and court outcomes are included in Crimtrak information	Yes, because summarised juvenile offences and court outcomes are included in Crimtrak information	Yes, because summarised juvenile offences and court outcomes are included in Crimtrak information	Yes, because summarised juvenile offences and court outcomes are included in Crimtrak information
19. Does check include professional body proceedings and findings?	Yes, where proceedings have found that reportable conduct has occurred (s35)	Yes, findings by VCAT under <i>Health Professions Registration Act</i> and <i>Health Practitioner National Law</i>	Yes. Professional bodies for teachers, child carers, foster carers, health practitioners and nurses.	No	No	Yes	Yes, part of other information that may reasonably be considered (s28(2)(e), Risk Assessment Guidelines)	Yes

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
20. Are there criteria for the inclusion of professional body disciplinary proceedings?	Yes. A finding that reportable conduct has occurred (s35)	Yes. For instance, where the disciplinary process is formal, with satisfactory standards of proof	Yes	No	No	Yes	Yes, part of other information that may reasonably be considered (s28(2)(e) Risk Assessment Guidelines	No
21. Are other child-related complaints while in employment checked?	Yes, limited	No unless info obtained under s11(1)(c) (allows information to be sought from any person or source the Secretary thinks fit)	Yes	No	No	Yes	Yes, part of other information that may reasonably be considered (s28(2)(e) Risk Assessment Guidelines	No
22. Are actions that have been investigated but not resulting in a charge checked?	No	No unless info obtained under s11(1)(c): allows for info to be sought from any person/source the Secretary thinks fit	Yes. Investigative information from police (s311), including updated information (s317)	Yes	No	Yes	Yes, part of other information that may reasonably be considered (s28(2)(e) Risk Assessment Guidelines	Unclear

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
23. Is any offence considered relevant?	Certain specified offences	No unless info obtained under s11(1)(c) which allows for information to be sought from any person or source the Secretary thinks fit	Yes	Yes	Yes	Yes	Relevant offences include sexual offences, offences involving violence, dishonesty, fraud, offences related to property or drug offences, offences against animals and driving offences (s26)	Yes
24. Can regulatory body request additional info from Police?	Yes, when assessing risk in either prohibited employment matters or in background checking	Yes (s11)	Yes (s311)	Yes	Yes (s.34)	Yes	Yes (s33)	Yes
25. Will incidents of child abuse substantiated by Child Protection services be considered?	No	No unless info obtained under s11(1)(c) which allows for information to be sought from any person or source the Secretary thinks fit	No	No	No	No	Yes, as part of other information that may reasonably be considered (s28(2)(e) Risk Assessment Guidelines	Yes

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
26. Are relevant overseas convictions considered?	Not specified	Not specified	Not specified	Organisations may seek a stat dec from person who has been citizen or permanent resident of a country other than Australia since turning 18 stating no relevant convictions. (Standards p24)	Yes, via personal declaration	No	Yes. Applicant must provide a written statement in relation to convictions for relevant offences overseas (s18(1)(b))	Yes
27. Will previous registration or negative notice or finding under a corresponding law be taken into account?	Not specified	Not specified	Not specified	Yes	Not specified	No	Yes (s28(2)(c),(d))	Not specified
28. Is there an automatic bar if convicted of a serious offence involving a child?	Yes, clearance must not be granted to persons convicted of Schedule 2 (disqualifying) offence (s18)	Yes. Automatic refusal for Category 1 applications (s12)	Yes. Disqualified person must not apply (s174)	No	Yes. Negative assessment notice must be issued if applicant convicted of Class 1 offence (s12)	No	No	Yes (s189(1))

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
29. What is the product issued following completion of a check?	Risk assessment if assessment requirement exists, and Clearance or Refusal, (s15)	Positive or Negative Notice	Positive or Negative Notice (Part 4), Positive or Negative Exemption Notice (for police and registered teachers) (Part 5)	Decision made by employer assessing the person's criminal history – person deemed suitable or not suitable	Approved/Not approved	Approved/Not approved	Negative or Positive Risk assessment (s32) and registration (s41)	Approved/Not approved (s189)
30. What is the set length of time suitability notice is valid?	Yes 5 years and at start of employment with new employer	Yes. 5 years (s19)	Yes (Positive Notice: 3 years, (s231), Positive Exemption while police officer or registered teacher	Criminal history assessment must be conducted every 3 years.	Yes 3 years	Yes 3 years	Yes. 3 years (s41(3))	Yes 2 years
31. To whom is product provided?	Employer, employee	Employee, volunteer, prospective employee and prospective volunteer, employer or agency (s18)	Employee, person carrying on a regulated business, and/or notifiable person	Employee or 'responsible authority'	Employee	Employee	Applicant and named employer (s41(2))	Employee

