



**Joint Standing Committee on the  
Commissioner for Children and Young People**

Report on the functions of the Commissioner for Children  
and Young People: Working with children checks

**Report No. 8  
March 2012**

Parliament of Western Australia

## Committee Members

---

Chairman	Ms A R Mitchell MLA Member for Kingsley
Deputy Chairman	Mr M P Whitely MLA Member for Bassendean
Members	Hon Helen Bullock MLC Member for Mining and Pastoral  Hon Nick Goiran MLC Member for South Metropolitan

## Committee Staff

---

Principal Research Officer	Ms Renée Gould
Research Officer	Ms Emma Clegg

Legislative Assembly  
Parliament House  
Harvest Terrace  
PERTH WA 6000

Tel: (08) 9222 7494  
Fax: (08) 9222 7804  
Email: [rgould@parliament.wa.gov.au](mailto:rgould@parliament.wa.gov.au)  
Website: [www.parliament.wa.gov.au/jscccp](http://www.parliament.wa.gov.au/jscccp)

**Published by the Parliament of Western Australia, Perth.**

**March 2012.**

ISBN: 978-1-921865-39-1

(Series: Western Australia. Parliament. Legislative Assembly. Committees. Joint Standing Committee on the Commissioner for Children and Young People. Report 8)

328.365

99-0

# Joint Standing Committee on the Commissioner for Children and Young People

---

Report on the functions of the  
Commissioner for Children and Young  
People: Working with children checks

---

Report No. 8

Presented by:

**Ms A.R. Mitchell, MLA and Hon H.H. Bullock, MLC**

Laid on the table of the Legislative Assembly on the 1 March 2012

Laid on the table of the Legislative Council on 8 March 2012

## Chairman's Foreword

I am very pleased to present the eighth report of the Joint Standing Committee on the Commissioner for Children and Young People to Parliament. This report forms part of the Committee's broader examination of the exercise of the functions of the Commissioner for Children and Young People and has a specific focus on the working with children checks function within Western Australia.

The reason for this is that the *Commissioner for Children and Young People Act 2006 (WA)* has an unproclaimed function which, if enacted, will transfer the administration of the *Working with Children (Criminal Record Checking) Act 2004 (WA)* to the Commissioner. The Committee has long been aware that the Commissioner holds the view that the administration of working with children checks is not an appropriate function for the Children's Commissioner in this state. During the process of examining this matter, the Committee has gathered some important evidence from relevant agencies local and interstate. A statutory review of the *Working with Children (Criminal Record Checking) Act 2004 (WA)* is currently underway so the Committee felt it was timely to present its findings so that they may be considered as part of this review.

The main concern of the Commissioner is that such a function would overwhelm the current advocacy work of the Commissioner. The Committee explored this view in part by enquiring of Children Commissioner's in other jurisdictions who have this function and found that the administration of working with children checks requires significant staffing resources for those Commissions. The Committee also found that those Commissions have a specific child protection role that is distinct from the broad advocacy function of the Children's Commissioner in Western Australia. By contrast, the Department of Child Protection (DCP), who currently administers working with children checks, is a department with a specific child protection focus. As such, the Committee concurs with the Commissioner that being responsible for working with children checks would negatively impact on the Commissioner's advocacy work and finds that the DCP is the appropriate body to administer such checks.

The Committee also found that, whilst there have been no complaints about how DCP is conducting working with children checks, there is a lack of scrutiny about how DCP conducts these checks—particularly on their own staff. This fact may create the perception that a conflict of interest exists where the department assesses its own staff. The Committee learnt that such a conflict could exist wherever the working with children check function was placed. The Committee

enquired of the Auditor General for an opinion on the Office of the Auditor General conducting a performance audit on working with children checks. The reply indicated to the Committee that—given the negative consequences that would arise from DCP having a flawed process—it is likely that the process would be a rigorous one. The OAG did add that it is something that may be looked at further if the statutory review of working with children Act uncovered a serious weakness in the process.

Whilst the Committee respects the view of the Auditor General, it is of the opinion that this issue, given the potentially serious consequences should something go wrong, is a matter that should be looked at with some urgency by the Minister for Child Protection. It is the Committee's view that an audit of the working with children process—with a focus on managing any potential conflict of interest within the system—would strengthen the ongoing protection of children in this state.

I would like to acknowledge all of the people who were kind enough to meet with the Committee over the course of this examination, particularly those agencies, local and interstate, which provided the Committee with such useful information. I would also like to acknowledge the Commissioner, Ms Michelle Scott, and her staff for the ongoing cooperation in all of the Committee's work.

I gratefully acknowledge the assistance of the other Members of the Committee: the Deputy Chairman, Mr Martin Whitely MLA (member for Bassendean); Hon Helen Bullock MLC (Member for mining and pastoral) and Hon Nick Goiran, MLC (Member for South Metropolitan). Lastly, I would like to thank the Committee's Principal Research Officer, Ms Renee Gould, and Research officer, Ms Emma Clegg, for their ongoing work and assistance.



MS A R MITCHELL MLA  
CHAIRMAN

# Contents

Executive Summary	i
Ministerial Response	iii
Findings and Recommendations	v
<b>1 Background</b>	<b>1</b>
Review of the Working with Children (Criminal Record Checking) Act 2004	1
Legislative passage of the WWC Act and the CCYP Act	2
<b>2 Working with children checks in Australia</b>	<b>7</b>
Western Australia	7
New South Wales	8
Queensland	10
Victoria	12
Northern Territory	13
Australian Capital Territory	14
A National Approach	14
Differences in establishment of working with children checks	15
Effectiveness of working with children checks in Western Australia	17
Auditing of working with children check renewals conducted on Department for Child Protection staff	17
Access to working with children check information	23
<b>Appendices</b>	<b>27</b>
1 Committee’s functions and powers	27
2 Briefings and Hearings	29
3 Extract from transcript of evidence from hearing the Committee held with the Commissioner for Children and Young People	31
4 Extract from transcript of evidence from hearing the Committee held with the Department for Child Protection	35

- 5 Copy of letter from Ms Michelle Scott to the Committee regarding working with children checks 39
- 6 Copy of letter from the Auditor General to the Committee regarding working with children checks 41

## Executive Summary

This report details the particular examinations undertaken by the Joint Standing Committee on the Commissioner for Children and Young People (the Committee) in considering whether the Commissioner for Children and Young People (the Commissioner) should have a direct function within the working with children check (WWC check) system in this state. As a statutory review of the *Working with Children (Criminal Record Checking) Act 2004 (WA)* (WWC Act) is currently underway, the Committee resolved to take this opportunity to report its findings about the working with children check system in Western Australia.

The Committee examined the legislative passage of the *Working with Children (Criminal Record Checking) Act 2004* and the *Commissioner for Children and Young People Act 2006 (WA)* (CCYP Act) in order to determine where the intent to confer a working with children check on the Commissioner originated. The WWC Act was passed before the Children's Commissioner Act was established and the Committee found that no reference was made to a Children's Commissioner when the Bill was debated. In contrast, the Committee found that the later CCYP Act was passed with the provision to allow for future administration of the WWC Act. As such, the Committee states that the relevant clause should be deleted from the CCYP Act and has more broadly found that administering the working with children checks is not an appropriate function of the Commissioner.

This finding was additionally informed by the Committee's comparison of working with children check systems in other jurisdictions and the role of Children Commissioner's within those systems. The Committee found that, where a specific child protection focus exists, there are advantages to working with children checks being performed by an independent statutory body such as a Children's Commissioner. However, due to Western Australia's Children Commissioner having a broader advocacy focus than counterparts interstate, it is more appropriate for the Department of Child Protection (DCP), whose focus is the protection of children, to continue administering the WWC Act.

As to strengthening the current effectiveness of the WWC Act, the Committee examined the need for independent auditing of WWC checks that are performed on Department for Child Protection staff and found that, in order to diminish any potential perception of conflict, the Auditor General should conduct periodic audits of those internal checks. Lastly, the Committee also examined the potential use the Commissioner may have for the information gathered during the WWC check process by DCP, and found that, by comparing how this information is used in other jurisdictions, both the Children's Commissioner advocacy work and the intent of the WWC Act would be strengthened if relevant information, such as that allowing for the identification of emerging trends and issues in child related work, was shared with the Children's Commissioner.





## **Ministerial Response**

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Commissioner for Children and Young People directs that the Minister for Child Protection report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.



## Findings and Recommendations

### **Finding 1**

**Page 4**

The Select Committee on Advocacy for Children (Appointment of a Commissioner for Children) did not intend for the Commissioner for Children and Young People to have responsibility for the day to day operations of working with children checks—nor was it the intent of the *Working with Children (Criminal Record Checking) Act 2004* for the Commissioner to have a working with children check function.

### **Finding 2**

**Page 5**

The *Commissioner for Children and Young People Act 2006* was passed without amendment to Schedule 1, Clause 3—allowing for the administration of the *Working with Children (Criminal Record Checking) Act 2004* to be transferred to the Children’s Commissioner at a later date.

### **Finding 3**

**Page 6**

The administration of the *Working with Children (Criminal Record Checking) Act 2004* is not an appropriate function for the Commissioner for Children and Young People.

### **Finding 4**

**Page 17**

Establishment of working with children checks and similar employment screening procedures in Queensland and New South Wales differs from Western Australia in that the implementation of screening procedures was largely the result of inquiries substantiating systematic abuse of children.

### **Finding 5**

**Page 17**

There are advantages to working with children checks being administered by a body independent of government, such as a Children’s Commissioner.

### **Finding 6**

**Page 17**

In Western Australia, it is appropriate for the Department for Child Protection to continue to be responsible for the administration of working with children checks as the Department’s main focus is child protection.

### **Finding 7**

**Page 22**

There is no external audit of working with children check renewals conducted by the Department for Child Protection in Western Australia on its own staff.

### **Finding 8**

**Page 22**

The administration of the *Working with Children (Criminal Record Checking) Act 2004* (WA) would be strengthened as a result of periodic external audits.

