

**COMMISSIONER FOR CHILDREN
TASMANIA**

CONSULTATION PAPER

**SCREENING OF INDIVIDUALS WHO
WORK WITH CHILDREN IN TASMANIA**

The Commissioner for Children is an independent, statutory office responsible to the Parliament of Tasmania. The Commissioner's functions include promoting the rights and well-being of children along with examining the policies, practices and services provided for children and any laws affecting the health, welfare, care, protection and development of children.

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1. INTRODUCTION

Every child has the right to be protected from abuse and it is important that every child is provided with a safe environment in which to grow and learn.

Organisations who offer services to children have a responsibility to provide them with safe environments in which to grow and learn. Parents also need to feel confident that their children are in a safe environment. Most organisations are looking to confidently promote themselves as being protective of children by implementing best practice standards for ensuring the safety of children in their care.

Environments that provide best practice protection and safety to children have a number of common features. These include thorough application and selection procedures for staff, adequate staff supervision, education for staff on child protection issues and well understood and accepted complaints mechanisms. It is widely recognised that child abusers choose to seek work in organisations that lack these characteristics to gain access to potential victims.

Statistics from the Victorian Police Child Exploitation Squad indicate that between 1988 to 1996, 43.5% of offenders gained access to child victims through children's organisations¹. More recently, the national police crackdown on child pornography (operation "Auxin") highlighted the importance of creating safe environments for children and the potential dangers that exist if we do not take a thorough, universal approach to child protection.

Fundamental to every child-safe environment is recruiting staff and volunteers who do not pose a risk to children. One way employers can begin to do this is by 'screening' applicants who wish to work with children. The term 'screening' is used to refer to the process of inspecting the criminal history, employment history and other relevant background information of a person to assess their suitability to work with children. This process is sometimes called a 'character check' or 'pre-employment check'.

There is currently no law in Tasmania that requires the screening of all people who seek paid or unpaid work with children.

The purpose of this paper is to identify issues and options arising from the current policies and procedures used by Tasmanian organisations to screen individuals who seek to work with children both in a voluntary and paid capacity. The paper will outline a number of screening methods currently used in Tasmania. Based upon these approaches as well as the

¹ Petraitis, V. and O'Connor, C. (1999) *Rockspider: the danger of paedophiles – untold stories*, Hybrid Publishers, Ormond, Victoria.

experiences of New South Wales, Queensland and the United Kingdom, a new system for screening in Tasmania will be proposed.

The Commissioner for Children invites your comments on the proposal put forward in this paper. Comments should be sent to:

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Comments can also be emailed to:
tasmanianchildrenscommissioner@dhhs.tas.gov.au

The Commissioner will then advise the Government of Tasmania on the best possible screening processes to protect Tasmanian children.

The closing date for comments is **25 February 2005**.

All comments on the Consultation Paper will be treated as public documents unless you request otherwise. If you do not wish your name to be identified or if you do not want your comments to be quoted or sourced to you, please state this in the document.

It is preferred that all comments are submitted via email.

2. BACKGROUND

Screening procedures have become common practice in some other Australian States who have developed legislation and practices to ensure that only suitable adults are entrusted with the health, welfare, care and development of children. Tasmania has taken action on this issue but there has not been a comprehensive approach across the Government and non-Government sectors.

In the absence of legislation requiring screening, the existing policies and procedures used both within Government and by non-Government organisations (NGOs) have developed in an 'ad-hoc' manner. The requirements of these procedures vary between organisations. Although the existing processes have many strengths, they do not maximise efforts to protect children from abuse.

In some jurisdictions, tragedies have acted as a catalyst for Governments to review their screening processes. Recently the horrific killing of two school girls in the United Kingdom prompted an inquiry into child protection and screening processes in parts of England ("the Bichard Inquiry")². The

² Bichard, M. (2004) *The Bichard Inquiry Report*, The Stationary Office, London
<http://www.bichardinquiry.org.uk>

man convicted for their murder (Ian Huntley) was employed as a caretaker at the children's school at the time of the killings. It was later found that, although Huntley had never been convicted of a sexual offence, there had been a long history of serious allegations made against him many of which had been documented in detail by both Police and Social Services. Additionally, prior to applying for employment at the school, Huntley had resided in a different area and at one stage had changed his name. The allegations against Huntley were not revealed during the school's screening process.

The handling of sexual offences against children, staff recruitment procedures in schools, information management, 'vetting' processes and the collection of Police intelligence were all found to have significant failings by the inquiry. The inquiry recommended that all people wishing to work with children be registered. The register would confirm that there was no known reason why an individual could not work with children based on information provided by police and other agencies (i.e. national criminal convictions and Police intelligence)³. Inclusion on the register would be decided by a central body, however employees would still require "rigorous" recruitment and selection processes as not all people who pose a risk to children have convictions or police intelligence recorded about them⁴. Recommendations were also made for training members of interview panels for school staff "to ensure that interviews to appoint staff reflect the importance of safe guarding children"⁵.

The Bichard Inquiry encapsulated the purpose of enhancing such measures to protect children:

"For those agencies whose job it is to protect children and vulnerable people, the harsh reality is that if a sufficiently devious person is determined to seek out opportunities to work their evil, no one can guarantee that they will be stopped. Our task is to make it as difficult as possible for them to succeed..."⁶.

The Bichard Inquiry also acknowledged the "climate of fear" that is often associated with legislation used to regulate the sharing of personal information for screening ("data protection legislation"). The report indicated that professionals were often fearful of the consequences of breaching the legislation and needed to be provided with education and guidance regarding its use⁷.

It is possible to make a number of preliminary observations from the information obtained in the preparation of this paper.

³ Ibid, 15.

⁴ Ibid, 152.

⁵ Ibid, 11.

⁶ Ibid, 12.

⁷ Ibid, 4 and 8.

Firstly, it is evident that many Tasmanian organisations are relying on the existence of criminal convictions as evidence of a person's unsuitability to work with children and in actual fact, it appears there are few other universally accessible methods of screening in the State. This is particularly the case for smaller, non-Government organisations that have limited human and financial resources.

However it is clear that relying only upon the criminal justice system is not sufficient to protect children. Whilst the rights and privacy of individuals must be protected, this must be balanced against the need to protect our children and young people from persons who will be a danger to them even though these persons may not have been convicted of a criminal offence in a Court of law. Striking the balance between the rights of adults to a "presumption of innocence" and the need to protect children from harm is not an easy task. However avoiding the task does nothing to protect children. We need to take all reasonable steps to ensure that children are not rendered prey to persons who have a prediction to abuse children – an unfortunate aspect of life in recent times.

Secondly, without guidance and assistance on appropriate screening methods, it appears organisation feel obligated to implement their own strategies in an effort to uphold their duty of care to children. Although implemented in good faith, these strategies inevitably involve issues of privacy and confidentiality that require careful, consistent management and increased human resources that many organisations are unable to provide.

For example, some non-government employers currently require job applicants to provide them with personal information obtained under Freedom of Information (FOI) legislation for screening. This can be an extremely complex, and in many cases costly, approach to screening. The intricacies of the legislation, as well as the information an organisation believes it will receive through FOI, has resulted in significant confusion for agencies attempting to utilise FOI.

The Department of Health and Human Services (DHHS) currently receives a large number of FOI requests from people seeking information about their history with the Children and Families Division ("the Division") for this purpose. The Division is responsible for providing care and protection services to children who are at risk of abuse or neglect. They hold information on children who have been clients of these services, such as children who have been in State care and children who have been the subject of alleged or actual abuse. When a person makes an FOI request to the Division this is the nature of the information they receive and will ultimately show to their employer. It is not information as to whether the person is an alleged or actual perpetrator of abuse. Furthermore, the data collected and maintained by the Division is under the name of the client and not under the name of the any perpetrator, alleged or otherwise.

Whether employers should require this information and its use in screening is questionable, especially as the information received can be misleading, unreliable and of dubious relevance. Nevertheless, it appears that in the absence of agreed, accessible methods of screening, organisations are resorting to FOI. This is not an effective way of obtaining relevant screening information and employers may inadvertently be placing themselves in positions of liability by relying upon the information they receive.

Furthermore, of the limited screening procedures that do exist in Tasmania, it seems that many were not developed with a view to enhancing child protection but have been adopted for reasons such as preventing fraud, stealing or for insurance purposes. In many cases, the role screening plays in protecting children has been ancillary to these purposes.

Thirdly, there is no mechanism for monitoring or auditing the screening procedures that are currently used in Tasmania.

Fourthly, there are no universal standards for identity checking in Tasmania. Ascertaining the identity of applicants for child-related work is a fundamental component of best practice screening. Failing to obtain full, accurate details about identity may mean that a person's true criminal or previous employment history is not revealed during the screening process. A person should be required to disclose their past and present names and addresses and have this information verified prior to screening to ensure the screening process works effectively. A failure to carry out this task in a diligent and thorough manner can result in the employment of persons who are a real threat to children as occurred for example in Victoria in the late 1980's. In that case, an escapee, convicted of numerous paedophile offences in the USA was employed as a senior child protection worker in the equivalent of the Department of Health and Human Services.

Fifthly, the only way the movement of alleged offenders is currently monitored in Tasmania is through the checking of personal referees or informal information sharing amongst organisations. There are few protections regarding the privacy of individuals, the accuracy of the information shared or how it is used.

Other issues presented by Tasmania's current screening processes include the use of statutory declarations. These are often used to require job applicants to disclose personal information for screening prior to employment. However not all statutory declarations comply with the formal requirements of the *Oaths Act 2001* and where they do comply, they are of course entirely dependent upon a person telling the truth.

Additionally, there are issues related to the information screened about a person's previous employment history. For example, although employers may check whether a person has been subject to 'disciplinary proceedings' in their previous employment, the definition of this term varies between

organisations, as does the stage at which such proceedings will be initiated.

