

# child protection a fresh start.

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A working with children check (WWCC) is an assessment of information relating to a person's prior conduct to determine whether the person should be prohibited from working with children.

On its own, a WWCC cannot determine whether a person is suitable to work with children. A WWCC is an assessment of a person's prior conduct only and it cannot guarantee against their future conduct, nor can it be relied on as proof of good character. Just because a person is not prohibited from working with children does not mean the person does not pose a risk to children.

Therefore, organisations and employers must also have in place comprehensive strategies to ensure child safe environments.

### **The need for reform**

The Child Protection Systems Royal Commission was established in August 2014 to investigate the adequacy of the child protection system in South Australia (the SA Royal Commission).

Royal Commissioner Margaret Nyland and her team looked at the laws, policies, practices and structures currently in place for children at risk of harm, abuse or neglect including those who are under the guardianship of the Minister.

The SA Royal Commission received 374 submissions, examined 10,800 documents and conducted 74 stakeholder engagements. The final report was publicly released on 8 August 2016. Among the SA Royal Commission's 260 recommendations were calls to transform the way we screen people who want to work or volunteer with children in South Australia.

Prior to the release of the report, the State Government had already begun working on new legislation to adopt the final recommendations on WWCCs made by the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse (the Commonwealth Royal Commission).

The Child Safety (Prohibited Persons) Bill 2016 (the Bill) adopts the approach recommended by the Commonwealth Royal Commission but adapted to meet all the SA Royal Commission recommendations concerning WWCCs.

### **Why are we making changes?**

The proposed changes are part of the State Government's child protection reform agenda, where the welfare of the child comes first. New laws will provide the community access to a transparent and consistent regime for WWCCs.

Under the current regime:

- There are two different types of checks that a person or organisation can obtain to work with children, one which is more comprehensive than the other. This means that different levels of scrutiny can apply to different people, depending on which check is undertaken.



- There is no system that determines whether a person is 'cleared' or 'not cleared' to work with children. This means that a person can continue to work with children even if they are deemed to be 'high risk'.

The proposed changes will create a stronger legislative scheme, ensuring that a person who is assessed as being of high risk to the safety of children is prohibited from working or volunteering with them, and that it is an offence to allow this to occur. It will also bring South Australia more in line with other states and territories, enabling progress towards a nationally consistent scheme.

### What will change?

The Bill proposes to significantly improve how people who wish to volunteer or work with children are assessed.

- Under the Bill, a central assessment unit will be established as the sole agency in South Australia responsible for conducting WWCCs and issuing prohibition notices.
  - After completing a WWCC, the central assessment unit will determine whether the person should be prohibited from working or volunteering with children.
  - The unit will issue the applicant with a unique identifier, allowing employers or community organisations to find out whether a WWCC has been conducted in the last five years, whether the person can be employed or engaged as a volunteer or whether the person is prohibited from working or volunteering with children.
  - New guidelines will be developed to spell out how a WWCC is undertaken, how information is assessed and the weight that is given to different information, ensuring transparency.
  - In accordance with the recommendations of Royal Commissioner Nyland, a person will be unable to begin employment until the outcome of their WWCC has been determined.
  - A person will only need to undertake a WWCC every five years and it will be portable across employers or community organisations. This will remove the need to undergo multiple checks for different employers or community groups when changing jobs or volunteering with children.
- The central assessment unit will have discretion to conduct additional checks at any time, to undertake continuous monitoring and to seek external medical, legal or other professional advice to make a decision or determination.
  - Employers and community groups will be able to readily access a new records management system and verify quickly whether a person they wish to employ or engage as a volunteer has undertaken a WWCC.
  - If the person has been assessed as posing an unacceptable risk to children, this will be contained in the records management system. It will be an offence to employ or engage that person and it will be an offence for that person to undertake child-related work or volunteering.

### Prohibited persons

Under the Bill, a person will be prohibited from working with children if:

- the central assessment unit has issued a prohibition notice as a result of a WWCC
- a person has been prohibited from working with children under a law of the Commonwealth, or of another state or territory
- the person has been found guilty of a *prescribed offence* committed as an adult.

If the central assessment unit determines that a person is prohibited from child-related work, the central assessment unit must issue a written notice. In addition, a court that finds a person guilty of a *prescribed offence* must ensure that the information is provided to the central assessment unit as soon as reasonably practicable after the person is found guilty.

Further information is provided below concerning *prescribed offences*.

### Steps employers must take prior to employing a person

It will be a criminal offence for any employer, organisation or community group to engage a person to work or volunteer with children unless they have obtained the person's unique identifier, have checked the new records system to verify that a WWCC has occurred and have verified that the person has not been prohibited from working with children.

There are also requirements under the Bill for organisations and employers, and the person working or volunteering with children, to notify the central assessment unit of certain information or changes.

### **How does this impact on people who currently work or volunteer with children?**

Until now, South Australia has been the only state or territory where a person has been allowed to rely on a screening based on a national criminal history check to work or volunteer with children.

If the Bill is passed, people who previously relied on a national criminal history check will be required to undertake a WWCC by the central assessment unit in order to work or volunteer with children.

The Government will work closely with the current screening unit to consider how best to implement the new regime of WWCCs.

Transitional provisions will be designed to ensure people working with children, community organisations and employers can transition to the new WWCCs.

### **We need your input**

During consultation we must consider the Bill as a whole, but we are also seeking community and sector feedback on a number of issues and questions.

