



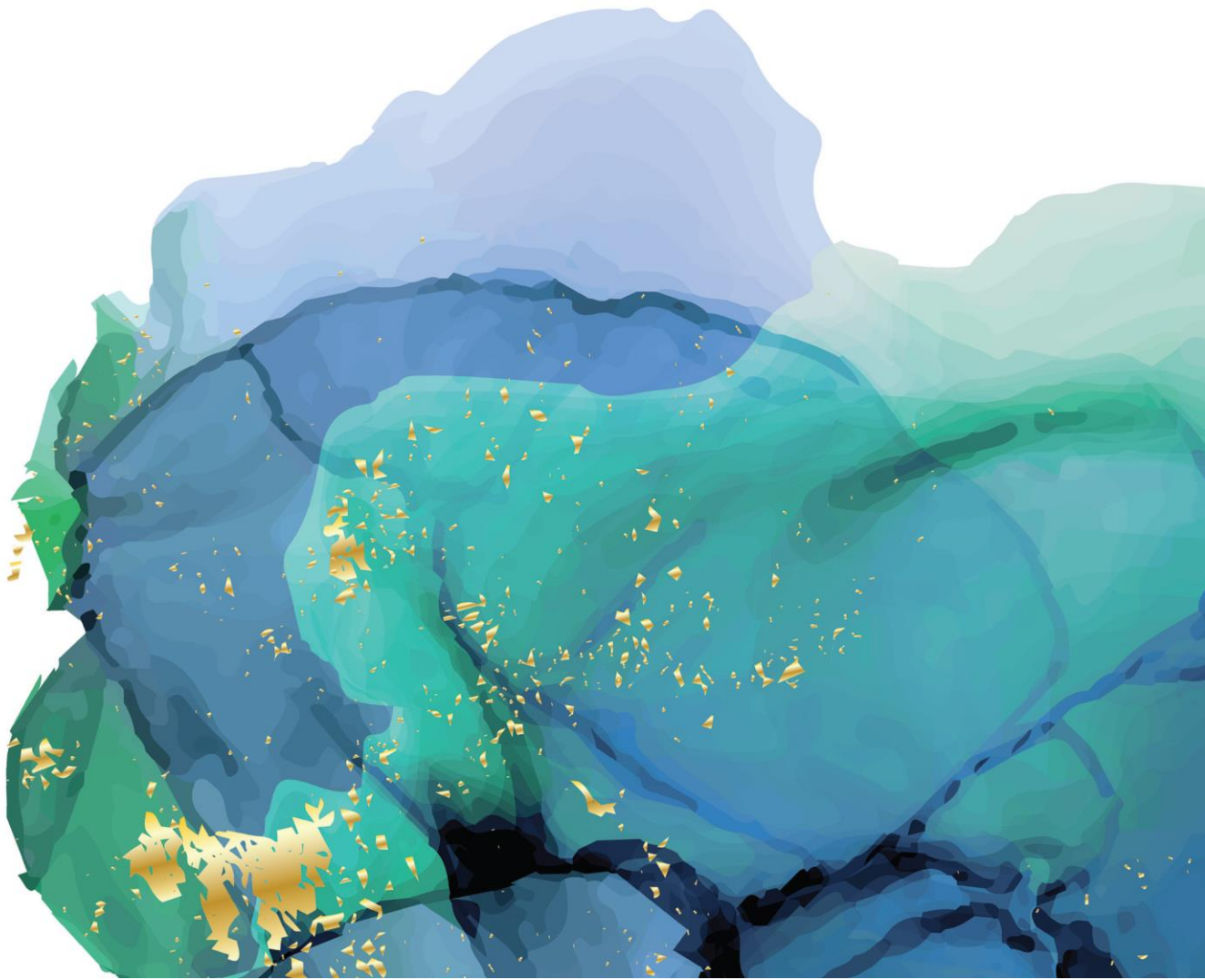
This initiative is part of the WA Government's action to create a Safer WA for Children by implementing the recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse.

Consultation paper

Phase 2 reform – Western Australia's Working with Children legislation

This consultation paper is intended to facilitate feedback from members of the public on key issues related to Western Australia's Working with Children law. Potential reforms and any associated commentary do not represent the final views of the Department of Communities, the Minister for Child Protection or the WA Government.

National reform discussions are progressing concurrently and will also contribute to the potential reforms.



Preface

This consultation paper has been produced to inform the community of potential future reforms to *Western Australia's (WA's) Working with Children (Screening) Act 2004* (the Act) and seek feedback on key issues.

All or part of this document may be copied, with due recognition of the source.

This publication is free and can be made available in alternative formats on request from the Department of Communities (Communities) using the following contact details:

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Acknowledgement of Country

Communities proudly acknowledges Traditional Custodians throughout Western Australia and their continuing connection to the lands, waters and community.

We pay our respects to all members of Aboriginal communities and their cultures and to Elders past and present.

Table of contents

Preface	1
Acknowledgement of Country	1
Part 1 – Introduction	4
WA's Working with Children Scheme	4
1.2 How does the WWC Scheme work?	5
1.3 Why are we reforming this legislation?.....	5
1.3.1 Successive key reviews and reports	5
1.3.2 Phase 1 Reform – Achieved.....	6
1.3.3 Phase 2 Reform – Potential pending this consultation	6
1.4 Why are we consulting?	7
1.5 Have your say	7
1.5.1 How to give your feedback	7
1.5.2 Will my feedback be confidential?	8
1.5.3 Next steps	8
Part 2 – Potential reforms	8
2.1 Scope of the Act: child-related work, exemptions and related issues	8
2.1.1 Context on the categories of child-related work	8
2.1.2 Mentoring services; counselling or other support services; coaching or private tuition services.....	10
2.1.3 Commercial services for children	12
2.1.4 Disability services for children	14
2.1.5 Education services for children	15
2.1.6 Health services for children	16
2.1.7 Justice or detention services for children	18
2.1.8 Context on the exemptions from child-related work.....	20
2.1.9 Private or domestic purpose exclusion.....	20
2.1.10 Removal of access to any exemption for persons with a current Negative Notice (NN) or Interim Negative Notice (INN) under WA's Scheme	22

2.1.11 Removal of access to parent volunteer exemption (PVE) where service involves close personal contact with child with disability	24
2.1.12 Five-day defence be made not available for overnight camps	25
2.2 National consistency and portability of WWCC decisions across Australia ...	27
2.2.1 Context.....	27
2.2.2 Current work to promote national consistency and national portability of WWCC Cards.....	28
2.3 Other potential reforms – WWCC Report – Notifications to CEO	28
2.3.1 Potential requirement for employers and education providers to notify the CEO of change in employees	28
2.4 Other potential reforms – operation and effectiveness – publication of information	30
2.4.1 Publication of information about a prosecution – after commencement or after conviction	30
2.4.2 Publication of information about a person with a current Negative Notice (NN), who continues to carry out child-related work before a prosecution has commenced	31
Appendices	33
Appendix 1 – Full list of questions posed in this consultation paper	33
Appendix 2 – WWCC Schemes of other States and Territories.....	35

Part 1 – Introduction

WA's Working with Children Scheme

The Working with Children Check (WWCC) is a compulsory screening strategy for individuals engaging in child-related work in WA and the Christmas and Cocos (Keeling) Islands.