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
32. Is there employer discretion in decision to employ person without clearance?	No. it is an offence to work (s8) , or employ a person (s9) in child-related work without clearance or a current application, or while an interim bar is in place	No. It is an offence to work, or to employ a person in child related work without a valid assessment notice (Part 4)	No. It is an offence to carry on a regulated business, or to employ a person in regulated employment , unless they have an eligibility declaration, a current positive notice, a current (renewal) application, or are a transitioning person (s188-198)	Yes, employer determines whether an individual's criminal history should preclude them from being hired or continuing to act in their current role, except where applicant does not consent to a criminal history check or is an offender recorded on ANCOR	No. It would be an offence for an employer to employ, or continue to employ, a person with a negative notice under the legislation.	Limited. Information regarding disciplinary proceedings against an individual in his/her previous employment will be forwarded to the individual's prospective (new) employer. The prospective employer will have discretion in deciding whether to employ the individual.	No. While there is limited ability to employ a person whose registration is pending (ss15, 16), it is an offence to employ a person in a regulated activity without registration (s14)	No. An employer can seek an exemption for an employee who has submitted an application. CEO can only grant an exemption if appropriate. (ss187(4)-(6)).
33. Do individuals in existing child-related employment have to receive clearance?	No, existing employees exempt (Schedule 3 cl 3)	Yes	Yes	Yes	Yes and this is provided for under transitional arrangements specified in the regulations.	Yes	Yes	Yes

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
34. Are applicants notified of an adverse decision?	Yes. Applicants given notice of (proposed) refusal of application (ss19, 20)	Yes. Applicants receive written notice of adverse decision with reasons (s17)	Yes. Person given notice of negative decision with reasons	Employer is required to follow procedural fairness in the criminal history assessment, including informing the applicant of any proposed decision and providing their ability to have the decision independently reviewed.	Yes	Yes	Yes. Applicants given notice of (proposed) negative notice (ss37,40) (proposed) conditional registration (ss43, 46) (proposed) suspension or cancellation of registration (s59)	Yes. Applicants receive written reasons for decision (see administrative guidelines)
35. Are there options for internal review of proposed adverse decision?	Where adverse decision is proposed, applicant may make submission prior to final decision (s20)	No	No, but opportunity to make submissions if Commissioner requests (ss229)	No	No internal review. Person can apply to State Administrative Tribunal for review of adverse decision (s26)		Yes. Reconsideration of proposed negative notice, proposed conditional registration, or (proposed) suspension or cancellation of registration (ss30, 44, 58, 59)	No

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
36. Is there an appeal/complaints procedure?	Yes. Merits review by Administrative Decisions Tribunal (Part 4)	Yes. Merits review by Victorian Civil and Administrative Tribunal (VCAT) (ss25-26)	Yes. Merits review by Queensland Civil and Administrative Tribunal (QCAT) (Chapter 9). Appeal of eligibility declaration heard by Magistrates Court (s178)	Current employees deemed ineligible based on their criminal history have a right of reply, may also have a right of appeal depending on employment sector (Standards, p34)	Yes. Merits review by State Administrative Tribunal	Yes (complaints to Central Screening Authority; appeals to Tasmanian Industrial Relations Commission).	Yes. Merits review by ACT Civil and Administrative Tribunal (ACAT) (Part 7)	Yes. Appeals heard by Local Court (s194(3))
37. Are there penalties for false disclosures or failure to disclose?	Yes	Yes (s39)	Yes (ss351-352)	Not specified	Yes (s35)	Yes	Yes (s55)	Not specified
38. Is there a requirement to disclose changes in criminal history, and/or suspension of professional registration?	No	Yes (ss20,30-31A)	Yes (ss323,324)	Organisations are to develop policies that encourage workers to notify them of changes to their criminal history (Standards pp.20-21)	Yes	Yes	Yes, both prior to application being determined (s21) and once registered (s55)	Yes