Finally, there is a need for advice, assistance and training for organisations on how to develop child-safe environments. Screening is only one component of a broad range of child-protection strategies that, when combined, provide children with safe environments in which to grow and learn. A comprehensive approach for creating child-safe environments is yet to be adopted in Tasmania.

3. EXISTING PROCEDURES IN TASMANIA

3.1 GOVERNMENT AGENCIES

Government agencies must obtain the State Service Commissioner's approval to require a potential employee to undergo screening. In particular, the Department of Health and Human Services and the Department of Education commonly screen people who work with children.

The State Service Commissioner and the Head of Agency of each Government Department referred to in this paper were provided with opportunity to comment on the information regarding their agency prior to publication. Whilst no Head of Agency or the State Service Commissioner had any significant criticism of the proposed contents, some chose to make minor amendments or re-phrase paragraphs. These amendments, together with any re-phrased paragraphs have been included in their entirety. Accordingly this section contains a variety of styles and some information does not relate to children.

3.1.1 State Service Commissioner

The screening of people who work with children in the State Service is undertaken by way of a pre-employment check, which is conducted on a person prior to appointment or promotion to a position where a pre-employment check is considered appropriate. Unless provided for in any other enactment, the State Service Commissioner must approve the inclusion of the conduct of a pre-employment check as an essential requirement to employment in a position.

Under Section 18(1)(l) of the *State Service Act 2000* a function of the State Service Commissioner is to determine requirements, including qualifications, for employment of employees or groups of employees in the State Service. It is in accordance with this statutory function that the State Service Commissioner approves the conduct of pre-employment checks for appropriate positions.

The policy and procedure in relation to pre-employment checks is contained in Commissioner's Direction No. 10/2001 *Pre-employment*

*Checks*⁸. It is noted that the Duty of Care associated with a position (eg Teachers, Nurses, Child Care Workers etc) is specifically mentioned in relation to assessing whether a position requires a pre-employment check.

If a State Service Agency wishes to undertake a pre-employment check on a person as an essential requirement to appointment or promotion to a position, the Head of Agency must obtain the approval of the State Service Commissioner. Such requests provide justification for the conduct of the check based on the nature of the work involved and indicate the specific checks required. It should be noted, however, that where applications are made on the basis of involvement of children, approval is always provided.

Although these checks vary on the basis of the nature of the work and the working environment, a typical submission may contain a request for the following:-

- **Conviction check** in the following areas:
 - a) Crimes of violence
 - b) Sex related offences
 - c) Drug and alcohol related offences
 - d) Crimes involving dishonesty
 - e) Serious traffic offences
- **Identification check**
- **Disciplinary action in previous employment check**

The role of the State Service Commissioner is limited to the provision of approval; it is the agency's responsibility to arrange for the conduct of the checks. Conviction checks are normally conducted by Tasmania Police at the request of the agency. Either the Chair of the selection panel or the Human Resources Branch of the agency conducts identification checks and disciplinary action in previous employment checks. This process is summarised in Attachment 1.

The approval given by the State Service Commissioner relates to an essential requirement for employment in a particular position or positions. It therefore provides for the 'once only' screening of a person immediately prior to appointment or promotion to a particular position. Such approvals do not provide any facility for the screening of existing employees or any other form of ongoing screening. This effectively means that a person could be screened only once if they occupy the same position during their career.

The State Service Commissioner provides approvals for pre-employment checks on a 'case-by-case' basis; therefore a Head of Agency does not receive a 'blanket' approval to screen all employees who work with

⁸ Available at www.osscc.tas.gov.au

children. Furthermore, the approval provided by the State Service Commissioner relates only to State Service positions and does not extend to screening outside organisations that may be contracted to deliver services for an agency under a “service agreement”.

Should a Head of Agency wish to screen an existing employee who works with children, it is assumed that the Head would first ensure that the position in question had the appropriate pre-employment check approved by the State Service Commissioner. Although such a check of an existing employee would not be a “pre-employment check”, this approval would establish the principle that the checks are indeed appropriate for the position in question. The actual conduct of the check would then be an ongoing Human Resource/Industrial matter for the agency to address⁹.

3.1.2 Department of Health and Human Services

3.1.2.1 Paid employees

The Department of Health and Human Services (DHHS) draws upon a number of human resources to deliver their services. They include Government employees, volunteers and independent organisations.

Three types of screening or “check” procedures have been approved for use by DHHS:

- 1) a criminal conviction check (generic conviction areas include crimes of violence, sex related offences, serious drug offences, crimes involving dishonesty and serious traffic offences)¹⁰;
- 2) an identification check; and
- 3) a check of disciplinary action in previous employment.

The Head of Agency assesses the nature, responsibilities, level of client contact and duty of care of the work involved in a position to determine which of the above “checks” should be undertaken¹¹. He or she may then decide to apply for the State Service Commissioner’s approval to make these “checks” a pre-requisite for employment. Where employment will require work with children, approval is commonly sought for all three types of “checks”.

An applicant is required to provide their consent for DHHS to “carry out any relevant checks of information held by former employer/s” as identified on their resume and declare whether they have been the subject of any disciplinary action in previous employment. However a person’s previous

⁹ To date, no Head of Agency has requested the State Service Commissioner to approve a “pre-employment check” with respect to an existing employee.

¹⁰ The Head of Agency may also make an application to the Commissioner for a check of convictions outside these generic conviction areas.

¹¹ State Service Commissioner’s Direction No. 10/2001 *Pre-Employment Checks*.

employment history will be screened regardless of whether or not a disclosure is made. A consent form for DHHS to obtain their criminal record is also completed. If it is found that a person made false disclosures or withheld information from DHHS during this process, their suitability for employment is reviewed based on the circumstances of the case.

Employees are only screened once (during the application process) and are not screened again during their employment unless they change positions. DHHS has no mechanism for being alerted to or updating changes in a person's screening information once they have been employed. For example, the Department will not be alerted if a person commits any new offences after they are screened unless they are imprisoned.

With the exception of the Royal Hobart Hospital, Launceston General Hospital, North West Regional Hospital and other district settings, all paid-employees who work with children within DHHS are subject to screening. DHHS are currently examining the issues involved in screening some hospital employees, such as nursing staff (for further information on registration requirements for doctors and nurses please see 3.4 below).

Within DHHS Mental Health Services, all medical, nursing, allied health and ancillary workers already go through pre-employment screening or "checks" as do Family Child and Youth Health nursing and other staff.

DHHS also contracts outside organisations to undertake services through "service agreements". Screening does not form part of the general conditions of a "service agreement". However if an organisation is required to screen employees in accordance with any service delivery standards or funding program it operates under (eg some Commonwealth government funded programs), then compliance with these standards will be included in the agreement.

3.1.2.2 Volunteers

The screening of DHHS volunteers who have contact with children is limited to volunteers in the ambulance service and foster carers.

Volunteer foster carers must undertake initial training and screening before they can be assessed as suitable carers. This involves a criminal record check and a Departmental (DHHS) record check (which includes family violence information). These checks are undertaken once every year for as long as the person remains a foster carer. Carers are also required to have an initial medical check that is repeated every two years. Additionally, anyone over 18 years of age who stays in the carer's home or who may care for the children involved must also undergo criminal record and Departmental (DHHS) record checks. This includes any of the foster carer's children who are over 18 years old.

As regards work experience students, the student's educational institution is required to guarantee their suitability and it is considered only a remote possibility that a DHHS client would be exposed to direct, one-on-one contact with the student.

3.1.3 Department of Education

The Department of Education (DoE) is responsible for primary and secondary education in State schools, library and information services, vocational education and training services, administration of the *Child Care Act 2001*, assessment and certification of trainees and students, and youth affairs.

3.1.3.1 Child Care

Any person who operates or provides child care or a child care service must be licensed or registered under the *Child Care Act 2001*. Services include Long Day Care centres, Outside School Hours Care services, occasional care centres including Neighbourhood Model occasional care, Family Day Care (FDC) Schemes, Home Based Carers registered with FDC Schemes, licensed Home Based Carers, and play centres.

In Tasmania, playgroups, which are usually set up and run by parents and carers, are not required to be licensed because parents stay on the premises during the playgroup sessions.

The *Child Care Act 2001* requires that in determining whether an applicant is a fit and proper person to hold the licence applied for, the Secretary of DoE must consider a number of relevant matters in relation to the applicant; the persons involved in the management of the service; the staff and the spouse (if applicable) of those people who may have contact with children. Licence applicants must submit a 'Notice of Disclosure' which includes a number of declarations that are taken into account. The Secretary is also able to carry out any investigation he or she considers necessary or appropriate to make this decision.

Integral to the decision about the suitability of the applicant to hold a licence is the fitness and propriety of those other persons listed, i.e. all child care workers, home based carers and members of their household aged 18 years or older, in-home child carers, ancillary workers at a child care service, volunteers/students/and regular visitors over the age of 18 years, licence applicants, licensee representatives (where the service operator is to hold the licence). These people are not employees of the DoE.

Each person must complete a safety screening application which includes, but is not limited to, a declaration in relation to any charges or convictions of offences punishable by a period of imprisonment and also whether they have been found guilty of any offences against the *Child Care Act 2001*, regulations or Standards or similar in any other State or Territory. In order

to work with children, a person must hold a current safety screening clearance.

Safety screening in accordance with the *Child Care Act 2001*, and the Standards issued by DoE, must be completed every three years. Applicants for safety screening give their permission for DoE to seek information from Tasmania Police, Department of Health and Human Services and current or past employers. Tasmania Police conduct a National Criminal History Check.