Under the Act, work is 'child-related work' if the usual duties of the work involve or are likely to involve contact with a child in connection with one of the categories listed in section 6(1)(a) of the Act, subject to any applicable exemptions.

The intention of the Act is to prevent a person from engaging in child-related work where there is an unacceptable risk that the person may harm children in carrying out that work. The best interests of children are the paramount consideration under the Act.

The WWCC is one of a range of strategies implemented by the State Government and supported by the community to increase child safety in WA.

It sits within the various child safety strategies set out in the National Principles for Child Safe Organisations and other recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission), particularly those related to:

- mandatory reporting of child sexual abuse
- a legislated reportable conduct scheme applying to certain entities and
- information gathering and sharing, between jurisdictions and between entities, of information in relation to child wellbeing.

These strategies work together to improve child safety in WA.

The WWCC cannot be the sole strategy relied on by an organisation to ensure child safety. As noted by the Royal Commission:

“WWCCs are one of a range of strategies needed to make organisations child-safe... While an important tool, WWCCs – in the absence of broader child-safe strategies – do not make organisations safe for children. In fact, an over-reliance on WWCCs can be detrimental to children's safety.

“They can provide a false sense of comfort to parents and communities and may cause organisations to become complacent due to the belief that people who have undergone WWCCs do not pose any risks to children – this is not the case.

“WWCCs only detect people who have been reported previously, or come to the attention of authorities, for offending against children. However, many perpetrators of child sexual abuse have not been reported or convicted for past offences. This means that any risk they pose to children would not be detected via a WWCC.”¹

1.2 How does the WWC Scheme work?

The Chief Executive Officer (CEO) of the Department of Communities (Communities) is the decision maker under the Act. The Act requires individuals who are in or intending to commence ‘child-related work’ in WA, to apply for an assessment notice (commonly referred to as a WWC Card) unless they are subject to an exemption.

An application can result in the person receiving a WWC Card or a negative notice. A negative notice prohibits an individual from carrying out child-related work. An interim negative notice may also be issued under the Act, before a final decision is reached.

A WWC Card is valid for three years from date of issue, however during that period, certain events can trigger a reassessment of a person’s suitability to undertake child-related work. An example is where the person is charged with or convicted of an offence.

WWCC applicants and cardholders are subject to ongoing monitoring of their WA criminal record by the WA Police Force.

Further information about the WWC Scheme is available at the [WWCC website](#).

1.3 Why are we reforming this legislation?

1.3.1 Successive key reviews and reports

In its Working with Children Checks Report 2015 ([WWCC Report](#)), the Royal Commission made 36 recommendations to strengthen protections for children provided by WWC Schemes in all jurisdictions. Broadly, the recommendations aimed to improve national consistency in the circumstances in which an assessment should occur, the information that should be assessed and the outcomes which should result.

The [Statutory Review of WA's WWCC law](#), tabled in the WA Parliament in September 2012, made 23 recommendations, of which 15 were for potential legislative change.

These legislative recommendations of the Statutory Review were considered to enhance the operation of the Scheme, rather than introduce major structural change, and many of them overlap with those later made by the Royal Commission’s WWCC Report.

[National Standards for WWCC](#) (National Standards) were developed collaboratively by all jurisdictions in response to the Royal Commission’s WWCC Report. The National

¹ Royal Commission, Working with Children Checks Report 2015, p.3.

Standards built on the relevant Royal Commission WWCC Report recommendations and establish nationally consistent minimum parameters for the screening of people seeking to engage in child-related work.

States and Territories are currently at differing stages of implementation of the National Standards and have implemented them in different ways. Importantly, the National Standards themselves provide that: "It is open to any jurisdiction to exceed the National Standards where existing frameworks provide more robust protections." Where implementation of the National Standards could reduce protections for children, the WA Government would not progress the change.

The release of successive key reviews and reports regarding the WWCC Scheme means the required reforms to the Act are complex and require a staged approach to implementation.

The Standing Council of Attorneys General on 15 August 2025 announced their agreement to address gaps in WWCCs nationally. This important announcement reflects the high priority given by all governments to improving child safety.

1.3.2 Phase 1 Reform – Achieved

The first phase of WWCC reforms was achieved in July 2023, with the commencement of the substantive provisions of the *Working with Children (Criminal Record Checking) Amendment Act 2022*.

These Phase 1 reforms addressed key recommendations of the Royal Commission's WWCC Report and of the Statutory Review, which did not require substantial stakeholder consultation to inform their design and concerns raised by the Office of the Auditor General in its 2014² and 2019³ Reports regarding WWCC.

1.3.3 Phase 2 Reform – Potential pending this consultation

The potential Phase 2 WWCC reforms outlined in this paper are intended to address:

- the remaining recommendations of the Royal Commission's WWCC Report and related National Standards and of the Statutory Review; and
- key operational and effectiveness issues.

These potential reforms aim to:

- improve protections for WA's children by updating the Act's scope to reflect contemporary service provision

² Available [at report2014_15-WWCC.pdf \(audit.wa.gov.au\)](#)

³ Available [at Working-with-Children-Checks—Follow-up-V2.pdf \(audit.wa.gov.au\)](#)

- ensure regardless of where a child lives, they are provided a more consistent level of protection by increased national consistency across State and Territory WWC Schemes.

Many of the potential reforms outlined in this paper have substantial interdependencies with other jurisdictions. Some cannot proceed until action is taken by other jurisdictions.

Of the 12 remaining WWCC Report recommendations, five are dependent on work being led by the Australian Government and the rest are influenced by the approaches taken in other States and Territories.

1.4 Why are we consulting?

Communities is seeking stakeholder input on approaches to ensure proposed reforms are well-designed and appropriate. The feedback received in response to this consultation paper will assist Communities and inform the shape and detail of amendments to the WWC Scheme.

1.5 Have your say

1.5.1 How to give your feedback

You can give your feedback to Communities by responding to some or all questions in the consultation paper. A full list of the questions is in [Appendix 1](#).

Submissions can be made in the following ways:

- Post your written submission or letter to:
Department of Communities
Strategy and Partnerships (Working with Children Reform)
Locked Bag 5000
Fremantle WA 6959
- Email your written submission or letter to:
WWCReforms@communities.wa.gov.au
- Provide online feedback through the [WWCC Reforms webpage](#).

If you have any questions or would like to make a submission in a different way, please send an email to WWCReforms@communities.wa.gov.au.

All feedback must be submitted by **23 September 2025**.

1.5.2 Will my feedback be confidential?

The feedback we receive may be made publicly available on Communities' website or excerpts quoted in Communities' publicly available reports and publications. If you prefer your name or any other personal information about you or your organisation remain confidential, please clearly identify this when making your submission.