**Recommendation 1****Page 22**

Legislative amendment to the *Working with Children (Criminal Record Checking) Act 2004* should be made to ensure periodic auditing of the working with children checks and renewals the administrating body (currently the Department for Child Protection) performs on its own staff.

**Recommendation 2****Page 23**

The Minister for Child Protection should immediately request the Auditor General, or other appropriate body, to conduct an independent audit of the working with children checks conducted by the Department for Child Protection on its own staff.

**Finding 9****Page 26**

Information sharing between the Department of Child Protection and Commissioner for Children and Young People may benefit the advocacy work of the Commissioner for Children and Young People and strengthen the operation of the working with children check system within Western Australia.

**Recommendation 3****Page 26**

The sharing of information about the scope, operation and function of organisations dealing with children between the CEO of the Department administrating the *Working with Children (Criminal Record Checking) Act 2004* and the Commissioner for Children and Young People should be enabled.

# Chapter 1

## Background

Under its Terms of Reference, the Joint Standing Committee on the Commissioner for Children and Young People (the Committee) is required to ‘monitor, review and report to Parliament on the exercise of the functions of the Commissioner for Children and Young People’.<sup>1</sup>

With reference to these terms, there exists an unproclaimed provision within the *Commissioner for Children and Young People Act 2006* (WA)<sup>2</sup> (CCYP Act) which, if proclaimed, would afford responsibility for working with children checks to the Commissioner for Children and Young People (the Commissioner). Consequently, the Committee has held a long standing interest in the working with children check (WWC check) system in Western Australia, with particular regard being given to whether this section of the CCYP Act would—or should—be proclaimed. This report forms part of the Committee’s broader examination of the exercise of the functions of the Commissioner for Children and Young People.

### **Review of the Working with Children (Criminal Record Checking) Act 2004**

Working with children checks are detailed and compulsory criminal history checks for many people working with children within Western Australia. The administration of the *Working with Children (Criminal Record Checking) Act 2004* (WA) (WWC Act) currently rests with the Department for Child Protection.

A review of the WWC Act is currently underway.<sup>3 4</sup> The Committee was informed of its commencement in November 2011 by means of a letter inviting the Committee to contribute to this review.<sup>5</sup> The Committee subsequently resolved to report to Parliament their research and findings on WWC checks—with particular regard to the role of the Commissioner for Children and Young People in the conduct of such checks. The Committee also examined the need for independent auditing of the conduct of WWC checks on Department for Child Protection staff and the potential use the Commissioner may have for the information gathered during the WWC check process.

---

1 See Appendix One for the Committee’s full terms of reference.

2 Schedule 1, Clause 3.

3 Section 47 of the *Working with Children (Criminal Record Checking) Act 2004* requires that the Minister for Child Protection carry out a review of the operation and effectiveness of the WWC Act as soon as practicable, after the fifth anniversary of the Act’s commencement.

4 The Working with Children check system as it currently operates is discussed in Chapter 2.

5 Ms Leanne Guest, Independent Reviewer for the Department of Child Protection, Letter, 24 November 2011.

## Chapter 1

The Committee hopes that the Minister for Child Protection will consider the Committee's report, findings and recommendations during the WWC Act review. The Committee has also included an overview of the information it obtained about working with children checks in other jurisdictions—in the aim that the information provided will help inform the review process generally—and contribute to the overall strengthening of the working with children check system in this state.

### **Legislative passage of the WWC Act and the CCYP Act**

An examination of the legislative passage of both the WWC check legislation and the establishment of the Commissioner for Children and Young People in Western Australia, with specific focus on how the WWC Act effected the passage of the CCYP Act, provides context as to whether it was intended that the Commissioner be conferred with a working with children check function.

Calls for a Children's Commissioner existed in Western Australia for some time prior to the Commissioner's office being established.<sup>6</sup> Between June 2003 and July 2004 a Select Committee on Advocacy for Children (Appointment of a Commissioner for Children) enquired into and reported on the most appropriate means for establishing an advocate for children in Western Australia. The report's recommendations—in addition to recommending the establishment of a Children's Commissioner—stated that such a Commissioner should have an employment screening function.

The Select Committee stated that:

*The Committee is of the unanimous view that employment screening to minimise a child's risk of abuse is necessary and believes the commissioner should have the power to oversight and review such a screening function.<sup>7</sup>*

Of note is the Select Committee's use of the wording 'oversight and review' rather than recommending the Commissioner to have responsibility for the day-to-day administration of such a function. The report detailed that the proposed Commissioner should be involved in the drafting of guidelines for—and the provision of risk management advice to—organisations employing persons to work with children.<sup>8</sup> The report further stated that the Children's Commissioner should only be given the

---

6 The Hon. Barbara Scott, MLC, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 14 May 2003, p 7626.

7 Select Committee on Advocacy for Children (Appointment of a Commissioner for Children), *Final Report*, Legislative Council, Parliament of Western Australia, 2 July 2004, p79.

8 *ibid.*

function of oversight and review of an employment screening function provided it were not to overwhelm the other core work of the Commissioner.<sup>9</sup>

In October 2004, following the release of the Select Committee's Report on the Children's Commissioner, the Working with Children (Criminal Record Checking) Bill 2004 (the WWC Check Bill) was introduced into Parliament.<sup>10</sup> The purpose of the WWC Check Bill was to prevent unsuitable people, particularly persons with serious criminal histories involving sexual offences against children, from having the opportunity to work with children.

At this time, the WWC Check Bill conferred the responsibility of conducting working with children checks upon the then Department for Community Development<sup>11</sup>—no mention was made during the Bill's debate that this function may potentially become the responsibility of a future Children's Commissioner.<sup>12</sup>

It was not until the Commissioner for Children and Young People Bill 2005 (the CCYP Bill) was introduced into Western Australia's Parliament on 1 June 2005, that the Hon Shelia McHale MLA advised Parliament that Clause 3, Schedule 1 of the Bill would enable transfer of the employment screening function provided by the *Working with Children (Criminal Record Checking) Act 2004* to the Children's Commissioner at a later date.<sup>13</sup>

The rationale behind this transfer of responsibility was that it would ensure the working with children check process in Western Australia was consistent with the

- 
- 9 The Hon. Barbara Scott, MLC, and the Hon. Kate Doust, MLC, were of this view. The Hon. Giz Watson, MLC, held the view that employment screening is a matter for the Police and would distract from the intention that the Commissioner should advocate for all children and young people. The Select Committee recommended that consideration be given to the provisions in Part 7 of the *Commission for Children and Young People Act 1998* (NSW) and Part 6 of the *Commission for Children and Young People Act 2000* (Qld), which prescribe the screening functions of these Commissioners, when considering what role a future Children's Commissioner should have in regard to employment screening.
  - 10 The WWC Check Bill preceded the introduction of the Commissioner for Children and Young People Bill by some 7 months.
  - 11 On 1 January 2008 the Department of Community Development was split to form the Department for Child Protection and the Department for Communities. As a result of the split, the working with children check function became the responsibility of the Department for Child Protection.
  - 12 The WWC Act was enacted on 1 January 2006 enabling the working with children check system to be in operation since this time.
  - 13 The Hon. Shelia McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), Second reading speech for the Commissioner of Children and Young People Bill 2005, 1 June 2005, p2823.



## Chapter 1

practices of New South Wales and Queensland<sup>14</sup> and provide the screening process with independence.

*This important task needs to be independent of the agencies and service sectors for which it is designed. After further consideration, it was felt that the commission is the appropriate location for this function.*<sup>15</sup>

This view was not unanimous. The Hon Barbara Scott MLC—Chair of the former Select Committee that recommended this function be conferred on the Children's Commissioner—informed Parliament that she was no longer of the view that employment screening should be a function of a new Children's Commissioner.

*It is not an appropriate function of a children's commissioner. It ought to have a discrete budget and be a function of maybe the Police Service or the Department of Justice, but certainly it should be outside the role of the children's commissioner. We will be looking to amend that part of the bill as well when we come to it.*<sup>16</sup>

Despite the Hon Barbara Scott indicating amendments would be sought to remove Schedule 1, Clause 3 from the CCYP Bill, it was passed without amendments to this provision being put to the vote. The ability for the WWC check function to be transferred to the Commissioner therefore formed part of the *Commissioner for Children and Young People Act 2006*.<sup>17</sup>

### Finding 1

The Select Committee on Advocacy for Children (Appointment of a Commissioner for Children) did not intend for the Commissioner for Children and Young People to have responsibility for the day to day operations of working with children checks—nor was it the intent of the *Working with Children (Criminal Record Checking) Act 2004* for the Commissioner to have a working with children check function.

---

14 New South Wales working with children check system is overseen by the Commissioner for Children and Young People. In Queensland the equivalent to working with children check, the 'Blue Card' system, is administered by the Commissioner for Children and Young People and Child Guardian. The WWC checks system in NSW and Queensland are discussed in Chapter 2.

15 The Hon. Shelia McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), Second reading speech for the Commissioner of Children and Young People Bill 2005, 1 June 2005, p2823.

16 The Hon. Barbara Scott, MLC, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 11 October 2005, p 5988-89.

17 Legislative Council, *Parliamentary Debates* (Hansard), 14 September 2006, p 5992.

**Finding 2**

The *Commissioner for Children and Young People Act 2006* was passed without amendment to Schedule 1, Clause 3—allowing for the administration of the *Working with Children (Criminal Record Checking) Act 2004* to be transferred to the Children’s Commissioner at a later date.

The CCYP Act formally commenced operation on 10 December 2007 and Ms Michelle Scott was appointed Commissioner for Children and Young People. Ms Scott has consistently maintained the view that having the WWC check function would serve as a distraction from her core functions and may negatively impact on her advocacy role.<sup>18</sup>

The Commissioner informed the Committee that:

*I remain concerned that if the function was to stay within my remit, that it would be a significant administrative workload. I believe there are other agencies that are well placed to continue or assume that responsibility.*<sup>19</sup>

The Commissioner’s concern mirrors cautionary points raised in both the Select Committee’s final report and the Second Reading Bill debates.<sup>20</sup> The Committee has considered this point at length. Whilst it is likely that the WWC check function would be adequately funded and resourced by the government if it was to be transferred to the Children’s Commissioner—the Committee nonetheless agrees with the Commissioner that such a transfer may overwhelm the Commissioner’s primary advocacy functions.<sup>21</sup>

---

18 Ms Michelle Scott, Commissioner for Children and Young People, Letter, 23 February 2009; Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p12; and Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p5.