If a person is assessed as suitable to work with children, DoE provides a safety screening certificate, or where a person is working on a child care site in another capacity, a clearance letter.

Persons employed by DoE within the Child Care Unit are required to complete a good character check.

3.1.3.2 School Based Employees

Since 1997 DoE has conducted good character checks for new teaching and non-teaching school employees and for existing staff who receive an appointment, are promoted or transferred.

In 2002 Teacher Registration was introduced. Teachers are required to be screened under the *Teachers Registration Act 2000*, please see 3.4 below.

During 2003 the Department's good character check process was further enhanced with authority from the State Service Commissioner to check all school based non-teaching employees who had not undertaken a good character check.

The good character check involves a National criminal history check, an identity check and a check on any disciplinary action in previous employment, if deemed necessary.

An applicant must complete a 'Good Character Check Form', which provides DoE with permission to undertake these checks. If false information is provided or information is withheld by an applicant, it may result in withdrawal of an offer of employment or dismissal.

As part of a National Strategy in Schooling to Prevent Paedophilia and Other Related Child Abuse (MCEETYA 1997), the Good Character Check Form requires an applicant to declare if they have previously worked in another Education Department in Australia. If an applicant discloses that they have worked for another Education Department, DoE will request the relevant Education Department to complete a 'National Check for Employment Status Form'. This form checks for any disciplinary action in an applicant's previous employment.

Upon approval of a good character check, a clearance letter is sent to the applicant for presentation to their workplace prior to commencement.

Through a Memorandum of Understanding between DoE and the Department of Police and Public Safety (DPPS) an agreed 'flagging' process has been established. This enables DPPS to notify the Department if a person (who has previously undertaken a departmental good character check) commits any Tasmanian offence.

The good character check form also provides approval for DoE to investigate a person's employment history once they are employed, if deemed necessary.

3.1.3.3 Volunteers and non employees

DoE requires all volunteers and parents accompanying a school group on an overnight excursion or a day trip in remote areas (i.e. areas that are not easily contactable or accessible by First Aid) to complete a good character check. For all other volunteer situations the Principal, in consultation with their school community, determines whether all volunteers working in their school during the day should also complete a good character check. A number of School Councils have integrated this requirement into their school policies.

Tasmanian Communities Online has developed policies requiring each On-line Access Centre (OAC) volunteer to complete a National criminal history check prior to commencement. This includes OACs managed either by DoE or by community groups.

3.1.3.4 DoE Review

DoE is currently reviewing all groups within the Department who have contact with children and young people to determine if the good character check process should be broadened. The identified groups currently under consideration include volunteers, billets, researchers, University students, religious instructors, contractors and other non-school based employees.

3.1.4 Department of Economic Development - Sport and Recreation Tasmania

One of the business units of the Department of Economic Development is Sport and Recreation Tasmania, which includes the Tasmanian Institute of Sport. As well as implementing local policies and programs, Sport and Recreation Tasmania implements national initiatives and programs to develop the sport and recreation sector in Tasmania.

Sport and Recreation Tasmania endorses, and will work with sporting organisations to implement, the Australian Sports Commission's Harassment Free Sport Strategy which includes a member protection

policy template (incorporating child protection requirements and screening procedures). Some state sporting organisations are working on screening procedures based on those of other states or their own national organisations. All state sporting organisations and clubs are encouraged to utilise “Play By The Rules”, a training program developed by the Equal Opportunity Commission of South Australia and the South Australian Office for Recreation and Sport. A generic child protection section is being developed as part of this program, specifically for states that do not currently have legislation regarding child protection and screening procedures for those people working with children.

The Tasmanian Institute of Sport does not request mandatory screening for its employees as a condition of employment but, as an internal policy, those employees that have contact with junior athletes are requested to provide a Tasmania Police Record Check to the Director. All coaches of the Tasmanian Institute of Sport’s athletes are required to sign and comply with a Coaches’ Code of Conduct, which includes a Code of Ethics.

3.1.5 Department of Tourism, Parks, Heritage and the Arts

The Department of Tourism, Parks, Heritage and the Arts (DTPHA) has recently obtained the State Service Commissioner’s approval to undertake screening for park guides and interpretation rangers. Other areas of employment screened by DTPHA include staff who have exposure to high value assets and commercial transactions such as Tasmanian Museum and Art Gallery staff.

Potential employees are screened for a variety of offences related to working in these areas. The screening involves a check of identity and a national criminal record check for crimes of violence, serious drug offences, sex related offences and crimes involving dishonesty or fraud. Employees are only screened once for each position they occupy in DTPHA. The currency of this information is not monitored during their employment.

DTPHA is also examining other areas for screening employees who may work with children in public or school related programs e.g. Royal Tasmanian Botanical Gardens. The current approach is to evaluate screening requirements as positions are advertised. Where practicable to do so and on a case by case basis the Department may also undertake screening of existing staff after appropriate consultation with staff.

3.1.6 Department of Premier and Cabinet

The Tasmanian Government has a partnership with Volunteering Tasmania Inc. to recognise and promote the work of volunteers in the State. Pursuant to this partnership, the Department of Premier and Cabinet (DPAC) is in the process of drafting guidelines for all State Government Agencies regarding the management of volunteer activity. The guidelines currently include information on how to approach police checks for

volunteers. The guidelines will strongly encourage agencies to adopt the principles and approaches suggested, however, the guidelines are intended to be broad and, as such, implementation will be reliant upon individual agencies.

DPAC is also responsible for co-ordinating the “Volunteer For A Day” (VFAD) program which allows State Service employees to volunteer for a community-based organisation for one working day. People participating in the program are subject to the screening requirements of the organisation for which they volunteer. As screening requirements vary between organisations, there are a variety of screening processes for these volunteers. However VFAD activities are reviewed through DPAC before being made available to volunteers. This involves identifying, where possible, activities which might require screening of volunteers and raising this with the sponsoring organisation if police checks were not part of the original activity description.

3.2 NON-GOVERNMENT ORGANISATIONS (NGOs)

At present there are no requirements for organisations to require screening of individuals that work with children in NGOs, with one exception that being if the NGO operates or undertakes operations under the *Child Care Act 2001*. These requirements are set out above at paragraph 3.1.3.1.

If an NGO has a “service agreement” with a State Government Department and provides services in return for funding the NGO must comply with the Department’s screening processes. However it appears very few agreements contain these requirements.

If an organisation receives Commonwealth funding, they must also comply with any requirements for screening volunteers and employees contained in their funding agreement with the Commonwealth Government. For example, all persons who work for a State based organisation funded under the Commonwealth Department of Families and Community Services “Communities for Children” Program (which focuses upon early intervention services for 0-5 year olds) are required to undergo screening.

The following examples illustrate how some NGOs have chosen to approach screening. It is not an exhaustive list of the screening processes used by all NGOs in Tasmania.

3.2.1 Hobart Police and Citizens Youth Club (PCYC)

Each PCYC is a separate incorporated body and works in partnership with Tasmanian Police. The Hobart PCYC is not subject to any requirement to screen people before employing them. However the Club has chosen to adopt a number of child protection measures.

Staff are subjected to a rigorous formal interview and a check of their background information. This includes checking information with past

employees or other organisations the person has been affiliated with and their family situation if possible. Volunteers are subject to close supervision and monitoring over an extended period to ensure their suitability and children and young people are consulted for feedback on staff and volunteers. The Club also has policies to make staff aware of impropriety issues and provides lectures on body language, working with children and communication skills.

3.2.2 Scouts

Every person who has contact with children within Scouts is required to have a National police check. They are also required to undergo interviews and reference checks.

The practices and policies of the Scout Association of Australia are also contained in their "Policy and Rules" which are binding upon all formations, members and supporters of Scouts. The policy covers areas such as personnel management, commitment to the welfare of young people, the Scouts Duty of Care, Code of Conduct, appointment of leaders and the need to enquire as to the suitability of applicants.

Scouts are the only volunteer organisation exempt from the provisions of the *Annulled Convictions Act 2003*. This means that a person must provide full disclosure of their criminal history where requested, irrespective of when their convictions occurred (for further discussion on the *Annulled Convictions Act 2003* please see 3.5 below).

3.2.3 Volunteering Tasmania

There is no requirement to screen volunteers in Tasmania. However organisations involving volunteers may choose to adopt the National Standards for Involving Volunteers in Not For Profit Organisations issued by Volunteering Australia. The National Standard relating to "Recruitment, Selection and Orientation" requires that:

"An organisation that involves volunteers shall plan and have clearly documented volunteer recruitment, selection, and orientation policies and procedures that are consistent with non-discriminatory practices and guidelines."¹²

A number of criteria are provided to help organisations to monitor their achievement of this standard. This includes whether they have developed appropriate procedures to screen the suitability of applicants for volunteer positions and whether there are provisions for applicants to undergo a police check prior to undertaking work that involves direct and unsupervised contact with vulnerable members of the public.

¹² Volunteering Australia Inc (2001) *National Standards for Involving Volunteers in Not For Profit Organisations*, 2nd Edition, Melbourne, 29.

Volunteering Tasmania Inc. is the peak body for volunteering in Tasmania and provides leadership in the volunteering sector¹³, offering consultation and training on volunteer management. Screening is considered part of best practice management for volunteers, particularly where volunteers owe a duty of care to vulnerable groups such as children. Screening is becoming increasingly common practice in the volunteering sector.

Volunteering Tasmania Inc. has also entered into a partnership with the State Government and is providing advice on guidelines for involving volunteers that are currently being developed by DPAC as referred to above at paragraph 3.1.6.

3.2.4 Playgroups

Unlike Child Care services, playgroups are not subject to licensing or screening requirements. One basis for this difference is that parents attend playgroup with their child and can closely supervise their activities.