Feedback provided to Communities can be subject to freedom of information requests, which we must comply with by law. Information that is released will have identifying information removed, including names.

1.5.3 Next steps

Communities will consider stakeholder feedback to inform proposed changes to the Act and advice to the WA Government.

Please note that the Phase 1 reforms to the Act⁴ inserted a new requirement for periodic statutory review of WA's WWC Scheme to occur every five years. The first required review will occur as soon as practicable after 1 July 2028. As such, this paper is only seeking feedback on the specific issues it outlines. Any additional issues raised by stakeholders will be referred for fuller consideration as part of the forthcoming statutory review.

Part 2 – Potential reforms

Potential changes to the Act currently being considered for implementation can be divided into three main areas. They are:

- the definition of child-related work and exemptions and other provisions relevant to the scope of WA's WWC Scheme
- mutual recognition and national portability of WWC outcomes across jurisdictions
- other reforms to respond to recommendations from the Royal Commission and the Statutory Review and to enhance the Act's operation and effectiveness.

2.1 Scope of the Act: child-related work, exemptions and related issues

2.1.1 Context on the categories of child-related work

In WA, a WWC Check is required by a person if they carry out or propose to carry out 'child-related work'. The Act at section 6(1)(a) provides work is child-related work if the

⁴ Phase 1 Reforms to Western Australia's WWCC Scheme were contained in the Working with Children (Criminal Record Checking) Amendment Act 2022 and associated Working with Children (Criminal Record Checking) Amendment Regulations 2023, which commenced on 1 July 2023.

usual duties of the work involve, or are likely to involve, contact with a child in connection with one of the categories which follow, subject to any exemptions which may apply.⁵

In addition, the work must also be carried out as either child-related employment (including voluntary employment) or a child-related business.

The legislated definition of child-related work seeks to achieve a considered balance between capturing persons and ensuring the system remains effective and not overloaded.

The scope of the Act must remain targeted to those who are able to cause harm to children, while carrying out child-related work. If the scope of the Act becomes too wide, we risk diluting the effectiveness of the Scheme by including people who are not able to cause such harm.

The Scheme is not intended to cover individuals who have no contact with children as part of the usual duties of their work. A WWCC is not required for individuals just because they are participating in or otherwise attending an activity or event where children are participating.

Similarly, the Scheme does not aim to describe the categories in section 6(1)(a) on the basis of any person's particular employer but rather on the child-facing nature of the work concerned.

Communities considers the WWCC is most effective when targeted at people who:

- work with children in situations where they have opportunity to develop relationships and where persons are familiar to and trusted by the children and their caregivers
- work in roles which have authority, power and influence over children
- work with children who are of increased vulnerability, due to the type of work, the environment where the work occurs or the circumstances of the care required by the child
- undertake roles which are directed primarily towards children, increasing the opportunity for harm.

The Scheme is not intended to capture every situation where risk of harm to a child may exist. All of the various child safety strategies should be implemented, as appropriate.

WWCCs should not be solely relied on or over relied on to the exclusion of other systems, policies and practices. Consideration will be given to submissions consistent with this risk-based approach.

⁵ Another category of child-related work in s.6(1)(b) is any person exercising or performing a power or duty delegated by the CEO under the Act. There is no intention to change this category.

Question:**1. Have you had any lived experience with difficulties from the current definitions of 'contact'⁶ or 'child-related work' in the Act?**

Please add any comments you consider relevant.

In the sections below, the relevant Royal Commission recommendations, National Standards and current WA provisions are set out and your feedback is sought on implementation.

2.1.2 Mentoring services; counselling or other support services; coaching or private tuition services

There are three issues which arise in relation to mentoring and counselling or other support services.

The relevant Royal Commission recommendation, National Standards and current WA provisions are set out below.

WWWC Report	National Standard	WA current provision
N/A	<p>2. Child-related work is work that:</p> <p>c. is one of the following: ...</p> <p>(iv) mentoring or counselling services for children</p>	<p>(1) Subject to this section, work is child-related work if...</p> <p>(a) the usual duties of the work involve, or are likely to involve, contact with a child in connection with...</p> <p>(x) a counselling or other support service; or ...</p>

⁶ 'Contact' is defined in section 4 of the Act as "includes:

a) any form of physical contact; and (b) any form of oral communication, whether face to face, by telephone or otherwise; and (c) any form of electronic communication, but does not include contact in the normal course of duties between an employer and an employee or between employees of the same employer."

WWWC Report	National Standard	WA current provision
<p>12. State and Territory governments should amend their WWCC laws to:</p> <p>a. define the following as child-related work:</p> <p>vi. coaching or tuition services for children.</p>	<p>(vii) coaching or tuition services for children, except services that are provided under an informal or domestic arrangement.</p>	<p>(iv) a coaching or private tuition service of any kind, but not including an informal arrangement entered into for private or domestic purposes.</p>

Mentoring

Depending on the nature of the mentoring services provided, there are two current categories in WA's Act which may require mentors to obtain a WWCC.

Mentoring or mentoring programs are not specifically referenced in WA's Act but are specifically mentioned in the NSW, QLD and Tasmanian WWCC legislation, although the provisions vary.

Mentoring arrangements by their nature, provide an opportunity for the development of relationships of trust and authority with children. In some circumstances, mentors provide a varied range of supports to children and, in this regard, may be adequately captured by the Act's current 'counselling or other support service' category.

In other circumstances, mentors are more akin to coaching or private tuition services and, in this regard, may also be adequately captured under the Act. The 'coaching and private tuition category' is effectively limited to services provided primarily for children, because 'a class of two or more persons' is exempt from this category, 'unless that class is provided primarily for children'.⁷

There may be other circumstances or situations where a person provides 'mentoring' services not captured in the current definitions.

⁷ Working with Children (Screening) Regulations 2005, Schedule 1, Clause 14. This allows, for example, persons under the age of 18 to attend extracurricular tuition in a class for adults, without the person teaching the class needing a WWCC. This works to capture coaching and tuition services which may not be specifically for children, but at which children attend for instruction individually, such as piano lessons, driving lessons and the like.

Other support services

The Act contains a reference to 'other support service', a phrase which was not included in the National Standards. This element of the category captures support services which are 'other' than counselling services – such as staff at victim mediation services; translating and interpreting services; or career counsellors.

Consideration should be given to whether the 'other support service' element of the category should be retained unchanged or amended in its application. For example, it may or may not be appropriate to amend the category, so it clearly captures only certain 'other support services'.

For example, one other State explicitly captures services such as housing services and homelessness services for vulnerable people, community services such as food services provided to certain persons, services provided for migrants, refugees or asylum seekers who have difficulty communicating in English.

In the Act the 'counselling or other support service' category is not limited to services provided for children. This means if a person's usual duties involve contact with a child in connection with a counselling or other support service aimed at adults, the person may require a WWCC – for example, family counselling services.