19 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p12.

20 Select Committee on Advocacy for Children (Appointment of a Commissioner for Children), *Final Report*, Legislative Council, Parliament of Western Australia, 2 July 2004, p86; The Hon. Shelia McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), Second reading speech for the Commissioner of Children and Young People Bill 2005, 1 June 2005, p2823; The Hon. Barbara Scott, MLC, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 11 October 2005, p 5988-89.

21 The Hon. Barbara Scott, MLC, Chairman (former), Joint Standing Committee of the Commissioner for Children and Young People, *Transcript of Evidence*, March 2009, p12; The Hon Nick Goiran, Member, Joint Standing Committee on the Commissioner for Children and Young People, *Transcript of Evidence*, 19 October 2011, p6.

## Chapter 1

To this end, the Committee recommended to Parliament that Clause 3 of Schedule 1 of *the Commissioner for Children and Young People Act 2006* should be deleted.<sup>22</sup> The Committee continues to support this recommendation and may tender it again for consideration by the Attorney General when the statutory review of the CCYP Act is undertaken later this year.<sup>23</sup> More broadly, the Committee finds that the WWC Check function is not an appropriate function for the Commissioner for Children and Young People to undertake.

### Finding 3

The administration of the *Working with Children (Criminal Record Checking) Act 2004* is not an appropriate function for the Commissioner for Children and Young People.

---

22 Joint Standing Committee on the Commissioner for Children and Young People, *Report 1 Review of the 2007-2008 Annual Report of the Commissioner for Children and Young People*, Parliament of Western Australia, 14 May 2009, p5.

23 The Hon. Christian Porter MLA, Treasurer; Attorney General, Letter regarding Statutory Review of the *Commissioner for Children and Young People Act 2006*, 6 February 2012.

## Chapter 2

### Working with children checks in Australia

A number of Australian jurisdictions, including Western Australia, have employment screening procedures in place to check the criminal histories of individuals wishing to work with children or work in positions which may result in contact with children. The screening processes have different names dependant on the jurisdiction but can collectively be referred to as working with children checks.

Queensland, Victoria, New South Wales and the Northern Territory each have a system in place to conduct such checks—these systems have been in operation as early as 2000. The Australian Capital Territory is in the process of implementing a similar working with children check scheme.

The Committee discussed working with children check systems with relevant agencies in some of these jurisdictions. The Committee was particularly interested in examining the role of Children Commissioner's within these systems. Information gathered by the Committee during these discussions is outlined below. Neither Tasmania nor South Australia has a system of formal working with children checks in place so will not be examined further.<sup>24 25</sup> To establish a point of comparison, the system in Western Australia is briefly outlined.

#### Western Australia

The *Working With Children (Criminal Record Checking) Act 2004* provides procedures for the checking of the criminal records of people who undertake, or propose to undertake, child-related work.<sup>26</sup> The WWC Act was enacted as one part of a suite of legislation intended to increase the protection of children in Western Australia.<sup>27</sup> The

---

24 Tasmania does not presently have formal legislation or screening processes in place — Employers may require criminal record checks at their discretion. A Tasmanian Parliamentary Select Committee on Child Protection recommended in December 2011 that a working with children check process be implemented as soon as possible. The Select Committee's final report is available at: <http://www.parliament.tas.gov.au/ctee/House/Reports/Final%20Report%20CP.pdf>. Accessed on 23 January 2012.

25 South Australia does not have specific screening legislation — Division 3 of the *Children's Protection Act 1993* (SA) provides for an employer driven system which requires employers and responsible authorities to obtain criminal history checks for those engaging in child-related occupations/volunteering.

26 Child related work is defined by Section 6 of the WWC Act and covers a variety of situations which involve, or are likely to involve, contact with children. Examples include employment in child care, health and education industries.

27 The Children and Community Services Bill, the Acts Amendment (Family and Domestic Violence) Bill and the Community Protection (Offender Reporting) Bill were the complementary legislation focused on child protection.

## Chapter 2

legislation was developed in response to community expectations of child safety and to safeguard against paedophiles working in positions of trust, including clergy, teachers and coaches.<sup>28</sup>

The Act currently falls within the portfolio of the Minister for Child Protection. The Department for Child Protection is responsible for the administration of working with children checks and a dedicated WWC check screening unit operates within the department.

The WWC Act requires all employed, self-employed and volunteer persons wishing to engage in child related work to obtain a working with children check.<sup>29</sup> Individuals who have successfully undergone the WWC check process receive an Assessment Notice in the form of a WWC Card—this card enables them to lawfully engage in child-related work.

Persons who have been charged with or convicted of certain offences are prohibited from being employed in child related work.<sup>30</sup> However, the presence of a criminal record in itself may not automatically prevent a person from working with children—the WWC check screening unit considers the nature of the charges or convictions and the relevance they have to working with children.<sup>31</sup>

### New South Wales

The Royal Commission into the New South Wales police service (the Wood Royal Commission)<sup>32 33</sup> recommended and led to the establishment of the New South Wales Commissioner for Children and Young People in 1999.<sup>34</sup> The Royal Commission further recommended assigning the function of working with children checks to the Children's

---

28 The Hon. Shelia McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 20 October 2004, p6945.

29 The WWC check considers a range of criminal records, including records obtained from all Commissioners of Police in Australia, the minister administering the *Sentencing Act 1995* (WA), and from the Western Australian Director of Public Prosecutions.

30 Section 12 of the WWC Act provides that a person convicted of a Class 1 Offence — which covers a range of sexual offences against children under 13 — should be issued with a negative assessment notice. This section also provides that persons charged with a Class 1 or Class 2 offence, or convicted of a class 2 offence, should be issued with a negative assessment notice unless exceptional circumstances are present. Class 2 offences include a broader range of offences, such as child exploitation, murder and assault.

31 Department for Child Protection, *About the Working With Children Check*. Available from: <http://www.checkwwc.wa.gov.au/checkwwc/About+WWC+Check>. Accessed on 6 January 2012.

32 The Royal Commission was established on 13 May 1994 to examine the existence and extent of corruption within the NSW Police Service. The scope of the enquiry was broadened to include the protection of paedophiles by the NSW Police on 21 December 1994.

33 The Hon. Justice JRT Wood, *Royal Commission into the NSW Police Service Final Report – Volume 4*, The Government of the State of New South Wales May 1997, p154.

34 The *Commissioner for Children and Young People Act 1998* (NSW), with the exception of Part 7 (Child Related Employment), commenced operation on 31 May 1999.

Commissioner.<sup>35 36</sup> As a result, New South Wales was the first jurisdiction in Australia to establish employment screening procedures for the purpose of identifying whether people are suitable to engage in child related work. The New South Wales Commissioner for Children and Young People began conducting working with children checks in July 2000.<sup>37</sup>

Whilst the Commissioner for Children and Young People has overall responsibility for the WWC checking process, the Commissioner is one of five agencies in New South Wales who carry out working with children checks.<sup>38</sup> The Commissioner for Children and Young People is also responsible for the development and issuance of guidelines for the other screening agencies and has a role in monitoring the other four screening agencies and performing audits where necessary.<sup>39</sup>

It was interesting for the Committee to note that—unlike in some other Australian jurisdictions where a Children's Commissioner conducts employment screening—the *Commissioner for Children and Young People Act 1998* (NSW) does not necessarily allow the Commissioner to prevent employers from hiring persons who are screened and subsequently identified as a risk to children. As long as they are not deemed a prohibited person, the decision of whether or not to employ a person identified as a potential risk rests with the employer.<sup>40</sup>

During a briefing held in February 2009 with Ms Gillian Calvert, the New South Wales Commissioner for Children and Young People at that time, the Committee heard that there are a number of advantages of the Commissioner being responsible for the working with children check system.<sup>41</sup>

Ms Calvert explained that holding responsibility for the WWC checks was mutually beneficial to both parties. This is because the government benefits by having working with children checks overseen by a body independent of the government as it increases

---

35 The Hon. Justice JRT Wood, *Royal Commission into the NSW Police Service Final Report – Volume 4*, The Government of the State of New South Wales May 1997, p302.

36 Specifically the Royal Commission recommended that the Children's Commissioner should oversee and participate in the pre-employment criminal record checking of persons who work closely with children.

37 Part 7 (Child Related Employment) of the *Commissioner for Children and Young People Act 1998* (NSW) was proclaimed and commenced operation on 3 July 2000.

38 The Department of Education and Training, the Department of Arts, Sport and Recreation, the Department of Health and the Catholic Commission for Employment Relations are the other agencies responsible for conducting working with children checks in NSW.

39 Audit Office of New South Wales, *Working With Children Check: NSW Commissioner for Children and Young People(Performance Audit)*, Audit Office, New South Wales, p2.

40 The Audit Office of New South Wales noted in their report on working with children checks that in 2008-2009, 14 persons who were assessed as a significant risk attained employment.

41 The Committee met with Ms Gillian Calvert, who was the NSW Commissioner for Children and Young People at the time, on 26 February 2009. This briefing was held as part of the Committee's examination of the exercise of the functions of the Commissioner for Children and Young People.

## Chapter 2

the credibility of the screening process—and administering the WWC checks is a key service the government requires from the Children's Commissioner. This obligation ensures the issues the Commissioner advocates for cannot be sidelined so easily by the Government. Ms Calvert noted that this would more likely occur if the Commissioner's primary function was advocacy alone.

The former Commissioner further added that it was within the scope and remit of the office of the Commissioner for Children and Young People to perform working with children checks. This is because the welfare of children is one of the Commissioner's primary interests, so enabling the Commissioner to be in an informed position to make decisions on such matters.