Play Group Tasmania have voluntarily adopted a policy of requiring a local Tasmania Police Record Check from potential employees. There is no system for updating or monitoring a person's criminal record during their employment.

Like many other small organisations, Play Group Tasmania is seeking clarification and guidance on a number of issues related to the administration of screening.

3.2.5 The Safety House Association of Tasmania Inc.

The Safety House Association of Tasmania Inc. ("the Association") requires all persons involved in the Safety House program to disclose whether they have lived in any other Australian State or Territory on their application form. If an inter-State address is disclosed, this prompts Tasmania Police to check whether the applicant has a police record elsewhere in Australia.

If a household participates in the program, all persons over the age of 12 years in that household are required to undergo a criminal conviction check. A comprehensive list of criteria has been developed that preclude a person from participating in the Safety House program. These criteria include convictions for serious drug offences; offences resulting in imprisonment within the last ten years; sexual offences of any nature; intervention and restraining orders imposed on any member of the household within the past 5 years or a history of crimes involving violence. Tasmania Police can alert the Association if a person commits any future offences included in the criteria.

¹³ For further information see <http://www.voltasinc.com>

Safety Householders are reminded to inform the Association of any change in their details or circumstances on a regular basis. They are also contacted by telephone or a personal visit every two years. A police check is repeated every two years, regardless of whether the details of a Safety Householder have changed.

Commercial premises that apply to be part of the Safety House program are checked by Tasmania Police against the same criteria mentioned above. However only the owner or manager and senior staff in supervisory positions are required to be checked.

3.2.6 Anglicare

Anglicare require National criminal record checks for all employees and volunteers who are responsible for the direct care of children.

The screening processes used by Anglicare are currently under review with the intention of enhancing screening practices for people working with children.

3.3 CHURCHES

There are no legislative requirements to screen individuals working with children within churches or religious organisations unless they are providing a service that operates under the *Child Care Act 2001* or the person is working in a professional capacity and is required to be of 'good character' in order to obtain professional registration (please see paragraph 3.4 below).

Screening processes vary between the different Churches in Tasmania. In recent times, anyone who works, volunteers, or has contact with children within the Anglican Church in Tasmania must have a criminal history check and be accredited by the Church. To be accredited, a person must attend "Safe Ministry" seminars that provide education and training on child protection issues.

Accreditation is valid for three years, at which time an individual must meet requirements to prove their continued suitability to work with children.

3.4 PROFESSIONAL REGISTRATION BODIES

Doctors, nurses, psychologists and teachers must all be registered with their relevant professional registration body.

Under the *Medical Practitioners Registration Act 1996*, the Medical Council of Tasmania must be satisfied that a person is of "good fame and character" before they can be registered to practice as a doctor¹⁴. This

¹⁴ *Medical Practitioners Registration Act 1996 (Tas)*, section 24(1)(c)

registration lasts indefinitely unless the Council specifies otherwise¹⁵. Under the *Nursing Act 1995*, a person must satisfy the Nursing Board of Tasmania that they are of “good character” before they can be registered as a nurse¹⁶. Similarly, under the *Psychologists Registration Act 2000*, a person is to be of “good fame and character” before being approved for registration by the Psychologists Registration Board¹⁷.

Doctors, nurses and psychologists are required to pay annual registration fees. The registration body is to immediately issue the person with a new certificate of registration or practising certificate unless they do not comply with any of the specified requirements for registration, including being of good character¹⁸.

The *Teachers Registration Act 2000* requires all teachers to be registered with the Teachers Registration Board (“the Board”), which is an independent statutory body. A person must satisfy the Board that they are of ‘good character’ before their registration may be approved.

The primary source of information used to determine ‘good character’ is a person's National criminal record. The Board obtains this information from Tasmania Police and the *Teachers Registration Act 2000* requires that the Board is to take into account any conviction or charge against the person. The Board also sends a list of applicants' names to any authority that employs teachers in Tasmania who are asked to inform the Board if they have information that may cause the Board to question a person's ‘good character’. Applicants are also required to answer a set of questions, within a Statutory Declaration, about their employment. Although “good character” is not defined in the *Teachers Registration Act 2000*, the legislation does set out the matters to be taken into account when determining whether a person is of “good character”¹⁹.

If a registered teacher seeks employment in a State school through DoE, they must provide their 'Teacher Registration Number' on their 'Good Character Check Form'. This indicates to DoE that the applicant has already undergone a criminal history check.

Although doctors, nurses, psychologists and teachers are required to be of “good character” or “good fame and character”, the above Acts do not provide any criteria or guidance that specifically relate to the protection of children. This needs to be better articulated so that there is a consistent approach across the relevant registration bodies. In particular, what should constitute “good character” in the context of working with children.

¹⁵ *Medical Practitioners Act 1996 (Tas)*, section 30

¹⁶ *Nursing Act 1995 (Tas)*, section 22(1)(c)

¹⁷ *Psychologists Registration Act 2000 (Tas)*, sections 23(1)(c) and 23(2)(c).

¹⁸ *Medical Practitioners Act 1996 (Tas)*, section 39(5); *Nursing Act 1995 (Tas)*, section 50(4); *Psychologists Registration Act 2000 (Tas)*, section 37.

¹⁹ *Teachers registration Act 2000 (Tas)*, section 12(2).

3.5 CRIMINAL HISTORY INFORMATION

A person can apply to Tasmania Police for a national criminal record (called a “National Police Record Check”) or local criminal record (a “Tasmania Police Record Check”). Either record can be sent directly to an employer or organisation by specifying their details on a person’s application form.

There are crucial differences in the level of information contained on each record. A National Criminal Record Check contains information obtained anywhere in Australia and is co-ordinated through the federally established Crim-Trac agency in Canberra. A Tasmanian Police Record Check contains only Tasmanian information. In either case, the record does not contain information regarding charges or investigations; both records are limited to findings by a court that a person has been found guilty of an offence. This generally means that the person has been convicted of the offence. In some minor matters a finding of guilt may not result in the court “recording a conviction”.

Every other State in Australia has abolished the provision of local criminal records. Only in Tasmania is a local criminal record available. National records are more comprehensive than a local record.

It is also important to note the impact of the *Annulled Convictions Act 2003*. This Act regulates what offences do or do not have to be disclosed on a person’s criminal record. Broadly, an adult does not have to disclose a minor conviction to any other person if they have been of good behaviour for 10 years since the minor offence. For a youth, the respective time period is 5 years good behaviour.

Significantly, the *Annulled Convictions Act 2003* does not apply to workers in youth justice, education and other “child-related” fields listed in the Act. These workers must still disclose all of their convictions on any criminal record they provide to an employer. However the list of “child-related” fields does not contain all types of work that involve direct contact with children. For example, the only volunteer organisation listed is Scouts Australia.

All Australian States and Territories have legislation that provides for the restriction of the release of information relating to old convictions similar but not identical to the *Annulled Convictions Act 2003*. This legislation is most commonly referred to as “spent convictions” legislation. The lack of uniformity only adds to the complexity of obtaining information since a conviction in one State may be contained in the National Criminal Record Check, whereas the very same conviction may not be provided if the conviction occurred in a different State or Territory.

It is also important to note that in Tasmania and some other Australian States, Restraining Orders will only show on a person’s criminal record if they have been breached. The existence of restraining orders is otherwise

not included on a person's record. Restraining Orders that may be of relevance in screening are those involving serious violence, or violence against children.

3.6 OPPORTUNITIES FOR PERSONS WHO ARE DISSATISFIED WITH ADVERSE DECISIONS RELATING TO THEIR 'GOOD CHARACTER' AND ALIKE – CURRENT APPEAL PROCESSES

State Service employees may apply to the State Service Commissioner for a review of any State Service action that relates to his or her employment in the State Service. In certain circumstances, this includes a review of the selection of another person or employee to perform duties²⁰. The State Service Commissioner may refer matters to the Ombudsman, Tasmanian Industrial Commission or Anti-Discrimination Commissioner.

The Tasmanian Industrial Commission may hear and determine any matter arising from or relating to an "industrial matter". An "industrial matter" is any matter pertaining to the relations of employers and employees such as the terms, conditions or termination of employment²¹. This does not include matters relating to appointments or promotions, other than issues relating to the qualifications required for advancement. A hearing may be initiated by an organisation, employer, employee or the Minister for Industrial Relations²². Therefore, with the exception of the Minister, only employees or former employees can make an application to the Tasmanian Industrial Commission.

The Ombudsman has the power to investigate any administrative action taken by or on behalf of a public authority²³. However this does not include action taken by the Tasmanian Industrial Commission in relation to "State employees" within the meaning of the *Industrial Relations Act 1984* or determinations made by the State Service Commissioner²⁴.

Under the *Anti-Discrimination Act 1998*, the Anti-Discrimination Commissioner has the power to receive and investigate complaints of alleged discrimination, including discrimination on the basis of an "irrelevant criminal record"²⁵. However there is a special exemption that allows discrimination where a person will be dealing with children:

"50. A person may discriminate against another person on the ground of irrelevant criminal record in relation to the education, training or care of children if it is reasonably necessary to do so in order to protect the physical, psychological or emotional wellbeing of children having regard to the relevant circumstances."²⁶

²⁰ *State Service Act 2000 (Tas)*, sections 50(1) – (3).

²¹ *Industrial Relations Act 1984 (Tas)*, sections 3 and 19.

²² *Ibid*, section 29(1).

²³ *Ombudsman Act 1978 (Tas)*, section 12.

²⁴ *Ibid*, Schedule 2.

²⁵ *Anti-Discrimination Act 1998 (Tas)*, sections 3 and 16(q).

²⁶ *Ibid*, section 50.

Under the *Teachers Registration Act 2000* a person may appeal to the Magistrate's Court against a decision made by the Teachers Registration Board. Doctors, nurses and psychologists may also appeal decisions regarding their registration to the Supreme Court²⁷.