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
39. Is there a requirement to notify change of name and/or address?	No		Yes (ss179, 230)	Not specified	Not specified		Yes (s56)	Not specified.
40. Is there an embargo on further applications after refusal?	5 years unless there is a change in circumstances (s21)	5 years unless there is a change in circumstances, new application may not be considered unless new information available (s11(2),(6), s25)	Application for eligibility declaration, cancellation of negative notice, or cancellation of negative exemption notice may not be made less than 2 years after refusal/ issue unless there is a change in circumstances (ss178, 236, 294)	Not specified	Not specified		3 years unless there is a change in circumstances (s22)	Not specified.
41. Is there provision for review of approval if new information becomes available?	Yes (s15(2))	Yes (s21)	Yes (Part 4 Div 11, Part 5 Div 10)	Organisation may conduct a criminal history assessment at any time to establish or maintain child safe environment (s.8B(2))	Yes		Yes (s54)	Yes.

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
42. Does the regulatory body have the ability to suspend or cancel approval?	Yes (s23)	Yes (ss21-21B)	Yes (Part 4 Div 11, Part 5 Div 10)	Yes	Yes		Yes (s57)	Yes (s192)
43. Is there centralised administration?	Yes	Yes	Yes	No. Employers undertake criminal history assessments for potential and existing employees	Yes. Central screening unit may establish additional screening agencies in other government departments	Yes. The central body will maintain, supply records and undertake some screening.	Yes	Yes
44. What is the centralised body?	The Children's Guardian	The Working With Children Check Unit, Department of Justice	Commission for Children and Young People and Child Guardian		Working with Children Screening Unit, Department for Community Development	Commission for Children and Young People or Ombudsman	The Commissioner for Fair Trading (s17)	Screening Authority appointed by the Minister for Child Protection
45. Are there any other permitted screening agencies?	No	The Victorian Institute of Teachers screens teachers	Government and professional peak bodies	Government and 'responsible authorities' (prescribed by Regulations)	See above	Government Departments and approved non-government organisations	No	No

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
46. Does the central body have oversight of other screening bodies?	N/A	No	No	Chief Executive of Department can exercise the powers of the responsible authority, if requested by the responsible authority (s.8B(5)).	The central screening unit will have a quality assurance role for the approved screening agencies	Yes	N/A	N/A
47. Cost of application	\$80, free for volunteers, unpaid workers and potential adoptive parents	\$102.70, free for volunteers	\$76, free for volunteers	Employee \$62.70, Volunteer \$41.25	Yes. \$54, \$10.50 for volunteers and students	\$45, \$5 for volunteers	\$71, free for volunteers	\$52, \$5 for volunteers.
48. Are there community education requirements for creating child safe environment?	Yes	Yes. The Department of Justice will run information sessions on the Act. More general child safe organisations education/information will be provided by the Child Safety Commissioner	Yes (s17)	Yes. Organisations require policies and procedures for obtaining and assessing criminal history information and to establish child-safe environments (s8B, 8C Standards)	Information is provided for community education as part of the Screening Unit's work, but this is not a legislative requirement.	Yes	Not addressed	Not addressed

QUESTION	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
49. Are there guidelines and mandated requirements for providing child safe environments?	Yes. NSW Ombudsman and CCYP provide guidance to government and non-government organisations and all employers on child- safe strategies	No	Yes – risk management strategies required (ss171-172)	Yes. Organisations providing services for children are required to have policies and procedures to maintain child safe environment (s.8C(1))	The central screening unit will promote organisational best practice in this area.	No	Not addressed	Not addressed
50. Is there provision for investigation of allegations?	NSW Ombudsman oversees investigations of child abuse allegations in designated government and non-government organisations	No	No	No	No	No	No	No

Note: Table based on Appendix A of Bayer, Higgins and Bromfield (2005) *Understanding organisational risk factors for child maltreatment: a review of the literature*, National Child Protection Clearinghouse, Australian Institute of Family Studies, viewed 17 June 2013 <<http://www.aifs.gov.au/nch/pubs/reports/organisations/appendix.pdf>>