The WWCC Schemes of four other States and Territories similarly reference 'counselling or other support services', with no reference to mentoring but limit these to services 'for children'. One of these Schemes only captures such services if the employee is alone with or not physically present with the child.

Questions:

2. What types of 'mentoring services' should be captured by the Act?
3. What types of 'other support services' should be captured by the Act?

Please add any comments you consider relevant.

2.1.3 Commercial services for children

WWCC Report	National Standard	WA current provision
<p>12. State and territory governments should amend their WWCC laws to:</p> <p>a. define the following as child-related work: ...</p>	<p>2. Child-related work is work that: ...</p> <p>c. is one of the following: ...</p>	<p>(1) Subject to this section, work is child-related work if</p> <p>(a) the usual duties of the work involve, or are likely to involve, contact with a child in connection with...</p>

WWWC Report	National Standard	WA current provision
vii. commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions.	vi. commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions.	(xviii) a children's entertainment or party service;

Children's entertainment or party services are regulated under the Act, whether provided commercially or for free. Exemptions apply if:

- a performance is open to the public and involves no physical contact with children
- only equipment, food or a venue is provided and no other children's entertainment or party service.⁸

States and Territories have implemented this recommendation in varied ways. Two regulate only the commercial provision of the specific services listed in the WWCC Report and National Standards (that is, entertainment or party services, gym or play facilities, photography services and talent or beauty competitions). Others restrict this category only to work at sporting, cultural or other entertainment venues used primarily by children, where services and activities are provided on a commercial basis but not specifically in relation to the services listed in the WWCC Report and National Standards.

Restricting this category to the types of commercial services listed in the WWCC Report recommendation and National Standards risks excluding other relevant services for children, both commercial and non-commercial services, that should fall within the scope of the Act.

Capturing all commercial services, facilities and activities for children could overly broaden the scope of the Act without significantly increasing child safety. Low-risk services, like children's hairdressers or shoe shops which offer a fitting service, often involve minimal contact and occur in the presence of parents. It may also cause confusion about whether a single child-focused service within a shared venue – such as a small gym or play facility in a shopping mall – brings the entire venue under the Act's scope.

⁸ Working with Children (Screening) Regulations 2005, Schedule 1, Clause 16. NSW's WWCC Scheme contains a similar exemption for the provision of food or equipment at or for a sporting, cultural or other entertainment venue, or the provision of the venue. QLD's Scheme contains an exemption for the provision of food, beverages or equipment, if there is no further contact with children by a person.

Limiting this category to commercial services may unintentionally exclude non-commercial children's entertainment or party services that should remain covered by the Act.

Additionally, when services, commercial or not, are provided to children and adults at a location which is within the scope of the Act,⁹ it raises questions about whether a WWCC should be required.

Question

4. What types of commercial or non-commercial services for children should be captured by the Act, beyond a children's entertainment or party service?

Please add any comments you consider relevant.

2.1.4 Disability services for children

WWWC Report	National Standard	WA current provision
<p>12. State and territory governments should amend their WWCC laws to:</p> <p>a. define the following as child-related work: ...</p> <p>viii. disability services for children.</p>	<p>2. Child-related work is work that: ...</p> <p>c. is one of the following: ...</p> <p>(ix) disability services for children.</p>	<p>No current provision</p> <p>Disability services for children are not specifically referenced in WA's Act.</p>

The Act currently contains no specific category for disability services for children. The provision of services to children with a disability is captured within the existing categories, for example childcare, an arrangement for the accommodation or care of children or counselling or other support services.

Disability services for children may include support services such as case management, personal care or rehabilitation, which appear adequately captured by 'other support services' and may also be captured by forthcoming potential amendments regarding, for example, health services for children. However, there may be additional disability services for children which are not currently adequately captured under the Act.

⁹ Such as at a school or at the Perth Children's Hospital.

Other States and Territories again vary widely in their implementation of this National Standard.

The definition of disability is not within scope for this WWCC Phase 2 consultation.¹⁰

Question

5. What types of disability services for children should be captured by the Act?

Please add any comments you consider relevant.

2.1.5 Education services for children

WWWC Report	National Standard	WA current provision
12. State and territory governments should amend their WWCC laws to:	2. Child-related work is work that: ...	(1) Subject to this section, work is child-related work if —
a. define the following as child-related work: ...	c. is one of the following: ...	(a) the usual duties of the work involve, or are likely to involve, contact with a child in connection with...
ix. education services for children.	(x) education services for children or work at an educational facility for children including administration and maintenance services.	(ii) a community kindergarten registered under the <i>School Education Act 1995</i> Part 5; or (iii) an educational institution for children.

The Act generally restricts its application to specific places by its references to registered community kindergartens and educational institutions for children, including schools among other educational institutions for children but excluding universities.

In contrast, the National Standards propose a broader definition covering all education services and facilities for children, including administration and maintenance roles.

Various educational activities and services are provided outside school grounds or independently of any educational institution for children and may newly fall within a

¹⁰ WA's *Disability Services Act 1993*, including its definition of "disability" in section 3, was the subject of public consultation which commenced in March 2023 to inform the development of new disability legislation in WA.

'service-based' definition. For example, school excursions may occur to museums, art galleries or outdoor adventure activities. Separately, the entities which offer such services may offer services aimed more specifically at children during school holiday periods.

Educational activities outside traditional institutions, such as excursions to museums or holiday programs, may fall under a service-based definition. Some but not all such services are currently captured by the children's entertainment or party service category or the coaching and private tuition service category, but the exemptions provided for these categories necessarily differ.

The current category is restricted to educational institutions for children. This means institutions which offer education for children and adults, such as Registered Training Organisations (RTOs) are not necessarily captured under this category.¹¹ The Royal Commission's proposed restriction of the category to educational services and facilities for children would mean this would remain the case.

The reference in the National Standards to 'administration and maintenance services' carried out at an educational facility may be of limited benefit to WA's Act as such workers are currently already captured if their usual duties involve contact with children.

Other States and Territories vary widely. Some restrict coverage to preschool, primary and secondary education, others cover educational institutions (other than universities) and facilities not restricted to those being 'for children'; while still others do restrict this category to services 'specifically for children'.

Questions

6. What types of educational services or facilities should be captured by the Act?
7. Should these be limited to educational services or facilities specifically 'for children'? Why or why not?

Please add any comments you consider relevant.

2.1.6 Health services for children

Depending on the nature of the health services provided, there are three current categories in the Act which may require health service professionals to obtain a WWCC. The relevant Royal Commission recommendation, National Standards and current WA provisions are set out below.

¹¹ Currently, RTO training staff who have contact with children apply under the coaching and private tuition category and are exempt from that category if the class is for two or more persons, unless the class is provided primarily for children.