4. NATIONAL APPROACHES AFFECTING TASMANIA

There are some national initiatives regarding screening currently taking place. These include the endorsement of a National Sex Offender Register at a national Police Minister's meeting in Hobart this year. The development of legislation to support the national sex offender register in Tasmania is being considered by the Minister for Health and Human Services.

The Community Services Ministers' Advisory Council (CSMAC) has also established a Working Group to develop a national framework for creating safe environments for children. The framework will not impose compliance on States, but will provide best practice guidelines and benchmarks for child-related organisations. The Working Group is looking at four key areas for action:

- ▶ Building capacity for child safe organisations
- ▶ Background checking for employees and volunteers
- ▶ Information sharing between States/Territories
- ▶ Implementation, monitoring and review of progress

An important aspect of the framework is that each State and Territory will retain responsibility for its implementation. Each State will have to decide when and how it will meet the guidelines and benchmarks developed by the Working Group.

The approach that each State and Territory will adopt to do this will vary, as will the cost and time involved. The existing processes in some States may already be meeting or even exceeding any benchmarks developed by the Working Group, while others may require significant work over a period of time before their screening processes meet national expectations.

The implementation of the framework will be achieved progressively, with the Working Group developing a number of schedules in each key area for action. The content for the majority of the schedules is to be finalised by 2006.

²⁷ *Medical Practitioners Registration Act (Tas) 1996*, section 61(1); *Nursing Act (Tas) 1995*, section 72(1); *Psychologists Registration Act 2000 (Tas)*, section 58(1).

The guidelines produced by CSMAC will inevitably be broad to cover the wide range of circumstances, structures and legislative regimes that already exist in the different States. They will not contain detailed plans of how screening policies should be implemented in the different States and territories.

Tasmania can enhance the child-protection strategies adopted by organisations in this State in readiness to meet the outcomes of the Working Group. The Working Group is informed by the ongoing developments occurring amongst the States and Territories in this area. Similarly, it is achievable to develop strategies for child safe organisations in Tasmania concurrently with the Working Group's progress.

The Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) are also progressing initiatives for model uniform legislation for conducting criminal records checks for persons seeking to work with children in educational settings, focussing on the consistent release of information for criminal records checks across the States. MCEETYA are currently undertaking nation-wide consultations on this issue with relevant stakeholders.

Whatever the outcomes of CSMAC and MCEETYA each State, including Tasmania, will need to develop their own legislation and strategies to implement their recommendations.

Federal funding has also been received by the not for profit Victorian organisation "Child Wise" to provide child protection education and training to organisations across Australia. Using a systemic approach to the prevention of child abuse, "Child Wise" has produced a universal information and training program called "Choose With Care" to assist organisations to improve their screening, recruitment and management practices²⁸. "Child Wise" conducted workshops in Tasmania in 2003 and 2004. They also run a number of other workshops in Australia and overseas based on the "Choose With Care" principals such as understanding child abuse, developing child protection policy and involving children in the child protection process. Comprehensive materials have been produced to support their training workshops, including guides for building child safe organisations and guides for parents on choosing child safe organisations. The "Choose With Care" program also forms part of an accreditation process being developed by the Australian Council for Children and Youth Organisations (ACCYO) for organisations providing services to children and young people.

ACCYO is currently providing an accreditation process that will allow organisations to have their child protection practices and policies recognised at a national level. Organisations registered for ACCYO's accreditation will receive assistance to develop their practices and policies in accordance with Choose With Care program. An external audit of an

²⁸ For more information visit www.childwise.net

organisation will be conducted by La Trobe University before they are provided with a formal certificate and accreditation by ACCYO. A training workshop for the accreditation was held in Hobart in September 2004.

It is important to note that any developments regarding screening that are progressed in Tasmania should not occur in isolation from these national projects.

5. APPROACHES IN OTHER STATES

All other Australian States either have legislation in place for screening or are reviewing their current practices. The two principle models for screening in Australia have been established in New South Wales and Queensland. The Commission for Children and Young People in each State plays an important role in guiding and facilitating these checks.

5.1 WESTERN AUSTRALIA, VICTORIA AND SOUTH AUSTRALIA

Legislation for the screening of individuals who seek work with children was assented to in Western Australia in December 2004. Although yet to commence, the *Working With Children (Criminal Record Checking) Bill 2004* draws upon the systems used in both New South Wales and Queensland. It regulates screening for areas “that offer opportunity for sustained contact with children”²⁹ such as child care, education, fostering, certain hospital wards, child health, cultural and sporting activities, Ministers of religion and children’s entertainment. Screening is limited to a person’s criminal record. No other screening or background information regarding prospective or existing employees is required to be considered under the legislation.

The legislation applies to self-employed people and those in paid and voluntary work in both Government and NGOs (excluding volunteers who are children or parents volunteering in activities with their children).

However, unlike Queensland and New South Wales, the legislation will operate retrospectively, so that existing volunteers, Ministers of Religion, self employed persons and the child-care sector will be screened over time³⁰.

Victoria recently released an ‘exposure draft’ of the *Working With Children Bill 2005* (“the draft Bill) and discussion paper³¹. The legislation provides for the screening of paid employees, volunteers and self-employed persons in child-related fields. The screening process will be called the “Working With Children Check” and will involve an assessment as to a person’s suitability to work with children based on information regarding a person’s charges or convictions for serious sexual offences or serious

²⁹ *Hansard* (LC), 28 October 2004, 7440b – 7452a/1.

³⁰ *Ibid*, 3.

³¹ For further information see www.justice.vic.gov.au

child-related offences, as well as serious disciplinary action by prescribed professional registration boards.

While extending Victoria's current screening processes, the draft Bill does not currently provide measures for the verification of identity of persons who seek work with children. Similar to WA, the draft Bill categorizes convictions and charges according to their seriousness. It also contains a definition of "child-related work" that resembles that used in WA. The WA definition has also been used and adapted in the proposals contained in this paper. The "Working With Children Check" in Victoria will be carried out by the State's Department of Justice, which means that all screening information will be dealt with by a unit within a Government Department.

In South Australia, recommendations regarding the screening and monitoring of people who seek to work with children were contained in the final report of the South Australian Government's Child Protection Review in 2003³². The recommendations included the establishment of a register of persons who would be automatically deemed unsuitable to work with children.

5.2 NEW SOUTH WALES

New South Wales requires paid employees in "child related employment" (work that primarily involves direct unsupervised contact with children) to undertake a "Working With Children Check". This process is based upon the *Child Protection (Prohibited Employment) Act 1998 (NSW)* ("the Prohibited Employment Act") and the *Commission for Children and Young People Act 1998 (NSW)* ("the Commission's Act") ("the two Acts").

5.2.1 NSW Legislation

In broad terms, the Child Protection Act prohibits persons convicted of certain offences against children or serious sex offences against adults from engaging in direct, unsupervised "child-related employment" as defined in the legislation³³.

Screening is undertaken for preferred applicants for paid child-related work, members of religious organisations and foster carers. As regards volunteers, only those in religious organisations and foster carers must be screened.

The NSW Commission for Children and Young People ("the NSW Commission") is responsible for the implementation of the two Acts, which together form the basis of the "Working With Children Check".

³² Layton, R., (2003) *Our Best Investment: A State Plan for Advancing and Protecting the Interests of Children*, Government of South Australia.

³³ *Commission for Children and Young People Act 1998 (NSW)*, section 33; *Child Protection (Prohibited Employment) Act 1998 (NSW)*, sections 3 and 4.

The two Acts used in NSW are currently being reviewed to ensure their effectiveness.

5.2.2 NSW Screening Process

All people working in, or seeking work in, paid and unpaid “child-related employment” must declare that they have not committed any offence that would prohibit them from working with children (the “Prohibited Employment Declaration”).

However only applicants for “primary child-related employment” must undergo a further “employment screening”³⁴. “Primary child-related employment” includes:

- ▶ Preferred applicants for paid “child-related employment” categories as defined in the Prohibited Employment Act;
- ▶ Ministers of religion and other members of religious organisations seeking direct unsupervised work with children; and
- ▶ Foster carers³⁵.

People who are related to the children they work with are exempt from “employment screening”.

“Employment screening” involves screening a person’s “relevant criminal record”, “relevant Apprehended Violence Orders” (broadly equivalent to Tasmania’s Restraining Orders) and any “relevant employment proceedings”³⁶.

A “relevant criminal record” includes charges and convictions for offences against children and serious sex offences against adults punishable by 12 months imprisonment or more and involves a National Criminal Record Check.

“Relevant employment proceedings” includes disciplinary proceedings against an employee by an employer or professional body in relation to:

- ▶ “Reportable conduct” defined as:
 - any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including pornography);
 - any assault ill-treatment or neglect of a child; and
 - any behaviour that causes psychological harm to a child;or

³⁴ *Commission for Children and Young People Act 1998 (NSW)*, section 34.

³⁵ *Ibid*, section 37.

³⁶ *Ibid*, sections 33 and 34.

- An act of violence by an employee committed in the course of employment and in the presence of a child, or there is some evidence it occurred, however the finding is inclusive³⁷.

An “Approved Screening Agency” then undertakes a “risk assessment” of the information. The outcome of this assessment is an indication of the level of risk a person poses to children, ranging from “no greater than average” to “high”. This level of risk is provided to the employer.

Screening is implemented by five Approved Screening Agencies appointed by the Minister for Youth. They are the NSW Commission, the NSW Department of Education and Training, the NSW Department of Health, the NSW Department of Tourism, Sport and Recreation, the Catholic Commission for Employment Relations.