### Queensland

The office of the Commissioner for Children and Young People and Child Guardian (CCYPCG) is responsible for working with children checks in Queensland (called the Blue Card). The office was established in 1996, initially for the purpose of reporting on the occurrence of child paedophilia in Queensland. The responsibilities and powers of the Commissioner were further increased as a result of the 1999 *Forde Commissioner of Inquiry into Child Abuse in Queensland Institutions* (the Forde Inquiry).<sup>42</sup>

The Forde Inquiry examined whether there had been any abuse, mistreatment or neglect of children in Queensland institutions. Many instances of unsafe, improper or unlawful treatment of children in both public and non-government institutions were identified by the Inquiry. Consequently, the Inquiry recommended that comprehensive, ongoing screening of all staff and other persons in contact with children in residential care and juvenile detention centres be undertaken in order to ensure suitability for such employment.<sup>43</sup>

During a briefing held with Ms Elizabeth Fraser, the Queensland Commissioner for Children and Young People and Child Guardian, in May 2011, the Committee heard that at the time the employment screening function was given to the Commissioner for Children and Young People and Child Guardian in Queensland there was increasing public debate about civil liberties and how personal information was being used by government agencies—concerns that primarily arose out of the findings of the Forde Inquiry.

Ms Fraser informed the Committee that the sentiment among the people of Queensland was that they were happy to participate in an employment screening

---

42 L. Forde AC, *Forde Inquiry Report: Commission of Inquiry into the abuse of children in Queensland institutions*, 31 May 1999. Available from: <http://www.communities.qld.gov.au/resources/communityservices/community/forgotten-australians/forde-comminquiry.pdf>. Accessed on 17 January 2012.

43 *ibid.*, p273.

system to protect the interests of children however; they did not want their personal details and criminal histories being used or viewed by the government.

This distrust in the government resulted in a deliberate move being made to house the working with children check function with a statutory body, independent of government. It was a result of the Forde Inquiry that the responsibility for the administration of employment screening for persons working with children was given to the CCYPCG. The role has a specific remit focusing on the protection of children and young people.

The Blue Card system applies to all persons in Queensland working with children, whether paid or volunteer. A number of records are checked in order for a blue card to be obtained.<sup>44</sup> If no relevant criminal records or disciplinary information is found, the CCYPCG will issue the person with a positive assessment notice and a Blue Card. If relevant records are revealed, a number of factors are considered, including the type of offence, the relevance of the offence to working with children and young people, and whether the offence is a disqualifying offence. When making a decision about whether to issue a Blue Card, the Commissioner for Children and Young People and Child Guardian's key priority is to ensure the safety and wellbeing of children and young people in Queensland.<sup>45</sup>

The Blue Card system has a strong reputation in other jurisdictions and is in part based on the comprehensive nature of the system itself, which incorporates eight separate elements of a risk management strategy ranging from the Blue Card check to child and youth risk management strategies. The system also supports live, ongoing monitoring of Blue Card holders and applicants.<sup>46</sup> The Committee learnt that running such a system, whilst effective, is very expensive in both time and money.<sup>47</sup> The CCYPCG's budget is considerably larger than other Children Commissioner's in Australia,<sup>48</sup> and whilst the Blue Card system generates around \$6 -7 million in revenue per annum for

---

44 Examples of the records checked include; charges and convictions for offences, child protection prohibition orders, whether a person is subject to the reporting obligations under the *Child Protection (Offender Reporting) Act 2004* or *Dangerous Prisoners (Sexual Offenders) Act 2003* and disciplinary information held by professional organisations.

45 Detailed information about the information the Commissioner for Children and Young People and Child Guardian considers when issuing a Blue Card is available from the Commissioner's website: <http://www.ccypcg.qld.gov.au/bluecard/employees/bluecardprocess.html>.

46 During the briefing with the CCYPCG the Committee was informed that there are 508 000 applicants in the database from over 100 000 organisations.

47 The Hon. Karen Struthers, Queensland Minister for Community Services, Briefing with Committee, 10 May 2011.

48 The Committee was informed by the CCYPCG during the briefing in May 2011 that the Commission's budget is approximately \$45 million from consolidated revenue, which equates to about 1% of the Department for Communities (Qld) budget. This budget figure was confirmed in the CCYPCG's 2010-11 Annual Report, page 11. Available from: [http://www.ccypcg.qld.gov.au/pdf/publications/reports/ccypcg2011-report/CCYPCG-Annual-report-2010-11\\_WEB.pdf](http://www.ccypcg.qld.gov.au/pdf/publications/reports/ccypcg2011-report/CCYPCG-Annual-report-2010-11_WEB.pdf). Accessed 13 February 2012.



## Chapter 2

the Commission, approximately 55% of the Commission's full time equivalent (FTE) staff are devoted to the operation of employment screening services.<sup>49</sup>

### Victoria

Unlike New South Wales and Queensland's employment screening systems, the Victorian *Working with Children Check Act 2005* is administered by the Department of Justice. All people who work or volunteer in child related work must apply for, and successfully attain, a working with children check. Checks must be renewed every five years.

Also dissimilar to New South Wales and Queensland, the implementation of a working with children check system in Victoria was not the direct result of an inquiry or Royal Commission examining abuse of children. However, the intent of the legislation—to protect children by enhancing 'the safety of children when they are participating in activities outside the home'<sup>50</sup>—is similar.

The records of working with children check applicants are checked for certain criminal offences<sup>51</sup> and for findings made by specified professional disciplinary bodies.<sup>52</sup> A decision is made by the Department of Justice, based on the obtained results, as to whether an assessment notice, an interim negative assessment notice or a negative assessment notice should be issued.<sup>53</sup>

Whilst the Department for Justice administers the working with children checks, the Victorian Child Safety Commissioner performs an oversight role of the checking system.

The Committee met with Mr Bernie Geary OAM, the Child Safety Commissioner for Victoria as part of its examination of the exercise of the functions of the Western Australian Commissioner for Children and Young People.<sup>54</sup> During this meeting the Committee heard that one function of the Child Safety Commissioner is to audit the

---

49 Ms Elizabeth Fraser, Commissioner for Children and Young People and Child Guardian, Letter, 30 May 2011.

50 The Hon. Rob Hulls, Attorney General, Victoria, Legislative Assembly, *Parliamentary Debates* (Hansard), 21 July 2005, p1997.

51 The definition of "relevant offences" contained within section 3 of the *Working With Children Check Act 2005* (VIC) lists the criminal records which are checked. It should be noted that criminal offences that not specified in the Act may be considered if exceptional circumstances exist and there is the offence possess a risk to the safety of children.

52 These include the Victorian Institute of Teaching, the out of home carers suitability panel and any determinations made under the *Health Professions Registration Act 2005* (VIC) by the Victorian Civil and Administrative Tribunal.

53 An interim negative assessment notice is issued in circumstances where the Department of Justice is seeking additional information from an applicant, asking lodge a submission explaining why they believe you should pass the Check. This submission is considered in the final determination.

54 The Child Safety Commissioner is appointed by the Premier of Victoria and is accountable to the Minister for Community Services, as per Part 6 of the *Child Wellbeing and Safety Act 2005* (VIC).

working with children check system, report the results of the audit and make any recommendations that are appropriate.<sup>55</sup> The Child Safety Commissioner advised that this function takes up less than five per cent of his office's time as he is not required to administer the working with children check process—he must simply audit it to ensure that the work undertaken by Department of Justice in conducting the checks reflects the intention of the *Working With Children Act 2005*. The issue of an independent body auditing the working with children check system in Western Australia has been explored by the Committee and is discussed later in this Chapter.

### Northern Territory

As of 1 July 2011 it is compulsory for all persons who have contact with, or could potentially be in contact with, children while working in specified types of employment in the Northern Territory to obtain a working with children check clearance—or 'Ochre Card'. To obtain the clearance criminal and employment records are checked to ensure suitability of the applicant to work or volunteer in roles where contact with children is likely.

In the Northern Territory the legislation pertaining to working with children checks falls under the authority of the Department of Children and Families, but is administered by the Northern Territory police.<sup>56</sup> The Northern Territory Commissioner for Children and Young People does not have a role in the administration or oversight of the working with children checks.

The Committee attended a briefing with representatives of the Northern Territory's Department for Children and Families in Darwin on 12 May 2011<sup>57</sup> and heard that there are limitations inherent with the Northern Territory police administering the working with children checks. The primary limitation is that, while the police have a general community safety role, their focus is not primarily on the wellbeing of children and young people. In contrast, the Queensland Commissioner for Children and Young People and Child Guardian—who, in their opinion, does an excellent job with the Blue Card screening—has a specific child protection focus.

The Committee was further informed that the working with children checks should remain separate to the operation of the Department of Children and Families as it is not related to the department's direct service provision. It was mentioned that if the

---

55 The Child Safety Commissioner is required to report the results of this audit to the Minister for Community Services, the Minister administering the *Working with Children Act 2005* (VIC) and the Secretary to the Department of Justice.

56 Part 3.1 of the *Care and Protection of Children Act 2007* (NT) provides the legislative basis for the Northern Territory's working with children checks.

57 The Committee met with Ms Clare Gardiner-Barnes, the Acting Chief Executive Officer, Ms Bronwyn Thompson, Director of Care and Protection Policy and Ms Lorraine Williams, Executive Director of Regional Services.

## Chapter 2

administration of the checks were to be moved, the Northern Territory Commissioner for Children and Young People would be the department's first choice.

### **Australian Capital Territory**

On 25 October 2011 the Working with Vulnerable People (Background Checking) Bill 2010 was passed by the Australian Capital Territory's Legislative Assembly. The scope of this Act when commenced will be wider than the legislation in place in other jurisdictions—a background check is required for people working or volunteering with children under the age of 18 years or a disadvantaged adult.<sup>58</sup>

The Act will provide that all people in the Australian Capital Territory who have contact with children or vulnerable people as part of engaging in specific regulated activities and services<sup>59</sup> must undergo background screening.<sup>60</sup> A Statutory Screening Unit will be established within the Office of Regulatory Services, Justice and Community Safety Directorate for the purpose of screening applicants.<sup>61</sup>

It does not appear from the legislation that the Australian Capital Territory's Commissioner for Children and Young People will have a role to play in the proposed screening system.