### **How should a WWCC be undertaken?**

New guidelines will be developed to spell out how a WWCC is undertaken, how information is assessed and the weight given to different information, ensuring transparency. During consultation, we need to consider what a newly-developed set of guidelines should include.

Section 4 of the Bill sets out the guidelines that need to be made so we all know how WWCCs are done. This includes the procedures to be followed by the central assessment unit when conducting a WWCC, how the different types of information are treated and the timeframes for undertaking a WWCC.

In addition, the Bill includes the ability to prescribe what constitutes procedural fairness, so everyone knows where they stand.

### **How should we define ‘working with children’?**

Section 6 of the Bill lists a number of activities that are considered child-related work, and allows further activities to be prescribed in the regulations. A clear definition in the regulations will ensure that everyone understands what constitutes child-related work. We are asking you to consider whether we have missed anything that should be included as child-related work.

Plus, we all need to consider how we define incidental contact with children so it is clear when a WWCC is not needed.

### **Parental exemptions**

The Bill (section 9(1)(e)) says that parents or guardians do not need a WWCC if their volunteering directly involves their own child, such as coaching their child’s sport team or reading in their child’s classroom. However, if the volunteering involves an overnight excursion or stay, or involves close contact with children with disability, a WWCC is still required.

This aligns with the Commonwealth Royal Commission’s recommendations and reflects current Government policy.

Royal Commissioner Nyland did not make any recommendations regarding parental exemptions for WWCCs. However, discussion on the issue was included in the body of the report.

As noted by Royal Commissioner Nyland (at pages 560 and 561), in January 2016 the Department for Education and Child Development (DECD) revised its screening policy, to be consistent with the Commonwealth Royal Commission.

As quoted by Royal Commissioner Nyland, the DECD policy provides that volunteers in DECD activities:

- do not require a screening if they are a parent (or guardian) of the child in direct receipt of the services they are providing
- do not require a screening if they are a parent (or guardian) coaching a sporting team and their child is in the team, however if their child is not in the team, a screening is required
- do require a screening if they are involved in overnight camps, school sleepovers, billets and homestays

- do require a screening if they are volunteering with children with disabilities and the services involve close personal contact.

Whilst this policy reflects the Commonwealth Royal Commission recommendations and has been adopted in the Bill, as Royal Commissioner Nyland noted, the requirement of a parent to undertake screening if they are volunteering with children with disability and the services involve close personal contact, provides additional safeguards for children with disability but goes beyond the protection provided under law currently in South Australia

The SA Royal Commission also noted (at page 561) that:

*The reality is that offenders can also be parents, and many offenders access victims through their own children. However, a balance must be struck between safeguarding children and not intruding disproportionately into ordinary parental activities.*

In this context, Royal Commissioner Nyland said that South Australia needs to re-consider parental exemptions and consider whether parents or guardians who participate in services that involve close personal contact, such as assistance with toileting or dressing, with **any** children (not just those with disability) should undertake a WWCC.

This is not the approach taken in the Bill in its current form. However, we are asking you to consider whether the Bill should adopt the approach suggested by Royal Commissioner Nyland whereby a person must undertake a WWCC if the activity involves close personal contact with children with disability, regardless of whether they are a parent of a child involved in that same activity.

#### **Prescribed Offences: Automatic Prohibition**

Under the Bill, a person found guilty of what is referred to as a *prescribed offence* (committed as an adult) is automatically a prohibited person and cannot be engaged to work or volunteer with children. These are listed in section 5(a) of the Bill and include murder and manslaughter of a child, rape and other sexual offences against a child, incest where a victim is a child and child exploitation offences.

The list of *prescribed offences* in the Bill reflects the Commonwealth Royal Commission recommendations.

Royal Commissioner Nyland (at page 562 and 563) discussed the inclusion of these prescribed offences that mean a person is automatically prohibited, and gave the following example of where this could be unfair:

*For example, an applicant when aged 19 may have had a sexual relationship with a young woman aged 16 who was a willing participant and whose parents were aware of the relationship. Nevertheless, he would still be guilty of a sexual offence. However, 10 years later, with no other criminal or relevant history and married to the young woman concerned, he seeks a screening clearance to volunteer as the coach of a junior boys' basketball team. Under the automatic refusal categories proposed by the federal Royal Commission, the Screening Unit would have no choice but to refuse the clearance.*

Whilst the above example would apply if the applicant was found guilty of unlawful sexual intercourse for entering into the sexual relationship, it would also apply if there was no sexual relationship but he was found guilty of child pornography offences for having explicit photos of his girlfriend on his phone.

Royal Commissioner Nyland asked whether automatic prohibition should only apply in cases of the murder of a child, and whether a risk assessment should be undertaken for all other offences.

This topic is also open for community discussion.

#### **Have your say**

We are asking for your views on the Bill and the proposed changes to requirements for working or volunteering with children in South Australia.

The consultation will remain open until **5pm Tuesday 13 September 2016**.

Provide your feedback via [www.yourSAy.sa.gov.au](http://www.yourSAy.sa.gov.au)

If you do not want the public to read your answer, please write 'confidential' on your submission. If someone asks for your answers through the Freedom of Information Act process, and if you have told us your answers are confidential, we will contact you and explain what is happening. However, even if your answers are confidential, we may still have to let someone read them if they ask for them through the Freedom of Information Act process.