Employers register with the Approved Screening Agency that regulates them or appropriately represents their industry. The NSW Commission deals with requests from employers not regulated or represented by other Approved Screening Agencies, such as NSW Department of Juvenile Justice, nanny services, theatre companies, entertainment agencies, churches and independent schools (except those screened by the Catholic Commission for Employment Relations).

The NSW Commission also plays a central role in maintaining and supplying screening information to other Approved Screening Agencies. The NSW Commission holds information regarding Apprehended Violence Orders and employment proceedings and is responsible for applying to Crim Trac for National criminal history information.

An employer cannot employ anyone who is expressly prohibited from child-related work under the Prohibited Employment Act³⁸. This broadly includes persons found guilty of child-related offences and serious sex offence against adults. However, employers have discretion as to whether to employ other individuals irrespective of the outcome of the risk assessment.

5.2.3 NSW Additional strategies

The NSW Commission emphasise that screening should be complimented by other strategies to protect children from harm. The NSW Commission plays an important role in providing community education on creating child-safe environments and has produced a range of resources to assist organisations and parents on topics such as reducing risk, managing complaints, supporting staff, children’s participation, choosing the “right

³⁷ Ibid, section 3; NSW Commission for Children and Young People (2004) *Working with Children Check Guidelines*, New South Wales, 5.

³⁸ *Child Protection (Prohibited Employment) Act 1998 (NSW)*, section 5.

people” to create safe environments for children and supporting staff in their roles³⁹.

The Commission’s Act also requires all employers, not just those in child-related fields, to notify the NSW Commission of any person against whom “relevant employment proceedings” have been completed by the employer since July 1995⁴⁰. This includes instances where an employee has resigned before the proceedings are concluded. The employer must then provide an Approved Screening Agency with details of the employment proceedings if requested to do so to inform the Agency’s risk assessment of an individual.

Employers must also notify the NSW Commission if they decide not employ a person primarily based on their risk assessment⁴¹.

5.2.4 NSW Ombudsman

The *Ombudsman’s Act 1974* provides the NSW Ombudsman with specific functions relating to child protection. Broadly, the Ombudsman deals with complaints about the manner in which designated Government and some non-Government agencies (including schools):

- ▶ Investigate allegations of child abuse against their employees; and
- ▶ Handle knowledge that an employee has been convicted of an offence involving child abuse⁴².

The Head of Agency is required to set up systems for providing safe environments for children in the Agency’s care, for requiring all employees to inform the Head of Agency of any allegation or conviction of a child abuse nature against an employee and for responding to any such allegation or conviction.

The Head of Agency must assess the allegation or conviction and notify the Ombudsman of all “reportable allegations” and “reportable convictions” within 30 days⁴³. The Ombudsman will scrutinise the process used to respond to the matter and intervene if this process risks compromising the safety of a child⁴⁴.

³⁹ For further information visit www.kids.nsw.gov.au

⁴⁰ *Commission for Children and Young People Act (NSW) 1998*, section 39; NSW Commission for Children and Young People (2004) *Working with Children Check Guidelines*, New South Wales, 25.

⁴¹ *Commission for Children and Young People Act 1998 (NSW)*, section 40.

⁴² NSW Ombudsman (2003) *General Information: Making A Complaint to the Ombudsman - Making A Child Related Complaint*, Information Brochure, Sydney.

⁴³ *Ombudsman Act 1974 (NSW)*, sections 25A and 25C.

⁴⁴ NSW Ombudsman, *Child Protection Fact Sheet No. 5 – Child Protection: Responsibilities of Heads of Agencies*, August 2004 www.ombo.nsw.gov.au

The Ombudsman has also developed a number of resources for employers on all aspects of its child protection jurisdiction and has produced comprehensive guidelines on responding to allegations against employees⁴⁵. These guidelines provide detailed information on child protection in the work place, including reporting obligations for the Head of Agency.

Aside from receiving individual complaints, the Ombudsman conducts random audits of Agencies and provides advice and assistance on how they can improve their child protection policies and practices.

5.3 QUEENSLAND

People who seek paid or voluntary to work in certain categories of child-related employment in QLD must have a “suitability notice” (commonly called a “blue card”). Like NSW, the process is called a “Working With Children Check” and is managed by the QLD Commission for Children and Young People and Child Guardian (“the QLD Commission”). However unlike NSW, a risk assessment is not provided, rather a “blue card” is either issued or not issued to the individual.

5.3.1 QLD Legislation

Queensland’s *Commission for Children and Young People and Child Guardian Act 2000* (“the Act”) requires employees and volunteers to undergo screening if, within a 12 month period, they undertake work with children:

- ▶ At least once a week over the course of one month; or
- ▶ At least once a fortnight over the course of two months; or
- ▶ At least once a month over the course of six months.⁴⁶

However a number of “Government entities” and “Government service providers”, as well as professionals who are registered with a professional registration bodies (i.e. teachers, psychologists and doctors), are exempt by the Act⁴⁷.

The terms “regulated employment” and “regulated business” are used to categorise the types of child-related employment governed by the Act. Broadly, the Act covers new paid employees or volunteers working with children in:

- ▶ Residential facilities;
- ▶ Schools boarding facilities;
- ▶ Schools (employees other than teachers and parents);
- ▶ Child care;

⁴⁵ For more information visit www.ombo.nsw.gov.au

⁴⁶ *Commission for Children and Young People and Child Guardian Act 2000 (QLD)*, section 105.

⁴⁷ *Ibid*, Schedule 1 and Schedule 4.

- ↳ Churches clubs and associations involving children;
- ↳ Counselling and support services;
- ↳ Private teaching, coaching or tutoring; and
- ↳ Education programs conducted outside of schools.

It also includes self employed people in businesses such as counselling and support services, private teaching, coaching and tutoring, child care and education programs conducted outside of schools.

Under the Act, there are some groups who do not require screening. These include:

- ↳ Volunteers who are under 18 years of age;
- ↳ Parents who volunteer at their child’s school; and
- ↳ Parents who volunteer to provide services or activities through a church, club or association if their child is involved in the same or a similar activity.

People who were employed before the Act commenced do not have to be screened. However if an employer reasonably suspects they have a criminal history that may make them unsuitable to work with children, they may apply to the QLD Commission to have the person screened. Additionally, proposed changes to the system will require screening of non-teaching staff employed before 1 May 2001⁴⁸.

5.3.2 QLD Screening Process

The “Working With Children Check” is managed by the QLD Commission. A person must be screened when they start a new job, set up a business or volunteer to work with children and young people.

An employer verifies the identity of an individual and then takes an application for screening to the QLD Commission. The Commissioner for Children and Young People (“the QLD Commissioner”) assesses a person’s suitability based on their National criminal history (including any convictions or charges for offences) and information provided by the QLD Board of Teacher Registration⁴⁹. The QLD Commissioner may also request additional information on a person’s criminal history from the Police Commissioner⁵⁰.

⁴⁸ 2003-04 Annual Report - Commission for Children and Young People, Queensland Commission for Children and Young People and Child Guardian, Queensland, 41. www.childcomm.qld.gov.au

⁴⁹ Commission for Children and Young People and Child Guardian Act 2000 (QLD), section 102. The QLD Board of Teacher Registration can provide “teacher registration information” to the Commissioner under the Education (Teacher Registration) Act 1988 (QLD) section 71B. This includes information regarding the Board’s decision to suspend or cancel a teacher’s registration.

⁵⁰ Ibid, section 122.

As a result of this process, a person will be provided with a “suitability notice” which will be either “positive” or “negative”. A “negative” notice will prevent an individual from working with children.

If there is teacher registration information about a person and they have been charged for offences, but not convicted, a notice must be “positive” (i.e. a “blue card” issued) unless it would not be in the best interests of children to issue such a notice. A notice must be “negative” if a “serious offence” has been committed, unless it is an exceptional case that would not harm the best interest of children⁵¹. A list of all “serious offences” is contained in Attachment 2. A person must not employ, or continue to employ a person if they do not have a current “positive notice” (or “blue card”)⁵².

A person who has received a “negative notice” may appeal the decision to the Children Services Tribunal.

A person must produce a “positive notice” (or “blue card”) to work with children and young people. A “positive notice” is valid for two years and a “negative notice” operates indefinitely unless an appeal is successful.

The Act also requires an employee to disclose any changes in their criminal history to their employer. After becoming aware of any such changes, the employer must not continue to employ the person without applying for a suitability notice, or further suitability notice, from the QLD Commission⁵³.

Individuals who were involved in child related work before the “Working With Children Check” was introduced in QLD were not required to be screened when the legislation commenced. However, an employer could screen a worker if they knew or reasonably suspected the person may be unsuitable to work with children⁵⁴.

5.3.3 QLD Additional Strategies

The QLD Commission has produced a “Working With Children Kit”, which provides advice on creating environments that are friendly to children and young people. The QLD Commission also offers “Working With Children Training”. This covers issues such as recruitment and selection strategies, staff management, delivering activities in safe environments and developing policies to create an environment friendly to children and young people, risk assessment skills and responding to disclosures of harm.⁵⁵

⁵¹ Ibid, section 102 and Schedule 2.

⁵² Ibid, section 107.

⁵³ Ibid, section 112.

⁵⁴ Ibid, section 128.

⁵⁵ For further information about the Working With Children Kit and the Working With Children Training see <http://www.childcomm.qld.gov.au/about/training.html>

To ensure screening information is current, the Act also provides for the Police Commissioner to notify the QLD Commissioner of changes to a person's criminal history if the Police Commissioner reasonably suspects they are the holder of, or an applicant for, a "blue card"⁵⁶.