### **A National Approach**

The development of a nationally consistent approach to conducting working with children checks was discussed as part of the Council of Australian Government's Framework for Protecting Australia's Children 2009-2020.<sup>62</sup> The first step towards a nationally consistent approach was made on 29 November 2008 when the Council of Australian Governments (COAG) agreed to the establishment of inter-jurisdictional exchange of criminal history information for people working with children.

---

58 Section 6 of the Working with Vulnerable People (Background Checking) Bill 2010 defines a vulnerable person as a child under 18 years of age or an adult who is experiencing disadvantage and, as a result of the disadvantage, is accessing a regulated activity or service related to the disadvantage.

59 Schedule 1 of the Working with Vulnerable People (Background Checking) Bill 2010 defined regulated activity or service — childcare services, child education service and commercial services for children, such as play facilities, fall within the definition.

60 Section 16(2)(a)(i) of the Bill provides that the background screening involves the checking of an applicant's criminal history, non-conviction information and any other information about the applicant that may be relevant in deciding the application.

61 Community Services Directorate, ACT Government, *Working with vulnerable people checks*. Available from: <http://www.dhcs.act.gov.au/home/publications/wwvpc>. Accessed on 17 January 2012.

62 Council of Australian Governments, *'Protecting Children is Everybody's Business' National Framework for protecting Australia's Children 2009-2020*, 2009. Available from: [http://www.facs.gov.au/sa/families/pubs/framework\\_protecting\\_children/Documents/child\\_protection\\_framework.pdf](http://www.facs.gov.au/sa/families/pubs/framework_protecting_children/Documents/child_protection_framework.pdf). Accessed on 23 January 2012.

A memorandum of understanding was signed by COAG officials on 28 November 2009 to facilitate the sharing of information.<sup>63</sup> Prior to the signing of the memorandum of understanding, the offices or agencies conducting working with children checks only had access to the conviction information held by other jurisdictions police services. As a result of the memorandum of understanding, participating screening units have access to a broader range of information, including spent convictions, prior charges and current charges.<sup>64</sup>

Work towards a completely consistent national approach to working with children checks is ongoing.

### **Differences in establishment of working with children checks**

As a result of its ongoing research, the Committee has observed differences in the establishment of employment checking processes utilised in other Australian jurisdictions and the Western Australian WWC checks.

The primary difference is that the establishment of employment screening in Queensland and New South Wales was the result of inquiries examining and uncovering the abuse of children in the respective states.

Comparatively, in Western Australia—while it was noted that instances of paedophilia among persons in positions of trust was one reason the WWC system was to be introduced<sup>65</sup>—there was not a specific Inquiry or Royal Commission which prompted the introduction of working with children checks.

The difference in the establishment of working with children checks and similar employment screening processes was summed up by the Commissioner during a hearing with the Committee held on 17 August 2011:

*I think historically the working with children checks in other states were built around a commissioner's role that was very much focused on child protection. We have a different history here in Western Australia because we had the working with children checks commence before we had a Commissioner for Children and Young People and we*

---

63 The memorandum of understanding can be accessed here: <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/memorandum-of-understanding.aspx>. Accessed 23 January 2012.

64 The memorandum of understanding facilitates the exchange of further police information concerning the circumstances of convictions or charges. This assists in identifying whether a child was involved, a witness or was the victim of a particular offence.

65 As noted in the Second Reading speech for the *Working With Children (Criminal Record Checking Bill 2004)*. The Hon. Shelia McHale, Minister for Community Development, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 20 October 2004, p6945.

## Chapter 2

*have a Commissioner for Children and Young People who has a broad remit rather than just a child protection focus.*<sup>66</sup>

The Committee recognises that there are advantages to WWC checks being administered by a body independent of government, such as a Children's Commissioner. One such benefit includes a decrease in any perceived conflict of interest which may arise from a government department conducting the checks, which would include checks on government staff. Another identified benefit is that the advocacy undertaken by Commissioner's may benefit from being informed by the information garnered through conducting the checks—this may allow for the identification of systemic issues relating to child wellbeing and safety.<sup>67</sup> As observed by the Children's Commissioner for New South Wales, providing working with children checks to the government may also intrinsically strengthen the position of the Children's Commissioner with that government—and provide the Commissioner with greater access to decisions makers than may be the case if the Commissioner did not provide that service to Government.

Notwithstanding these benefits, the Committee notes that the Commissioner in Western Australia has a wider role compared to other Children Commissioner's—with a broad remit to advocate for the wellbeing of all children and young people in Western Australia—not primarily focusing on children in care. This being the case, there is an argument that transferring a working with children check function on the Commissioner would necessarily alter the Commissioner's focus. The Committee notes that despite all the benefits gained from Queensland's CCYPCG administering the Blue Card system, 55% of all the CCYPCG's full time equivalent (FTE) staffing resources are dedicated to its operation. The Committee feels therefore that such a function would place an unsustainable impost on the broad advocacy role of the Children's Commissioner in Western Australia.

Unlike the Commissioner, the Department for Child Protection in Western Australia has a specific child protection remit that is more closely aligned to those of Children Commissioner's and their equivalents interstate who carry out direct working with children functions. The Committee had discussed the WWC check system with the Department and is of the view that DCP has been effective in its administration of the WWC function. Given the Department's focus on child protection, the Committee finds that it is an appropriate body to conduct the working with children checks and administer the *Working with Children (Criminal Record Checking) Act 2004*.

---

66 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p5.

67 This issue is explored in greater detail later in this Chapter.

**Finding 4**

Establishment of working with children checks and similar employment screening procedures in Queensland and New South Wales differs from Western Australia in that the implementation of screening procedures was largely the result of inquiries substantiating systematic abuse of children.

**Finding 5**

There are advantages to working with children checks being administered by a body independent of government, such as a Children’s Commissioner.

**Finding 6**

In Western Australia, it is appropriate for the Department for Child Protection to continue to be responsible for the administration of working with children checks as the Department’s main focus is child protection.

**Effectiveness of working with children checks in Western Australia**

Through its examination of working with children check systems—in both Western Australian and other jurisdictions—the Committee has identified areas of potential improvement to the Western Australian working with children check system.

Particularly:

- the need for audits on working with children check renewals conducted by the Department for Child Protection on its own staff; and
- the value of the Commissioner for Children and Young People having access to data obtained by the Department for Child Protection through the conduct of working with children checks.

**Auditing of working with children check renewals conducted on Department for Child Protection staff**

The Committee is of the view that there is a need for external audits to be conducted on working with children checks, particularly renewals, conducted by Department for Child Protection (DCP) on its own staff.

This aspect of working with children checks was first brought to the Committee’s attention during a briefing with representatives from the Queensland Department of Communities which was held in Brisbane in May 2011.<sup>68</sup> During this briefing the Committee was informed that the Blue Card system should not rest with the Department of Communities. If the Blue Card system were to be operated by the

---

68 The Committee met with Ms Bette Kill, Associate Director General, Strategy, Policy and Performance, and Ms Cathy Taylor, Executive Director, Child Safety, Youth and Families Policy and Performance, both staff of the Department of Communities.

## Chapter 2

department, rather than the Commissioner for Children and Young People and Child Guardian, the system would be in conflict as the department would be required to conduct checks and issue Blue Cards to its own staff.

This position was reiterated by the Queensland Minister for Community Services, the Hon Karen Struthers, who the Committee also met with in Brisbane in May 2011. The Minister was of the view that the Blue Card system should remain with the Commissioner for Children and Young People and Child Guardian because of Commissioner's independence. The Minister added that there is a community expectation that the Blue Card checks are conducted in a manner which is independent of the government.

Victoria is a jurisdiction—like Western Australia—where working with children checks are administered by a government department. As previously stated, it is a function of Child Safety Commissioner for Victoria to audit the working with children check system and then report the results of the audit to the relevant Minister/s. The Child Safety Commissioner may also make any recommendations that are appropriate to ensure that working with children checks are undertaken in accordance with the *Working with Children Act 2005*. The Committee observes that this approach has merit in safeguarding the intent of the Act and the overall integrity of the working with children check system.

Additionally, in 2008 the Victorian Auditor General conducted an audit on working with children checks in Victoria. No issues were highlighted in the final report which may reflect the ongoing internal audit process within the Victorian working with children check system.<sup>69</sup> Both the Auditor General's audit and the regular audits conducted by the Child Safety Commissioner include, but are not specifically targeted at, an examination on those checks conducted by the Department of Justice on its own staff.

It does not appear any of the other examined jurisdictions have clearly defined, routine or legislated audit requirements for checks conducted on staff internal to the department or office responsible for conducting the checks.<sup>70 71</sup> The Committee

---

69 Auditor General, *Working with Children Check*, Victorian Government Printer, October 2008, p55. Available at: [http://download.audit.vic.gov.au/files/WWCC\\_Report.pdf](http://download.audit.vic.gov.au/files/WWCC_Report.pdf). Accessed: 20 December 2011.

70 It should be noted that the NSW Auditor General conducted an audit of the state's working with children screening check processes. However, it is not clear from the audit whether checks are conducted by the Commissioner for Children and Young People on the office's own staff. The report is available at: [http://auditofficestaging.elcom.com.au/ArticleDocuments/142/196\\_Working\\_With\\_Children.pdf.aspx?Embed=Y/](http://auditofficestaging.elcom.com.au/ArticleDocuments/142/196_Working_With_Children.pdf.aspx?Embed=Y/). Accessed 20 December 2011.

71 It is acknowledged the Victorian Child Safety Commissioner is obliged by section 25 of the *Child Wellbeing and Safety Act 2005* (VIC) to annually report on the working with children checks completed by the Department of Justice, however, it is not clear whether the annual reports examine the conduct of working with children checks on internal Department of Justice staff.

observes that the absence of such targeted auditing in other jurisdictions is not sufficient reason to overlook the issue in Western Australia.