WWWC Report	National Standard	WA current provision
<p>12. State and territory governments should amend their WWCC laws to:</p> <p>a. define the following as child-related work: ...</p> <p>x. health services for children.</p>	<p>2. Child-related work is work that: ...</p> <p>c. is one of the following: ...</p> <p>(xi) health services provided specifically for children or work at a health facility for children</p> <p>(iv) mentoring or counselling services for children.</p>	<p>(1) Subject to this section, work is child-related work if —</p> <p>(a) the usual duties of the work involve, or are likely to involve, contact with a child in connection with...</p> <p>(ix) a community child health service; or...</p> <p>(xiii) a ward of a public or private hospital in which children are ordinarily patients; or...</p> <p>(x) a counselling or other support service.</p>

The Act predominantly refers to places where health services for children are delivered. This could be seen to restrict the requirement for WWC Cards to services provided in specified places, while not addressing the same services provided in a different place.

The National Standards propose a broader approach, covering health services or facilities specifically for children.

However, in regional and remote areas, there may only be one health service or facility, which caters for children and adults. Limiting the Act to facilities solely 'for children' could unintentionally exclude mixed-use services that still involve significant child contact. Any amendment should ensure adequate protection for children across all relevant settings.

In its reference to a ward of a public or private hospital in which children are ordinarily patients, the Act does not reflect contemporary models of health service provision, which have shifted towards more community-based approaches off the ward, such as increased home visits, day surgeries and outpatient clinics.

In its reference to a community child health service, the Act may also benefit from clarification to reflect contemporary health service provision and provide greater clarity as to the services captured. An example of services currently captured within this category are the services provided by the Child and Adolescent Health Service whether provided in the home, at a child health centre or at other venues. There may be other services in the

community that assess children's health and development which it may also be appropriate to capture under the Act.

Other States and Territories again vary widely in relation to this category. For example, some States' legislation broadly captures health services for children or work at a health facility for children, with some extending to allied health services or to health and wellbeing services requiring physical contact with a child or the worker's physical presence with the child while no one else is present.

Questions

8. What types of health services or facilities should be captured by the Act?

9. Should these be limited to health services or facilities specifically 'for children'? Why or why not?

Please add any comments you consider relevant.

2.1.7 Justice or detention services for children

WWWC Report	National Standard	WA current provision
<p>12. State and territory governments should amend their WWCC laws to:</p> <p>a. define the following as child-related work: ...</p> <p>(vi) justice and detention services for children, including immigration detention facilities where children are regularly detained.</p>	<p>2. Child-related work is work that: ...</p> <p>c. is one of the following: ...</p> <p>(xii) justice or detention services for children including immigration detention facilities where children are regularly detained and services provided to children who are the subject of community service orders.</p>	<p>(1) Subject to this section, work is child-related work if —</p> <p>(a) the usual duties of the work involve, or are likely to involve, contact with a child in connection with...</p> <p>(viii) a detention centre, as defined in the <i>Young Offenders Act 1994</i> section 3.</p>

The Act currently captures specific youth detention centres (Banksia Hill Juvenile Detention Centre and Unit 18 at Casuarina Prison) and does not explicitly capture broader youth justice services or immigration detention.

Some youth justice support workers may currently be captured under other categories, such as counselling or other support services or transport services specifically for children, depending on the usual duties of their roles.

Most other States and Territories include both youth detention centres and youth justice functions and services outside detention, such as supervision of children on community-based orders, supervised release orders or training programs. One State's Scheme also references functions under the legislation establishing its Youth Court.

The Royal Commission and National Standards recommend expanding the category to include justice or detention services for children including immigration detention facilities where children are regularly detained. In WA, this would explicitly bring into scope:

- work with children subject to youth community-based orders, intensive youth supervision orders, conditional or supervised release orders and the various diversionary youth justice pathways under the *Young Offenders Act*
- potentially, certain functions under the *Children's Court of Western Australia Act 1998*.

In regional and remote areas, a justice service or detention facility may necessarily service children and adults. Limiting the Act to justice services solely 'for children' could unintentionally exclude mixed-use services that still involve significant child contact. Any amendment should ensure adequate protection for children across relevant settings.

The Royal Commission and National Standards propose an explicit reference to immigration detention centres. The Act contains no specific reference to immigration detention facilities but certain workers in these facilities may currently be captured under the categories for counselling or other support services, arrangements for the accommodation or care of children and the like. Immigration detention is not currently referenced in any State or Territory WWCC Scheme.

Questions

- 10. What types of youth justice or detention services or facilities should be captured by the Act?**
- 11. Should these be limited to justice services or facilities specifically 'for children'? Why or why not?**

Please add any comments you consider relevant.

2.1.8 Context on the exemptions from child-related work

Certain people do not require a WWCC because an exemption from child-related work applies to them or applies to the work in which they are engaged.

For example, the Parent Volunteer Exemption (PVE) reflects community expectations that voluntary work done by parents to support their children should not be regulated by WWC legislation. Parents frequently volunteer in organisations with their children, such as at sporting clubs, schools and hospitals and, depending on the nature of their role, may be exempt from the requirement to apply for a WWC Check.

The PVE applies differently across the categories of child-related work and for some categories, such as overnight camps arranged by an institution, there is no PVE.

The Working with Children (Screening) Regulations 2005 (Regulations) set out most exemptions from child-related work, which fall into two categories:

- General exemptions which apply across all categories of child-related work
- Specific exemptions which apply to a particular category or categories or, in particular circumstances, both.

Further information about exemptions under the WWCC scheme is available on the WWCC website's [Resources page](#).

In line with recommendations of the Royal Commission and National Standards, the following changes to the exemptions and exclusions from child-related work may require consideration.

2.1.9 Private or domestic purpose exclusion

WWCC Report	National Standard	WA current provision
11. State and territory governments should amend their WWCC laws to provide that work that is undertaken under an arrangement for a personal or domestic purpose is not child-related, even if it would otherwise be so considered.	5. To avoid doubt, a person is not within the scope of a working with children check scheme if the person: ... c. is engaged in child-related work, except formal out of home care, for an informal or domestic purpose.	6. 1) Subject to this section, work is child-related work if — (a) the usual duties of the work involve, or are likely to involve, contact with a child in connection with... (iv) a coaching or private tuition service of any kind, but not including an informal arrangement entered into for private or domestic purposes; or

WWWC Report	National Standard	WA current provision
		<p>(v) an arrangement for the accommodation or care of children, whether in a residential facility or private residence, but not including an informal arrangement made by a parent of the child concerned or accommodation or care provided by a relative of the child...</p> <p>(xii) a club, association or movement (including of a cultural, recreational or sporting nature and whether incorporated or not) with a significant membership or involvement of children, but not including an informal arrangement entered into for private or domestic purposes...</p> <p>(xiv) a baby sitting or child-minding service, but not including an informal arrangement entered into for private or domestic purposes.</p>

The Royal Commission recommended that State and Territory governments amend their WWCC laws to provide that work undertaken in an arrangement for a personal or domestic purpose is not child-related work.

The National Standards echoed the Royal Commission's recommendation that the informal or domestic purpose exclusion should apply across all categories, except formal out-of-home care.

Under the Act, four categories of child-related work currently exclude informal arrangements entered into for private or domestic purposes and the like, as shown in column three of the table above.