The QLD Commission reviewed its screening process in 2003-04. As a result, proposed changes for the coming year include broadening the range of information that can be taken into account in the screening process to investigative information that does not result in a charge and information from professional registration bodies regarding individuals who have been professionally de-registered over an allegation of harm against a child⁵⁷. The review also proposed screening for home-stay providers, staff of hostels for rural children, providers of recreational activities and clergy employed prior to 1 May 2001.⁵⁸

6. STRENGTHS AND LIMITATIONS – NSW & QLD

6.1 NEW SOUTH WALES

The "Working With Children Check" adopted by NSW has many advantages. The screening process is based on employment and National criminal history information, providing an informed risk assessment. Charges as well as convictions are considered and Apprehended Violence Orders (which are not contained on a person's National Criminal Record Check) are also screened. Although the legislation does not stipulate the considerations to be taken into account when conducting a risk assessment, the "Working With Children Check Guidelines" produced by the NSW Commission provide a number of factors to be taken into account including the nature of the event and the period of time since relevant offences were committed⁵⁹.

Using a central agency (the NSW Commission) as a repository of screening information ensures consistency in screening practices. It also provides a point of reference and guidance for employers and employees who may be confused about their responsibilities in the screening process. However the majority of the large volume of work associated with screening is delegated to "Approved Screening Agencies". This approach also allows Government Departments to utilise their own Human Resources service while smaller agencies with limited means can approach the NSW Commission to undertake the "Working With Children Check" on their behalf.

Furthermore, using a central agency makes it possible for information to be gathered about individuals who have been subject to relevant

⁵⁶ Ibid, section 122A.

⁵⁷ 2003-04 Annual Report – Commission for Children and Young People, 41.

⁵⁸ Ibid, 40.

⁵⁹ NSW Commission for Children and Young People, *Working With Children Check Guidelines*, 27.

employment proceedings or who have previously been denied employment because of an adverse risk assessment.

The role of the Ombudsman in monitoring complaints procedures and auditing organisations is an important component of the child-safety screening process.

Further strengths of the NSW “Working With Children Check” are that it applies to Government and non-Government employees and existing employees were also required to declare they were not prohibited from working with children when the two Acts commenced. The “Working With Children Check” is also provided at no cost to the employee or employer. The two Acts allow the Commissioner of Police to provide information to screening agencies relating to a person’s criminal record or Apprehended Violence Orders⁶⁰ and create offences for making false disclosures⁶¹ and for misusing and dishonestly obtaining screening information⁶².

However the NSW approach is complicated because it involves understanding the operation of two different Acts. Additionally, the NSW “Working With Children Check” does not currently extend to volunteers. The criminal information assessed during screening focuses upon charges and offences against children or sexual offences against adults that were punishable by 12 months imprisonment or more and does not include other categories of serious offences that may be relevant to a person’s ability to work with children⁶³. Self-employed people are also not subject to background checking, as there is no employer to request the information.

6.2 QUEENSLAND

The QLD approach is simple, readily understood and allows for a person to transfer their positive screening outcome from one organisation to another system. The term “blue card” is widely known by organisations in QLD and across Australia. It is also well known and accepted in the community.

Similar to NSW, screening in QLD examines National criminal record information regarding charges as well as convictions, although a broader range of offences are provided for that prohibit a person from working with children. This includes “serious offences” against adults including threats, bestiality, acts intended to cause grievous bodily harm, kidnapping, incest, rape, aggravated supply of dangerous drugs and producing dangerous drugs. The QLD Commissioner is required to have regard to a number of matters relating to the offence by the person, including whether it is a conviction or charge, when the offence was alleged to be committed, the nature of the offence and anything else the QLD Commissioner

⁶⁰ *Commission for Children and Young People Act 1998 (NSW)*, section 38.

⁶¹ *Child Protection (Prohibited Employment) Act 1998 (NSW)*, section 7(6).

⁶² *Commission for Children and Young People Act 1998 (NSW)*, section 42.

⁶³ *Commission for Children and Young People Act 1998 (NSW)*, sections 33 and 34.

“reasonably considers to be relevant”⁶⁴. However, the QLD Commissioner has discretion to issue a “blue card” irrespective of a person’s criminal record if he or she is satisfied that, in all the circumstances, it would be in the best interests of children for the person to be granted a “blue card”⁶⁵.

A “blue card” is only valid for two years (unless cancelled) so that the card more accurately reflects the status of the person’s suitability. Additionally, an employee must immediately notify their employer if their criminal history changes.

QLD also requires most volunteers to be screened, with the general exception of parents involved in activities at their children’s schools and volunteers aged under 18 years⁶⁶. Providing screening through the QLD Commission means that the process is less resource intensive for small organisations. It also ensures that a minimal number of people have access to screening information and that screening procedures are consistent for non-government entities. The QLD Commissioner must also issue guidelines regarding the use of screening information. The stated purpose of these guidelines is to ensure natural justice, the use of relevant information only and consistency in decision making⁶⁷.

Other important aspects of the QLD “Working With Children Check” include the power of the QLD Commissioner to obtain further information from the Police Commissioner regarding a person’s criminal record and the inclusion of offences for providing false or misleading information⁶⁸. Additionally, the legislation states that consideration must be given to certain factors when making a decision to issue a “Blue card”, such as when the offence was committed or is alleged to have been committed and the nature of the offence and its relevance to child-related employment⁶⁹.

In QLD, an individual also has a right to appeal a decision made by the QLD Commissioner to the Children Services Tribunal.

However QLD legislation does not apply to all Government entities or Government service providers. Accordingly, Government Departments and Government service providers manage and maintain their own procedures.

Importantly, QLD legislation did not require all existing employees and volunteers to be screened when the legislation was introduced. The QLD “Working With Children Check” is also limited to information about a person’s criminal history and teacher registration information and does not make use of other relevant information such as employment history or

⁶⁴ *Commission for Children and Young People and Child Guardian Act 2000 (QLD)*, section 102(5).

⁶⁵ *Ibid*, section 102(4).

⁶⁶ *Ibid*, section 97 and Schedule 1.

⁶⁷ *Ibid*, section 125.

⁶⁸ *Ibid*, section 115.

⁶⁹ *Commission for Children and Young People and Child Guardian Act 2000 (QLD)*, section 102(5).

Restraining Orders where violence has been committed against or in the presence of children.

A possible outcome of the QLD screening process is that it creates a false impression for both the employer and members of the public that the possession of a “blue card” ensures the safety of children and organisations are relieved of the responsibility to implement more holistic child safe practices. This issue may be partly resolved as the QLD Commission is continuing to review and improve its screening procedures in 2004-05 (please see paragraph 5.3 above).

The fee for obtaining a “Working With Children Check” in QLD is also quite considerable. Although it is free for volunteers, paid employees and self-employed people are required to pay \$40.00.

In addition to legislation, both QLD and NSW have strategies for creating child-safe environments and employers are not encouraged to determine a person’s suitability to work with children based on screening alone. Both States have developed information and resources on creating child-safe and child friendly environments for use by organisations and the general public.

6.3 GENERAL OBSERVATIONS

Each State also has provisions for notifying an applicant of adverse information obtained during screening or of the likelihood of an adverse decision being made regarding to their suitability to work with children⁷⁰. However a limitation of both systems is that they do not provide for situations where an employer has received a child-related complaint against a person and that person leaves before any disciplinary proceedings are initiated. Following a complaint, a person could depart their employment with no adverse consequences and present for child-related work at a different organisation.

NSW goes part of the way by requiring all employers to notify the NSW Ombudsman of “relevant employment proceedings”, even if an alleged offender resigned from their employment before the proceedings were completed. However this system still requires formal disciplinary proceedings to have been initiated before making such a notification. It does not deal with the initial stages of a complaint, where there is still opportunity for an alleged offender to leave before an employer has decided that further investigations are warranted.

The NSW Ombudsman highlights the importance of agencies investigating matters promptly and recommends that if an employer has concerns for

⁷⁰ *Commission for Children and Young People and Child Guardian Act 2000 (QLD)*, section 103; *Commissioner for Children and Young People Act 1998 (NSW)*, section 35.

the safety of children in an agency where a former employee is now working, this should be discussed with the NSW Commission⁷¹.

7. PROPOSAL FOR TASMANIA

Drawing on the current screening practices in Tasmania and the two principle models of screening in Australia (NSW and QLD), it is possible to design a system for screening in Tasmania that will build upon the practices already being implemented by many organisations. The proposed features of this system are listed below.

The model proposed in this paper requires legislation with consequential amendments to other relevant legislation. By introducing legislation for Government and non-Government organisations, Tasmania could improve consistency in screening by providing universal, accessible and transparent screening processes.

Legislation should clearly establish the components of the screening process, including who must be subject to screening, what information should be used for screening, whether existing employees and volunteers should be screened and how screening information should be updated. Importantly, it should also work to maintain the privacy of individuals and ensure that they are afforded natural justice during the screening process.

Furthermore, the legislation should operate in combination with broader strategies for creating child-safe environments. Legislation should not be viewed as relinquishing organisations of their responsibility to implement these strategies, but should work to support and encourage their development.

It is proposed that the legislation apply to adults who work with children in either a paid or un-paid capacity, i.e. persons aged 18 years and over. It is possible that the implementation of the legislation could be staged with regard to children at a later time. For example, implementation could take place for children and young people aged 16 and 17 years, before extending to those aged 14 and 15 years. It is difficult to envisage that there would be children under 14 years of age employed or volunteering to work with children un-supervised.

With these matters in mind, it is proposed that the legislation include the following key components.

7.1 COMPULSORY SCREENING FOR CHILD-RELATED WORK

It is proposed that all prospective and existing paid employees, volunteers and self-employed persons in “child-related employment” be screened using the following information:

⁷¹ New South Wales Ombudsman (2004), *Child protection in the workplace: Responding to allegations against employees*, Sydney, 100.