The issue was explored with Western Australia's Commissioner for Children and Young People, Ms Michelle Scott, during a hearing on 17 August 2011. The Committee sought the Commissioner's views as to whether she thought there is a conflict of interest with DCP undertaking working with children checks in circumstances where monitoring and screening of its own staff occurs. The Commissioner advised the Committee that:

*I think wherever you place it, there is a potential conflict of interest. One of my concerns, if it was in my area of responsibility—I am a commissioner charged with acting in the best interests—is that there could be a conflict if something happens in relation to one of the checks.<sup>72</sup>*

Following this hearing, the Committee met with Mr Terry Murphy, Director General of the Department for Child Protection, in October 2011. During this hearing working with children checks were discussed and Mr Murphy echoed the Commissioner's sentiments regarding placement of the function.

*... [T]here is probably nowhere else for working with children to live that would not also require some of its staff being checked. The Department of the Attorney General was one option considered. Obviously all juvenile justice staff have to deal with kids in the courts, and so on and so forth.<sup>73</sup>*

Mr Murphy informed the Committee that the working with children screening unit of the Department for Child Protection conducts approximately 600 renewal checks on Departmental staff per year.<sup>74</sup>

The Hon Nick Goiran MLC enquired with Mr Murphy as to whether any conflict exists in relation to the working with children checks, particularly renewals, conducted by the screening unit on the Department for Child Protection's own staff, and how the conflict is managed internally. Mr Murphy informed the Committee that:

*...[T]he procedures in the Working with Children Act are very much prescribed in the legislation. The thresholds for determination of the issuance of a negative notice are clear in legislation. The most difficult ones require a lot of investigative work by lawyers, looking over old*

---

72 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p5.

73 Mr Terry Murphy, Director General, Department for Child Protection, *Transcript of Evidence*, 19 October 2011, p6.

74 *ibid.*, p5.



## Chapter 2

*court documents and so on, but they are clear, and those decisions are made on a delegated basis from me by the working with children unit itself. There is no influence on those decisions from the department. As I say, most of those are entirely straightforward on the basis of what the criminal convictions are. Some that are determined on non-conviction charges require more interpretation, but they are decided entirely independently of any other staff in the department, including myself.*<sup>75</sup>

Mr Murphy informed the Committee that there is no external audit process in place examining the WWC check renewals conducted on DCP staff.

*No, it would be the province of the Auditor General, should he choose to be involved. Obviously we would welcome that, if there was any concern.*<sup>76</sup>

The Hon Nick Goiran MLC then enquired with Mr Murphy as to whether he sees any merit in an amendment to the WWC Act which may result in an external body being given the responsibility of auditing the WWC renewal checks the Working with Children Screening Unit conducts on its own staff—to which Mr Murphy replied:

*Yes, insofar as there is a perception of conflict. Any perception of conflict needs to be brought out into the open and shown how it is being dealt with. I would probably counsel that it may be more prudent to simply ask the Auditor General to conduct a periodic review, but I would not have any problem and, yes, would see some merit in a legislative requirement that that occurs.*<sup>77</sup>

The Committee believes even the perception of a conflict of interest can be problematic. As a result of Mr Murphy's comments, the Committee wrote separately to Mr Colin Murphy, the Auditor General, and to the Commissioner for Children and Young People, seeking their respective views on the need for external auditing of WWC checks and renewals conducted by DCP on the department's own staff.<sup>78</sup>

In response to the Committee's letter the Commissioner noted:

*As the Director General indicated in his evidence there is potential for a conflict of interest for any agency that may host the Working with*

---

75 Mr Terry Murphy, Director General, Department for Child Protection, *Transcript of Evidence*, 19 October 2011, p6.

76 *ibid.*

77 *ibid.*

78 Letters dated 17 November 2011 from Committee Chairman to Auditor General and Commissioner for Children and Young People.

*Children Checks. It is therefore important that appropriate external scrutiny is available. This could be provided by the Auditor General or the Public Sector Commissioner.*<sup>79</sup>

The Auditor General advised that his office does not have a full understanding of the Department for Child Protection's arrangements to ensure the integrity of checks conducted on internal staff, however, expects their processes would be particularly rigorous, and added that:

*At this stage I do not therefore consider a specific audit on this topic is warranted. However, I understand from advice from a member of the team appointed to undertake the review of the Working With Children Act that the review would likely include an assessment of DCP's checks of its own staff. I understand a review is expected to be completed by mid-2012.*<sup>80</sup>

The Auditor General concluded by informing the Committee that:

*In the event that a review of the Act found serious weaknesses in DCP's processes for conducting 'working with children checks', then I would give strong consideration to an audit after sufficient time had passed for DCP to improve its processes.*<sup>81</sup>

The Committee concurs with the Commissioner's points and agrees that appropriate external scrutiny is important. The Committee has considered which agency would be best suited to oversee the auditing of WWC checks conducted on internal DCP staff. The Commissioner and the Auditor General were identified as two possible solutions. In addition, the Public Sector Commission was suggested.<sup>82</sup> After considering the audit function of the Victorian Child Safety Commissioner, and the lack of such formal processes amongst other Children's Commissioners in Australia, the Committee has concluded that the audit role does not neatly fall within the Commissioner's prescribed functions. Particularly as the Western Australia Commissioner's role—when compared to those in other jurisdictions—is distinctly broader in scope and focus with respect to child protection.

The Committee is of the opinion that the remit of the Auditor General could most appropriately accommodate the role. Specifically, the *Auditor General Act 2006* (WA)

---

79 Ms Michelle Scott, Commissioner for Children and Young People, Letter, 24 November 2011. See Appendix Five for a copy of this letter.

80 Mr Colin Murphy, Auditor General, Letter, 12 December 2011. See Appendix Six for a copy of this letter.

81 *ibid.*

82 Ms Michelle Scott, Commissioner for Children and Young People, Letter, 24 November 2011.

## Chapter 2

provides that the Auditor General may at any time carry out an examination or investigation for a number of prescribed purposes, including:

- examining an agency's compliance with legislative provisions, public sector policies or its own internal policies; and
- examining the efficiency and effectiveness of an agency.<sup>83</sup>

The Committee respects the Auditor General's position that performance audits may not be required and agrees with his suggestion that DCP would be rigorous in their checking of internal staff.<sup>84</sup> Nevertheless, where the safety of children is concerned it is best to be vigilant and rigorous—if audits are not undertaken, problems that may exist may not be identified.

The Committee finds that periodic external audit of the WWC checks performed by the Department for Child Protection on its own staff will strengthen the overall administration of the WWC Act and diminish any perception of conflict within the WWC check system.

It should be emphasised that there are no specific instances relating to the conduct of working with children checks in Western Australia that are of concern to the Committee or the Commissioner.<sup>85</sup> Nonetheless, given the important function working with children checks perform in safeguarding children—it is important that even the perception of a conflict of interest is removed from the working with children check process—to protect the ongoing integrity of the process.

### Finding 7

There is no external audit of working with children check renewals conducted by the Department for Child Protection in Western Australia on its own staff.

### Finding 8

The administration of the *Working with Children (Criminal Record Checking) Act 2004* (WA) would be strengthened as a result of periodic external audits.

### Recommendation 1

Legislative amendment to the *Working with Children (Criminal Record Checking) Act 2004* should be made to ensure periodic auditing of the working with children checks and renewals the administering body (currently the Department for Child Protection) performs on its own staff.

---

83 Section 18 of the *Auditor General Act 2006* (WA).

84 Mr Colin Murphy, Auditor General, Letter, 12 December 2011.

85 As indicated to the Committee in her letter regarding auditing of working with children checks, 24 November 2011.

**Recommendation 2**

The Minister for Child Protection should immediately request the Auditor General, or other appropriate body, to conduct an independent audit of the working with children checks conducted by the Department for Child Protection on its own staff.

**Access to working with children check information**

Through examination of the functions of the Commissioner of Children and Young People and the attention that has been paid to working with children checks, the Committee has identified that access to data obtained through the conduct of working with children checks is an issue which should be explored. As propounded by Children Commissioner's in other jurisdictions, there is potential for the Commissioner's advocacy role to be informed by the WWC check data and for systemic issues relating to the wellbeing of children to be identified. This information may then be used to inform improvements and identify potential risks within the WWC Check system—and help strengthen the system overall.

The Committee heard in February 2009 from Mr Gillian Calvert, the now former New South Wales Commissioner for Children and Young People, that the nature of the Commission's work has allowed for a three tiered working with children check scheme to operate. The three strategies are:

1. Excluding prohibited persons for engaging in child-related employment;
2. Conducting background checks of applicants wishing to engage in primary child-related employment; and,
3. Encouraging child-related organisation to become more child-safe and child-friendly.<sup>86</sup>

Point three allows the Commissioner to develop and implement child risk reduction strategies and to work with organisations to implement such strategies. This role, which may not be undertaken if the WWC checks were to be completed by a different agency, fits well with the advocacy function of the Commissioner.<sup>87</sup> It also allows the Commission to interact with and gather information from community organisations that may not have otherwise been shared.

Similarly, the Committee heard from the Queensland Commissioner for Children and Young People and Child Guardian that administering the Blue Card checks assists with

<sup>86</sup> These strategies are reflected in section 11 of the *Commissioner for Children and Young People Act 1998* (NSW).

<sup>87</sup> This point was raised by Ms Gillian Calvert, former New South Wales Commissioner for Children and Young People, during a briefing with the Committee held on 26 February 2009.

## Chapter 2

the Commissioner's general advocacy work. It allows for the investigation of systemic issues that may emerge—the Commissioner can use her powers to speak to any regulated child employment provider about their specific risk management strategies. The Blue Card system is a useful tool which allows the Commissioner for Children and Young People and Child Guardian to talk to communities, particularly remote communities, about what it is required to safeguard children.