There are a few categories in the Act where the nature of the service means it cannot have an informal, private or domestic purpose.¹²

Consideration of this recommendation is therefore limited to examining whether to extend the private or domestic purpose exclusion to the following categories of child-related work, where informal, private or domestic arrangements can also arise:

- a counselling or other support service
- a transport service specifically for children
- a school crossing service, being a service provided to assist children to cross roads on their way to or from school
- a children's entertainment or party service.

Question

12. Should the Act be amended to exclude work undertaken for an informal, private or domestic purpose, in relation to the categories noted above? Why or why not?

Please add any comments you consider relevant.

2.1.10 Removal of access to any exemption for persons with a current Negative Notice (NN) or Interim Negative Notice (INN) under WA's Scheme

WWWC Report	National Standard	WA current provision
14. State and territory governments should amend their WWCC laws to: ... c. prohibit people who have been denied a WWCC, and subsequently not granted one, from	7. A person cannot rely on an exemption listed in Standard 6 if the person has previously been denied a working with children check clearance, or had their clearance cancelled and subsequently not granted a clearance	Regulation 4 currently provides that a person with a current NN or INN cannot access any Parent Volunteer Exemption, a child with a current NN or INN cannot access the Child Volunteer Exemption; and a student with an NN and or INN cannot access the exemption for students under 18 years old who are on unpaid placement as

¹² These are as follows: a childcare service; a community kindergarten registered under the *School Education Act 1999* Part 5; an educational institution for children; a placement arrangement or secure care arrangement under the *Children and Community Services Act 2004*; the performance by an officer, as defined in the *Children and Community Services Act 2004* section 3, of a function given to the officer under that Act; a detention centre, as defined in the *Young Offenders Act 1994* section 3; a community child health service; a religious organisation; a ward of a public or private hospital in which children are ordinarily patients; an overnight camp, regardless of the type of accommodation or how many children are involved.

WWCC Report	National Standard	WA current provision
relying on any exemption.		part of their educational or vocational course of study.

Currently, individuals with a current Negative Notice (NN) or Interim Negative Notice (INN) under WA's WWCC Scheme cannot access the Parent Volunteer Exemption (PVE), the Child Volunteer Exemption (CVE) or the exemption for students who are children on unpaid placement as part of their educational or vocational course of study.

The WWCC Report and National Standards recommend States and Territories amend their WWCC laws to prohibit NN or INN holders from accessing any exemption.

This would mean that INN and NN holders would also be prevented from accessing exemptions in the Regulations, including:

- Short-term visitors to WA
- National events and national tours
- Coaching or private tuition services provided to classes of two or more people (unless the class is specifically for children)
- Accommodation or care of children (among other adult students) in residence for tertiary education
- Certain entertainment or party services.

Further information about exemptions under the WWCC Scheme is available on the WWCC website's [Resources page](#).

Removing access to the first two may be appropriate. However, removing access to the last three could cause unnecessary disruption across numerous sectors and activities which are not child specific or child focused and without improving child safety.

This potential reform would also need to consider the application of national portability of negative WWCC decisions across States and Territories ([see section 2.2](#)).

Question

13. Should the Act be amended to prevent persons with a Negative Notice or Interim Negative Notice from WA from accessing all or any of the other exemptions? Why or why not?

Please add any comments you consider relevant.

2.1.11 Removal of access to parent volunteer exemption (PVE) where service involves close personal contact with child with disability

WWWC Report	National Standard	WA current provision
<p>14. State and territory governments should amend their WWCC laws to: exempt: ...</p> <p>vi. parents or guardians who volunteer for services or activities that are usually provided to their children, in respect of that activity, except in respect of:</p> <p>a) overnight excursions or stays; or</p> <p>b) providing services to children with disabilities, where the services involve close, personal contact with those children.</p>	<p>6. Despite Standard 1, a person is not required to apply for a working with children check if the person: ...</p> <p>d. is a parent or guardian who volunteers for services or activities that are usually provided to their children, in respect of that activity, except in respect of:</p> <p>(i) overnight excursions or stays, or</p> <p>(ii) providing services to children with disabilities, where the services involve close, personal contact with a child other than their own child.</p>	N/A

The Royal Commission recommended parents be exempt from requiring a WWCC when they volunteer for services or activities usually provided to their children, except where any

services are provided to children with disabilities and involve close personal contact with those children.¹³

The National Standards refined this, specifying the PVE should not apply where the parent is providing services to children with disabilities, where the services involve close personal contact with a child other than their own child.

Feedback is sought on whether this could unintentionally exclude children with disabilities from activities unless parents obtain a WWCC and whether such exclusion is justified.

Only three other States have addressed this recommendation. In two of these States, the PVE cannot be accessed where the services involve close personal contact with a child other than the parent's own, irrespective of whether that child has a disability.

In the third State, the PVE cannot be accessed where services involve personal care of children with disabilities, being services that involve intimate contact such as assistance with toileting, bathing or dressing.

Question

14. Should the Act be amended to prevent persons accessing the Parent Volunteer Exemption where the services involve close, personal contact with a child with a disability other than their own child? Why or why not?

Please add any comments you consider relevant.

2.1.12 Five-day defence be made not available for overnight camps

WWWC Report	National Standard	WA current provision
14 State and territory governments should amend their WWCC laws to: a. exempt: ...	6. Despite Standard 1, a person is not required to apply for a working with children check if the person: ... c. is engaged in child-related work for seven	Rather than providing an exemption, the Act [s.25(3)] provides a defence from the s.24 offence for carrying out CRW without a current WWC Card, if a person can prove they were carrying out CRW on no more than five days during the calendar year

¹³ Or overnight camps – see [section 2.1.12](#). WA's Scheme does not currently provide the PVE for child-related work carried out in connection with an overnight camp, or a placement or secure care arrangement. In addition, the PVE is not provided for child-related work carried out in connection with a detention centre, or the performance by an officer of a function under the *Children and Community Services Act 2004*. These categories are not mentioned in the Regulations, Schedule 1 Division 1, which provides the parent volunteer exemptions.

WWWC Report	National Standard	WA current provision
iii. people who engage in child-related work for seven days or fewer in a calendar year, except in respect of overnight excursions or stays.	days or fewer in a calendar year, except in respect of overnight excursions or stays.	in which the offence is alleged to have occurred. Not everyone can access this defence.

The WWCC Report recommended exempting individuals from needing a WWCC if they engage in child-related work for seven days or less in a calendar year (except in relation to overnight stays or excursions).

WA's Act¹⁴ does not provide an exemption but instead provides a defence for a person charged with undertaking child-related work without a WWCC if the person did this for five days or less in the calendar year.

This defence can be applied in relation to all categories of child-related work (except work in connection with a childcare service), including arrangements for the accommodation and care of children, placement and secure care arrangements and formal overnight camps.¹⁵ Not every person engaging in child-related work can access this defence.¹⁶

The application of a defence, rather than an exemption, means a person undertaking child-related work for five days or less in a calendar year is still required by the Act to apply for a WWCC. This offers a higher level of protection to WA children than would be applicable if a seven-day exemption in every calendar year was implemented.