Similar to the Queensland Commissioner for Children and Young People and Child Guardian's involvement in consulting with the community about the Blue Card checks, the Victorian Child Safety Commissioner is legislatively required to, in consultation with the Department of Justice, educate and inform the community about the Victorian *Working with Children Act 2005*.<sup>88 89</sup>

The need for collaboration and information sharing between—and within—government agencies and statutory bodies was emphasised to the Committee during a hearing held with the Western Australian Ombudsman, Mr Chris Field, in September 2011. The Ombudsman stated:

*We see problems arising in public administration where there is not sufficient collaboration—where departments can work in silos. We think that collaboration and cooperation is incredibly important...*<sup>90</sup>

Mr Field spoke about the importance of having a legislative basis to the information sharing that occurs between his and other offices, including the Commissioner for Children and Young People:

*The Act [Parliamentary Commissioner Act 1971] does envisage us sharing information with a range of critical and key stakeholder-type agencies such as the Office of the Inspector of Custodial Services. When the children's commissioner legislation passed—as I am sure you know—that office was added into our legislation to allow us to share information. I thought that was a perfectly sensible thing to do at the time. It assists us though in having that legislative underpinning to be able to share information with an office, so we may disclose information. We are not compelled to disclose because the overall discretion to disclose information still resides with me, which I think is*

---

88 As provided by section 24(b) of the *Child Wellbeing and Safety Act 2005* (VIC).

89 The Committee notes that Section 26 of the *Child Wellbeing and Safety Act 2005* (VIC) gives the Child Safety Commissioner access to the records kept by the Secretary of the Department of Justice under the *Working with Children Act 2005* (VIC) in relation to the administration of the Act — however, it is not clear whether the access to these records is only for auditing purposes, or whether the information is used to inform the Commissioner's other work.

90 Mr Chris Field, Western Australian Ombudsman, *Transcript of Evidence*, 28 September 2011, p3.

*proper, but we may disclose information, and it certainly assists me in disclosing information.*<sup>91</sup>

The Committee believes the Ombudsman's comments can be applied to the sharing of working with children check information between the Department for Child Protection and the Commissioner.

The Committee recognises that:

- Section 22(2) of the *Commissioner for Children and Young People Act 2006* confers on the Commissioner the power to ask a government agency or service provider to disclose to the Commissioner relevant information; and
- Section 22(3) of the CCYP Act requires a government agency or service provider to disclose relevant information in response to such a request, unless such disclosure contravenes a prescribed written enactment relating to secrecy or confidentiality; and,
- A Memorandum of Understanding (MOU) exists between the Commissioner and the Director General of the Department for Child Protection—the purpose of which is to facilitate the exchange of information between the two, in turn, assisting the efficiency and effectiveness of both parties.

Although these measures are in place, the Committee is not aware of any information sharing—specifically related to working with children checks—between the Commissioner and the Department for Child Protection.

The *Working with Children (Criminal Record Checking) Act 2004 (WA)* does contemplate the CEO exchanging and disclosing information to certain bodies<sup>92</sup>—specifically with regard to individual assessment notices. It is the Committee's view however that access to non-personally identifying information—gathered in the administration of the working with children check system—may provide the Commissioner with information on emerging trends in child related work that would inform and strengthen the Commissioner's advocacy role.

This information may assist the Commissioner in identifying potential risks and systemic problems; or it may simply provide the Commissioner with more information about what is required to safeguard children. While the Committee does not think it appropriate for the Commissioner for Children and Young People to administer the WWC Act, the Committee finds that the Commissioner could have a beneficial role to play within the system. This type of information sharing would benefit the work of the

---

91 Mr Chris Field, Western Australian Ombudsman, *Transcript of Evidence*, 28 September 2011, p2.

92 Section 37 and section.38 of the *Working with Children (Criminal Record Checking) Act 2004 (WA)*.

## Chapter 2

Commissioner—and enable the Commissioner to contribute to the overall strengthening of the working with children check system in Western Australia.

### **Finding 9**

Information sharing between the Department of Child Protection and Commissioner for Children and Young People may benefit the advocacy work of the Commissioner for Children and Young People and strengthen the operation of the working with children check system within Western Australia.

### **Recommendation 3**

The sharing of information about the scope, operation and function of organisations dealing with children between the CEO of the Department administering the *Working with Children (Criminal Record Checking) Act 2004* and the Commissioner for Children and Young People should be enabled.



MS A R MITCHELL MLA  
CHAIRMAN

# Appendix One

## Committee's functions and powers

---

On 26 June 2008, the Joint Standing Committee on the Commissioner for Children and Young People ('the Committee') was established pursuant to Section 51 of the *Commissioner for Children and Young People Act 2006* ('the Act'). The Committee was re-formed in the 38<sup>th</sup> Parliament on 26 November 2008. In accordance with the Act, the Committee's functions and powers were agreed to between the Houses.

It is the function of the Joint Standing Committee to:

- i. monitor, review and report to Parliament on the exercise of the functions of the Commissioner for Children and Young People;
- ii. to examine Annual and other Reports of the Commissioner; and
- iii. to consult regularly with the Commissioner.

Otherwise, the Standing Orders of the Legislative Assembly relating to Standing and Select Committees are also to be followed as far as they can be applied.

The Joint Standing Committee comprises two members of the Legislative Assembly and two members of the Legislative Council





## Appendix Two

### Briefings and Hearings

Date	Meeting Type	Name	Position	Organisation
26 February 2009	Briefing	Ms Gillian Calvert	Commissioner for Children and Young People (former)	Commissioner for Children and Young People (NSW)
23 August 2010	Briefing	Mr Bernie Geary, OAM	Child Safety Commissioner	Child Safety Commissioner (VIC)
9 May 2011	Briefing	Ms Elizabeth Fraser	Commissioner for Children and Young People and Child Guardian	Commissioner for Children and Young People and Child Guardian (QLD)
		Mr Barry Salmon	Assistant Commissioner for Children and Young People and Child Guardian	Commissioner for Children and Young People and Child Guardian (QLD)
		Mr Bob Van-Kempen	Executive Director	Commissioner for Children and Young People and Child Guardian (QLD)
		Mr Lyle Gerbich	Manager Strategic Co-ordination and Reporting	Commissioner for Children and Young People and Child Guardian (QLD)
10 May 2011	Briefing	The Hon. Karen Struthers	Minister for Community Services and Housing; Minister for Women	Queensland Government
10 May 2011	Briefing	Ms Bette Kill	Associate Director General Strategy, Policy, Programs and Performance	Department for Communities (QLD)

		Ms Cathy Taylor	Executive Director Child Safety, Youth and Families Policy and Performance	Department for Communities (QLD)
12 May 2011	Briefing	Ms Clare Gardiner-Barnes	A/Chief Executive Officer	Department of Children and Families (NT)
		Ms Bronwyn Thompson	Director Care and Protection Policy	Department of Children and Families (NT)
		Ms Lorraine Williams	Executive Director Regional Services	Department of Children and Families (NT)
17 August 2011	Hearing	Ms Michelle Scott	Commissioner for Children and Young People (Western Australia)	Commissioner for Children and Young People (WA)
		Ms Caron Irwin	Executive Director	Commissioner for Children and Young People (WA)
28 September 2011	Hearing	Mr Chris Field	Ombudsman Western Australia	Ombudsman Western Australia
19 October 2011	Hearing	Mr Terry Murphy	Director General	Department for Child Protection (WA)

## Appendix Three

### Extract from transcript of evidence from hearing the Committee held with the Commissioner for Children and Young People

---

The following extract is from the transcript of the hearing Committee held with

Ms Michelle Scott, Commissioner for Children and Young People on 17 August 2011.

-----**START OF EXTRACT**-----

**Hon NICK GOIRAN:** Commissioner, can I turn to the issue of working with children checks? There is a section in the Act, which I understand has not been proclaimed, which would, if proclaimed, give the commissioner the duty to undertake those working with children checks. Since we last meet, I think it was in March, the committee had the opportunity to go, amongst other places, to Queensland and meet with the Queensland commissioner. The Queensland commissioner does have a function called the Employment Screening Services Program. One of the people that the committee met with was the relevant minister responsible for community services and housing, and we understand from the minister that that screening function costs about \$18 million, which I am sure you will appreciate is a significant increase on your existing budget.

[9.00 am]

Nevertheless, I am keen to ask some questions around that. There is always the possibility that a government may decide to reclaim that provision. One of my concerns at the moment is that that function is currently undertaken by the Department for Child Protection, as I understand it, and I am keen to get your views on whether you think there is a conflict of interest with the Department for Child Protection undertaking those working with children checks in circumstances where they would be, in effect, monitoring and screening some of their own employees?

**Ms Scott:** I suppose this is something we discussed in the early stages of my appointment and I discussed it with the previous government and with the current government. I think historically the working with children checks in other states were built around a commissioner's role that was very much focused on child protection. We have a different history here in Western Australia because we had the working with children checks commence before we had a Commissioner for Children and Young People and we have a Commissioner for Children and Young People who has a broad remit rather than just a child protection focus.

One of my concerns initially in establishing my office was that I would be overwhelmed by that function. As you have indicated, in a place like Queensland with a budget of \$18 million, that is a critical part, as is monitoring the child protection system and conducting investigations. So, I think it is important to see the working with children check in the context of other functions which a commissioner may be doing, rather than just single out that as a function they do in Queensland; it is in a context of a range of functions that Mrs Fraser undertakes as commissioner.

In Victoria, as you are aware, it is done through the Department of Justice with the commissioner having some sort of oversight role. I think wherever you place it, there is a potential conflict of interest. One of my concerns, if it was in my area of responsibility—I am a commissioner charged with acting in the best interests—is that there could be a conflict if something happens in relation to one of the checks.

**Hon NICK GOIRAN:** Can I just interject there and ask: you say wherever you place it, there might be a conflict of interest. I mean, I guess, in some respects that could be said in regard to the commissioner yourself and your staff, so, yes, I can understand that. I think that the Department for Child Protection is more obvious in that clearly there are people there working with children. So some might say, therefore, it should not be with the WA Police for similar reasons, although I think that is probably starting to draw a longer bow. There might be other organisations, say, for example, the Ombudsman, where I would not have thought that there would be an authentic conflict that might arise. I am not saying that the Ombudsman is the right entity. I am just saying that if we accept it is not appropriate that it be with yourself, surely there is still a better option than the Department for Child Protection?