The Royal Commission recommended the seven-day exemption not be applicable to formal overnight excursions or camps.¹⁷

Consideration should therefore be given to whether to amend the Act to exclude someone from accessing the five-day defence if they are undertaking child-related work in

¹⁴ In section 25(3) of the Act.

¹⁵ The overnight camp category does not apply to facilities or activities aimed at families (such as camping grounds, caravan parks, motels and etc) or in which parents participate in the same capacity as their children and have no formal role in, or duties at, the camp (such as family festival and camping events which run for a weekend).

¹⁶ See section 25(4) to (7). For example, persons convicted of a Class 1 offence under the WWC Act, committed when they were an adult; and persons with a pending charge in respect of a Class 1 offence under the WWC Act, allegedly committed when they were an adult, cannot access the 5-day defence.

¹⁷ The Act already provides the parent volunteer exemption does not apply for formal overnight camps.

connection with category 15: “an overnight camp, regardless of the type of accommodation or how many children are involved.”

Question

15. Should the Act be amended to prevent persons from accessing the five-day defence in relation to overnight camps? Why or why not?

Please add any comments you consider relevant.

2.2 National consistency and portability of WWCC decisions across Australia

2.2.1 Context

There are currently eight WWCC schemes operating independently of each other across Australia. The Royal Commission raised concerns that the number of schemes and the differences between them prevents portability, increases compliance burdens for people and organisations working in more than one jurisdiction, creates opportunities to forum shop for WWCCs in jurisdictions with less stringent screening processes or where some background records are less likely to be identified, limits information sharing and results in inconsistent levels of protection for children.¹⁸

The Royal Commission recommended the implementation of nationally consistent WWCC schemes across Australia, providing for WWCC decisions to be mutually recognised and accepted across State and Territory borders. The Royal Commission recommended national portability was subject to the:

- Implementation of the standards proposed in the WWCC Report (and further enhanced in the National Standards) to achieve nationally consistent Schemes.
- Commencement of ongoing monitoring of WWCC applicants and cardholders' national criminal records against offences in every State and Territory. Currently, ongoing monitoring of criminal records only occurs for offences in the State or Territory in which the WWC Card is issued.

Nationally consistent WWCC schemes will assist in ensuring children are afforded the same level of protection regardless of where they live in Australia, while national portability of positive WWCC decisions (ie; WWC Cards) would reduce regulatory burden for workers and organisations operating across interstate borders.

¹⁸ WWCC Report page 45.

2.2.2 Current work to promote national consistency and national portability of WWC Cards

The Australian Government is collaborating with all States and Territories to achieve the goal of national consistency in and national portability of all WWCC decisions, both positive and negative, including a solution for the ongoing monitoring of WWC applicants and cardholders' national criminal records.

2.3 Other potential reforms – WWCC Report – Notifications to CEO

2.3.1 Potential requirement for employers and education providers to notify the CEO of change in employees

WWCC Report	National Standard	WA current provision
<p>31. ... state and territory governments should amend their WWCC laws to specify that: ...</p> <p>b. employers and WWCC cardholders engaged in child-related work must inform the screening agency when a person commences or ceases being engaged in specific child-related work.</p>	<p>30. A person is liable for a criminal offence if the person: ...</p> <p>d. as an applicant or working with children check clearance holder, fails to notify screening agencies of relevant changes to their circumstances including a change of relevant criminal history, change of employer and change of personal information.</p>	<p>Currently, section 35c of the Act imposes a requirement to notify the CEO of commencing or ceasing child-related work and other relevant changes, only on the individual WWCC applicant or cardholder and not on their employer or education provider.</p>

The National Standard was implemented on 1 July 2023, with the commencement of section 35C, which requires all applicants and WWCC cardholders to provide to the CEO, notice of any change in their personal information and when they commence or cease child-related employment with a particular employer or education provider¹⁹ or a child-

¹⁹ Education providers include universities, colleges, and other vocational education and training institutions. See the section 4 definition of "education provider".

related business. The penalty for breach of this notification requirement by the WWCC applicant or cardholder is a fine of \$5,000.

This provision ensures the CEO has the latest information regarding a person's particulars (for example, their current contact details) and their current child-related work, ensuring notices are sent to the correct contact address and current child-related employers and education providers, so the person can be immediately removed from child-related work where required by the Act.

Consideration should be given to whether to extend this reporting obligation to employers in line with WWCC Report recommendation 31b. Introduction of a mandatory obligation for employers and education providers to notify the CEO of a person commencing or ceasing child-related work with them, with a penalty for failing to notify, may impose a considerable additional administrative impost on employers, education providers and the WWC Screening Unit. However, it would also serve to enhance the child safety and compliance benefits of existing section 35C.

Only Tasmania has implemented this mandatory obligation on employers.

In WA, in the case of a student on practical placement as part of their study with an education provider (such as, a university), the placement provider (that is, the organisation at which the student is placed), is the person's employer under the Act. The Act generally imposes similar obligations on both the education provider and the employer in the case of a student on placement.²⁰

It may be that a mandatory obligation to notify the CEO should only apply to the education provider and not to the employer in the case of a student on placement. In addition, the frequency with which such notices would be required would remain to be determined.

Alternately, it may be preferable to retain a voluntarily capacity for employers (or education providers) to advise the CEO of the person(s) who they employ in child-related work and to provide an avenue for the CEO to confirm with the WWCC cardholder that they are indeed employed by that employer, before any notices are sent to the notifying employer.

A further consideration is whether employers should be able to request from the CEO, and the CEO be able to advise employers of, a list and relevant details²¹ of the current WWCC applicants and cardholders who have named that employer in their notifications to the CEO.

This may assist employers to comply with the Act but may impose a significant administrative burden on the WWC Screening Unit. To some extent, it may wrongly suggest that the WWC Screening Unit, and not the employer, has the obligation to ensure employers' compliance with the Act.

²⁰ See sections 9A and 9B of the Act.

²¹ Such as their names, WWCC card expiry dates and card numbers.

Communities would only propose to introduce such a mandatory notification requirement or any capacity for the WWC Screening Unit to advise employers of their WWCC cardholders' details once IT systems are upgraded to enable an online, simplified process for both parties.

Questions

16. Should employers be required to inform the WWC Screening Unit when a person commences or ceases being engaged by them in child-related employment, with a penalty if they do not? Why or why not? How often should such mandatory notifications be required?
17. In the case of a student on placement as part of their educational or vocational course of study, should a mandatory notification requirement be applied to both the placement provider as the employer and the student's education provider? Or only one such party? If so which one?

Please add any comments you consider relevant.