**Ms Scott:** What I proposed initially was the Department of the Attorney General, because it is a regulatory function.

**Hon NICK GOIRAN:** Would that still be your recommendation to date?

**Ms Scott:** I want to say a couple of things. It has been working pretty well in the Department for Child Protection and I think there is a relative degree of autonomy in terms of the way in which the working with children checks are undertaken. I know that the Western Australian scheme has a good reputation nationally in terms of the standards and the practice. I think it is well regarded nationally. I want to say that. I know that when I have met and spoken with Minister McSweeney, she is very comfortable with it being in her portfolio. However, I did initially propose that another department would be appropriate. I agree with you that if you could take a different view, which is a department where they are not coming into direct contact with children, the police is possible. But probably it is more appropriate with the Department of the Attorney General. It is a regulatory thing. The only thing about that is that those departments, which I am sure you have gathered from

some of your discussions with Queensland and other states, is: how does the working with children check inform our policy areas? That is quite important. How do you create child friendly sport and rec where there is a lot of contact with kids, in child protection and in education? How do you improve those practices in those agencies and in those milieus as a result of the regulation? You would have to ensure that, I think. Does that answer the question?

**Hon NICK GOIRAN:** Yes, thank you.

-----**END OF EXTRACT**-----



## Appendix Four

### Extract from transcript of evidence from hearing the Committee held with the Department for Child Protection

---

The following extract is from the transcript of the hearing Committee held with Mr Terry Murphy, Director General of the Department for Child Protection, on 19 October 2011. This extract was provided to the Commissioner for Children and Young People and the Auditor General by the Committee for comment. Their responses can be found at Appendix Five and Appendix Six of this Report respectively.

-----**START OF EXTRACT**-----

**Hon NICK GOIRAN:** I think I have the call. Mr Murphy, if I can just direct you to an area which is the working with children checks. The reason I would like to raise it is as you know, this committee has the responsibility to oversee the functions of the commissioner for children and young people. One of those functions in the act is working with children checks, but as you would be aware, that is an unproclaimed function. I understand from my notes that in the past financial year the department received just over 101 000 applications for working with children checks. The department issued some 98 000 and about 30 000 of those were renewals. Are you in a position—and I appreciate you do not have documentation handy—but in rough terms are you able to indicate what proportion of those applications would be for people working within the department?

**Mr Murphy:** Of those 30 000 renewals, ours would have been about 600, on the basis that we have something like 1 500 or 1 600 service delivery staff who require a working with children card.

**Hon NICK GOIRAN:** 1 500 or 1 600 in all?

**Mr Murphy:** Yes.

**Hon NICK GOIRAN:** So in relative terms it is quite a small proportion.

**Mr Murphy:** Quite small.

**Hon NICK GOIRAN:** Nevertheless, one of the issues that, and I would not put it so far as to say it concerns me, but interests me, is whether there is sufficient concern that the department is checking its own people. When I say that, I mean more in terms of renewals. I think that it is probably fair to say that in terms of new applications, if you are likely to be putting on a new staff member, they are not yet a staff member; so I am not sure that it is really a conflict in that sense. However, when one has to consider a renewal



application of one's own staff, there is an inherent conflict there, not to say that it is unmanageable, but there is a conflict. I am just interested to know from you how you manage that conflict internally.

**Mr Murphy:** It comes with my role. I am responsible for the implementation of a number of acts of Parliament, one of which is the Working with Children (Criminal Record Checking) Act and one is the Children and Community Services Act. There is a line between those. Sometimes I am privy to information, as a result of working with children, that does not cross the boundary. That is the first point, where it starts with me. I think though that the simpler and more substantial answer to the question of whether the conflict arises—because I appreciate the perception and that is why I explained the Chinese wall between the acts and my responsibility for them—is that the procedures in the Working with Children Act are very much prescribed in the legislation.

[9.30 am]

The thresholds for determination of the issuance of a negative notice are clear in legislation. The most difficult ones require a lot of investigative work by lawyers, looking over old court documents and so on, but they are clear, and those decisions are made on a delegated basis from me by the working with children unit itself. There is no influence on those decisions from the department.

As I say, most of those are entirely straightforward on the basis of what the criminal convictions are. Some that are determined on non-conviction charges require more interpretation, but they are decided entirely independently of any other staff in the department, including myself.

**Hon NICK GOIRAN:** Is there any external audit that takes place in relation to those renewals that are conducted by the department for its own staff? I think you indicated there might be some 600 renewals. For example, does the Ombudsman get involved at all?

**Mr Murphy:** No, it would be the province of the Auditor General, should he choose to be involved. Obviously we would welcome that, if there was any concern.

**Hon NICK GOIRAN:** At the moment I think there is a general feeling that the working with children check process is working well, and I understand that that is part of the reason why the decision has been made not to refer that function to the children's commissioner. I think there is a whole range of other reasons why you might not get the children's commissioner to provide that kind of service and maintain the advocacy role, but nevertheless, would you see any merit in perhaps an amendment in the legislation that might result in the children's commissioner or somebody else directly being given the responsibility to audit those checks that the department does for its own staff? Not all applications; I think that would be onerous, for 100 000

applications, but I am probably referring more to the 600. Would you see any merit in something like that?

**Mr Murphy:** Yes, insofar as there is a perception of conflict. Any perception of conflict needs to be brought out into the open and shown how it is being dealt with. I would probably counsel that it may be more prudent to simply ask the Auditor General to conduct a periodic review, but I would not have any problem and, yes, would see some merit in a legislative requirement that that occurs. If I may, although ours is more obvious, there is probably nowhere else for working with children to live that would not also require some of its staff being checked. The Department of the Attorney General was one option considered. Obviously all juvenile justice staff have to deal with kids in the courts, and so on and so forth.

**Hon NICK GOIRAN:** I presume that even if it was with the children's commissioner, even within her own office —

**Mr Murphy:** All those people have to get checked.

-----**END OF EXTRACT**-----



## Appendix Five

### Copy of letter from Ms Michelle Scott to the Committee regarding working with children checks

---



**Commissioner for Children and Young People**  
Western Australia

**All enquiries**

Telephone: (08) 6213 2221  
Email: [caron.irwin@ccyp.wa.gov.au](mailto:caron.irwin@ccyp.wa.gov.au)  
Our reference: 11/9357



Hon. Andrea Mitchell MLC  
Chairman  
Joint Standing Committee on the  
Commissioner for Children and Young People  
Parliament House  
PERTH WA 6000

Dear Ms Mitchell

**Working with children checks**

Thank you for your letter dated 17 November 2011 seeking my opinion regarding the merits of an external audit of the Working with Children Checks conducted by the Department for Child Protection particularly those checks conducted on its own staff.

I would like to draw the Committee's attention to the review of the NSW Commissioner for Children and Young People. On 15 April 2010 the Minister for Youth, the Hon Peter Primrose MP, announced the Legislative review of the NSW Commission for Children and Young People. The timing of the review was brought forward following a report by the Auditor-General on the Working with Children Check in April 2010<sup>1</sup>. The Joint Standing Committee may wish to consider this review.

As briefly outlined by the Director General of the Department for Child Protection in his evidence to the Committee the current Western Australian Working with Children Checks process is prescribed in the relevant legislation.

As the Director General indicated in his evidence there is potential for a conflict of interest for any agency that may host the Working with Children Checks. It is therefore important that appropriate external scrutiny is available. This could be provided by the Auditor General or the Public Sector Commissioner.

---

<sup>1</sup> Report on the Review of the NSW Commission for Children and Young People Act 1998, June 2010, p. 3.

*Caring for the future growing up today*

I wish to advise the Committee that since my appointment as Commissioner I have not been advised of a specific case or matter where a conflict of interest has been alleged in relation to an employee of the Department for Child Protection and the Working with Children Checks.

Please contact me should you require any additional information.

Yours sincerely

A handwritten signature in black ink, appearing to read "Michelle Scott".

MICHELLE SCOTT

Commissioner for Children and Young People WA

29 November 2011

## Appendix Six

### Copy of letter from the Auditor General to the Committee regarding working with children checks

---



Our ref: 5022



Hon A R Mitchell MLA  
Chairman  
Joint Standing Committee on the  
Commissioner for Children and Young People  
Parliament House  
PERTH WA 6000

4th Floor Dumas House  
2 Havelock Street  
West Perth WA 6005

Tel: (08) 9222 7501  
Fax: (08) 9321 5183  
Email: ag@audit.wa.gov.au

Dear Ms Mitchell

#### **REQUEST FOR ADVICE ON PERIODIC AUDIT OF WORKING WITH CHILDREN CHECKS AT DEPARTMENT FOR CHILD PROTECTION (DCP)**

Thank you for your letter of 17 November requesting my views on DCP's potential conflict of interest when conducting 'working with children checks' on its own staff and the value of my undertaking an independent audit of this process.

Preventing and addressing real or perceived conflicts of interest is a small but important role of my Office.


My Office does not have a good understanding of the arrangements that DCP currently has in place to give itself assurance about the rigorousness of the checks done on its own staff. In the absence of that sort of knowledge, our approach in assessing whether an audit is warranted is to apply standard audit practice, considering (a) the likelihood of something going wrong and (b) the consequence if it does. On that basis, I would expect DCP's processes to be particularly rigorous when checking their own staff because of the consequence if they get it wrong.

At this stage I do not therefore consider a specific audit on this topic is warranted. However, I understand from advice from a member of the team appointed to undertake the review of the *Working With Children Act* that the review would likely include assessment of DCP's checks of its own staff. I understand that this review is expected to be completed by mid-2012.

In the event that the review of the Act found serious weaknesses in DCP's processes for conducting 'working with children checks', then I would give strong consideration to an audit after sufficient time had passed for DCP to improve its processes.

Thank you for raising this issue with me. Please contact me on 9222 7501 or Deputy Auditor General Glen Clarke on 9222 7543 if you would like further information.

Yours sincerely

  
COLIN MURPHY  
AUDITOR GENERAL  
12 December 2011