2.4 Other potential reforms – operation and effectiveness – publication of information

2.4.1 Publication of information about a prosecution – after commencement or after conviction

Section 39 of the Act currently provides that is an offence for a person who has been engaged in the performance of a function under the Act to disclose or make use of the information obtained while performing those functions, except in certain circumstances such as:

- if the information relates to proceedings before a Court or Tribunal and the proceedings are or were open to the public
- with the written consent of the person to whom the information relates.

Unlawful disclosure carries a penalty of \$24,000 and imprisonment for 2 years.

Section 39 is an important provision that upholds the privacy of a person who applies for a WWCC and information about them which officers from the WWC Screening Unit may have access to.

However, this provision lacks clarity as to whether, for example, the WWC Screening Unit may proactively advertise or publicise the fact of the commencement or successful conclusion of a proceeding against a person in a Court, for a breach of the Act such as knowingly employing a NN holder in child-related work. This is because the exceptions in section 39 operate as a defence, rather than an explicit authorisation.

Consideration is being given to an amendment to explicitly authorise the CEO's publication of information regarding the commencement or successful completion of a prosecution for an offence under the Act. Public awareness of such actions and penalties could strengthen the child-protective intent of the legislation.

Communities is aware that in certain circumstances the Court would not allow the publication of such information, notwithstanding any such explicit provision in the Act. For example, in some cases, Court orders are issued prohibiting publication and other legislation routinely operates to restrict publication if it will identify a child victim of sexual abuse. The potential reform would not override such circumstances.

It would be important to adequately account for circumstances in which a person may have Court proceedings commenced against them, which are withdrawn, dismissed or the individual is found not guilty. In these cases, publication at commencement stage could be expected to have negative impacts on the person's relationships, reputation and livelihood.

Therefore, consideration should be given to whether any explicit publication provision should only provide for publication of a successful prosecution under the Act, once the conviction and relevant penalty has been determined by a Court – and not reference publication at the commencement of a proceeding.

This alternative would mitigate concerns about reputational impacts if publication occurred at the time of commencement of the proceeding and then a conviction was not achieved.

Question

18. Should the Act authorise the publication of information about a prosecution for an offence under the Act after commencement of the prosecution or after conviction? Why or why not?

Please add any comments you consider relevant.

2.4.2 Publication of information about a person with a current Negative Notice (NN), who continues to carry out child-related work before a prosecution has commenced

Under section 23 of the Act, it is an offence for a person with a current NN or INN to be employed in child-related work or carry on a child-related business. While a breach of section 23 can result in the commencement of a prosecution, there remains an identified risk to children if that person continues their child-related work until a prosecution has been completed.

Consideration is being given to an amendment which provides, if a person with a current NN continues to carry out child-related work, the CEO has discretion to either proactively advise relevant people or potentially to publish a public warning notice before prosecution of the person with the NN commencing.

This could improve protections for children by enabling faster advice to impacted parents and caregivers (if they are known) or to the public (if that is determined to be more appropriate) that a person who has been assessed as being an unacceptable risk of causing harm to children in carrying out child-related work, continues to carry out that work. Parents and guardians could then remove their child from services and activities in which the person is carrying out the work.

Question

- 19. Should the Act provide the CEO discretion to either proactively advise relevant people and/or publish a public warning notice that a person with a current Negative Notice continues to carry out child-related work, before a prosecution of that person has commenced? Why or why not?**

Please add any comments you consider relevant.

Appendices

Appendix 1 – Full list of questions posed in this consultation paper

Below is a full list of questions posed in this consultation paper. You can give your feedback to Communities by responding to some or all of these questions.

For each question to which you respond, please add any comments you consider relevant. Please include advice as to why or why not you suggest or consider an approach to be preferred.

1. Have you had any lived experience with difficulties from the current definitions of 'contact' or 'child-related work' in the Act?
2. What **types of 'mentoring services'** should be captured by the Act?
3. What **types of 'other support services'** should be captured by the Act?
4. What **types of commercial or non-commercial services** for children should be captured by the Act, beyond a children's entertainment or party service?
5. What types of disability services for children should be captured by the Act?
6. What types of educational services or facilities should be captured by the Act?
7. Should these be limited to educational services or facilities **specifically 'for children'**?
8. What types of health services or facilities should be captured by the Act?
9. Should these be limited to health services or facilities **specifically 'for children'**?
10. What types of youth justice or detention services or facilities should be captured by the Act?
11. Should these be limited to justice services or facilities **specifically 'for children'**?
12. Should the Act be amended to exclude work undertaken for an informal, private or domestic purpose, in relation to **the categories** noted above?

13. Should the Act be amended to prevent persons with a Negative Notice or Interim Negative Notice from WA, from accessing **all or any** of the other exemptions?
14. Should the Act be amended to prevent persons accessing the Parent Volunteer Exemption where the services involve close, personal contact with a **child with a disability** other than their own child?
15. Should the Act be amended to prevent persons from accessing the five-day defence in relation to **overnight camps**?
16. Should **employers be required** to inform the WWC Screening Unit when a person commences or ceases being engaged by them in child-related employment, with a penalty if they do not? How often should such mandatory notifications be required?
17. In the case of a student on placement as part of their educational or vocational course of study, should a mandatory notification requirement **be applied to both the placement provider as the employer and the student's education provider? Or only one such party?** If so which one?
18. Should the Act authorise the publication of information about a prosecution for an offence under the Act **after commencement of the prosecution or after conviction**?
19. Should the Act provide the CEO discretion to either **proactively advise relevant people and/or publish a public warning notice** that a person with a current Negative Notice continues to carry out child-related work **before a prosecution of that person has commenced**?

Appendix 2 – WWCC Schemes of other States and Territories

The legislation which establishes a WWCC Scheme in each other State and Territory is set out in the Table below, with links provided.

State / Territory	Act	Regulations
Australian Capital Territory	<i><u>Working with Vulnerable People (Background Checking) Act 2011</u></i>	<i><u>Working with Vulnerable People (Background Checking) Regulation 2012</u></i>
New South Wales	<i><u>Child Protection (Working with Children) Act 2012 No 51</u></i>	<i><u>NSW Child Protection (Working with Children) Regulation 2013</u></i>
Northern Territory	<i><u>Care and Protection of Children Act 2007</u></i>	<i><u>Care and Protection of Children (Screening) Regulations 2010</u></i>
Queensland	<i><u>Working with Children (Risk Management and Screening) Act 2000 No.60</u></i>	<i><u>Working with Children (Risk Management and Screening) Regulation 2020</u></i>
South Australia	<i><u>Child Safety (Prohibited Persons) Act 2016</u></i>	<i><u>Child Safety (Prohibited Persons) Regulations 2019</u></i>
Tasmania	<i><u>Registration to Work with Vulnerable People Act 2013</u></i>	<i><u>Registration to Work with Vulnerable People Regulations 2024</u></i>
Victoria	<i><u>Worker Screening Act 2020</u></i>	<i><u>Worker Screening Regulations 2021</u></i>
Western Australia	<i><u>Working with Children (Screening) Act 2004</u></i>	<i><u>Working with Children (Screening) Regulations 2005</u></i>

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