- ✦ National criminal history information, including convictions and charges;
- ✦ Restraint Orders against the person;
- ✦ Disciplinary action against the person in previous employment, including information regarding professional de-registration;
- ✦ Child-related complaints against the person in previous employment; and
- ✦ Information provided by the Commissioner of Police in relation to any criminal record of a person or any Restraint Orders in respect of a person.

7.2 IDENTITY

To ensure that screening information is current and accurate, it is essential that a person's current and previous identity is made known. It is proposed:

- ✦ That all applicants for "child-related employment" be required to verify their identity as part of the screening process.
- ✦ That all employers be required to ensure the identity of persons seeking to work with children.

This includes verifying past and present names and addresses both within Australia and overseas.

Any screening system will fail unless the identity of the person seeking to work with children is scrutinised and verified.

7.3 TERMINOLOGY

It is proposed that the screening process be called a "Working With Children Check".

The outcome of this process will be a positive or negative "Working With Children Check Notice". This could include the issuing of a card to that effect called a "Tascard". A positive Working With Children Check Notice or "Tascard" will indicate that the person has successfully been approved for child-related employment or volunteer work.

7.4 DEFINITION OF CHILD-RELATED EMPLOYMENT

It is important that organisations, employers, employees and volunteers are clear about the definition of child-related employment to ensure screening is only undertaken where necessary and appropriate.

It is proposed that the definition of “child-related” employment apply to paid and voluntary work in Government and non-Government organisations.

Further, that the definition of “child-related” employment and volunteer work include, but not be limited to, work in the following areas:

- ✦ a child care service;
- ✦ a pre-school or kindergarten;
- ✦ an educational institution for children;
- ✦ a school crossing service;
- ✦ a coaching or private tuition service;
- ✦ 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;
- ✦ a person responsible for the care and protection of a child under the *Children, Young Persons and Their Families Act 1997*;
- ✦ foster care, or any other State funded out of home care provider;
- ✦ a detention centre established under section 123 of the *Youth Justice Act 1997*;
- ✦ a watch-house as defined under section 4 of the *Youth Justice Act 1997*;
- ✦ the provision of child health services;
- ✦ a ward of a public or private hospital in which children are ordinarily patients;
- ✦ a counselling or other support service of which children are ordinarily clients;
- ✦ any religious organisation;
- ✦ 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;

- ✦ a baby sitting or child minding service, but not including an informal arrangement entered into for private or domestic purposes;
- ✦ an overnight camp, regardless of the type of accommodation or how many children are involved;
- ✦ a transport service specifically for children;
- ✦ an entertainment venue where the clientele is primarily children;
- ✦ a refuge used by children;
- ✦ a safety house scheme organised by the Safety House Association of Tasmania Inc.;
- ✦ a guided tour in which children participate;
- ✦ the provision of legal representation where children are ordinarily clients;
- ✦ a children's entertainment or party service;
- ✦ any other work that may be prescribed by regulations; or
- ✦ work undertaken pursuant to a power or delegated power in screening legislation.

7.5 CATEGORIES OF PROHIBITED EMPLOYMENT

It is proposed that there be certain serious criminal convictions that prohibit a person from gaining employment with children, classified as:

- ✦ “Category 1” offences - these offences will include charges or convictions for the most serious offences against both adults and children such as murder and rape.

These offences will automatically prohibit a person from being approved to undertake child-related employment or volunteer work.

- ✦ “Category 2” offences - these offences will include charges or convictions for serious offences against adults and children, such as sexual assault of a child, violence committed against or in the presence of a child and bestiality.

If it is revealed during screening that a person has Category 2 offences, the screening body responsible for screening that person will refer the matter to the Central Screening Agency. Only the Central Screening Agency will be able to provide a

positive or negative Working With Children Check Notice persons with Category 2 offences.

The legislation should contain matters to be taken into account by the Central Screening Agency (which is discussed in detail at paragraph 7.7) when determining whether to approve a person with Category 2 offences. This should include such matters as the age of the offender at the time of the offence, the length of time since the offence occurred, the nature and gravity of the offence, the circumstances of the offence and the relationship between the offender and the victim.

The Central Screening Agency may choose to provide a positive Working With Children Check Notice to a person with Category 2 offences upon conditions. For example, restricting the period for which a person is approved to be employed or volunteer and restricting the person from supervising children unaccompanied by another adult.

7.6 SCREENING RESPONSIBILITIES

The sensitive nature of screening information demands that screening be oversaw by a separate entity separate from the State public service. This information should be maintained by an independent agency that is credible, accountable and visible.

It is proposed that a Central Screening Agency be established.

The Central Screening Agency could be a stand-alone entity or located within:

- ▶ The Ombudsman; or
- ▶ The Commissioner for Children.

It is proposed the screening process be undertaken when a person is chosen as a successful applicant for child-related employment or volunteer work. The screening process will be undertaken by:

- ▶ A Central Screening Agency;
- ▶ Government Departments; and
- ▶ Approved NGOs.

It follows that Government Departments and NGOs should only have access to information in relation to the successful applicant they are screening.

To diminish the duplication of screening processes and the costs associated with gaining multiple police checks for employees, volunteers, Government agencies and NGOs, it is proposed that a positive Working

With Children Check Notice be transferable. This could be achieved with the issuing of a “Tascard”.

A positive Working With Children Notice gained through any one of the above bodies will provide evidence that the person has completed a satisfactory Working With Children Check and have been approved to undertake any child-related employment or volunteer work for the period specified in the approval.

7.7 CENTRAL SCREENING AGENCY

The Central Screening Agency will have the following functions:

- ✦ To oversight the implementation of screening legislation with regard to paid and unpaid employees in Government and non-Government organisations and self employed people;
- ✦ To monitor and audit screening practices used by Government Departments and approved NGOs;
- ✦ To ensure consistency in screening processes used by Government Departments and approved NGOs;
- ✦ To receive notifications from employers of any employee against whom a child-related complaint has been made and the outcome of any investigation or disciplinary proceeding;
- ✦ To receive notification from any professional registration body regarding any member against whom a child-related complaint has been made and the outcome of any investigation or disciplinary proceeding;
- ✦ To provide information to Government Departments and approved NGOs regarding disciplinary proceedings in previous employment and complaints (whether resolved or unresolved) against a person in previous employment. Employers retain responsibility for assessing this information;
- ✦ To receive referrals from Government Departments and approved NGOs regarding successful applicants who have been found to have Category 1 or Category 2 offences;
- ✦ To undertake the Working With Children Check for successful applicants child-related employment or volunteer work and existing staff who have Category 2 offences;
- ✦ To maintain a register of persons who are prohibited from undertaking child-related employment or volunteer work on the basis of Category 1 or Category 2 offences and to notify such persons of their inclusion on the register;

- ✦ To provide information upon request to Government Departments and approved NGOs as to whether a successful applicant for child-related employment or volunteer work or existing staff are included on the register of persons who are prohibited from undertaking child-related employment or volunteer work on the basis of Category 1 or Category 2 offences;
- ✦ To undertake the Working With Children Check for prospective and existing self-employed persons who undertake child-related employment;
- ✦ To issue Tascards to persons who provide the Central Screening Agency with a positive Working With Children Check Notice from their employer or organisation with whom the person is to be engaged in “child related employment” or as a volunteer⁷²;
- ✦ To issue Tascards to persons who are self-employed and who have received a positive Working With Children Check Notice from the Central Screening Agency;
- ✦ To issue Tascards to persons who have Category 2 offences and who have received a positive Working With Children Check Notice from the Central Screening Agency;
- ✦ To provide universal guidelines for the assessment, use and recording of screening information;
- ✦ To approve certain NGOs to undertake screening in a manner consistent with that used by the Central Screening Agency and Government Departments; and
- ✦ To receive complaints regarding screening processes.

Additionally, that the Central Screening Agency has the following functions with regard to child-safe environments:

- ✦ To oversight the development and implementation of child-safe environments by Government and non-Government organisations and self employed people;

⁷² It is not intended for the Central Screening Agency to undertake any additional screening of a person who has been issued with a positive Working With Children Check Notice from their employer. The purpose of the Central Screening Agency issuing Tascards is to reduce the costs to small organisations as well as minimising fraud and the increased possibility of counterfeit Tascards being produced if all Government Departments and Approved NGOs could physically issue Tascards.

- ▶ To monitor, audit and keep record of child-safe environments in Government Departments, NGOs and self employed people, including the management and investigation of child-related complaints; and
- ▶ To provide information and assistance to employers, organisations and members of the public on creating child-safe environments.

7.8 GOVERNMENT DEPARTMENTS

That Government Departments continue to undertake screening of persons who work in child-related employment within their Department in accordance with the current practice of obtaining approval for screening from the State Service Commissioner.

That Government Departments undertake screening in a manner consistent with the screening procedures used by the Central Screening Agency.

In addition, that Government Departments comply with the following:

- ▶ That each Head of Agency be required to give consideration to each position within their agency to determine whether they are child related. If a position is child-related, they will be required to make an application to the State Service Commissioner for screening approval;
- ▶ That each Head of Agency be required to inquire of the Central Screening Agency for information regarding disciplinary proceedings with regard to previous employment and complaints (whether resolved or unresolved) against a person in previous paid and un-paid employment;
- ▶ That each Head of Agency be required to inform the Central Screening Agency of successful applicants for child-related employment or volunteer work who have Category 1 or Category 2 offences; and
- ▶ That each Head of Agency be required to make inquiries with the Central Screening Agency as to whether a successful applicant for child-related employment or volunteer work is listed on the register of persons who are prohibited from undertaking child-related employment or volunteer work on the basis of Category 1 or Category 2 offences.

7.9 PROCEDURES FOR EXISTING AND NEW EMPLOYEES

It is proposed that screening legislation operate retrospectively. It will require all existing and future successful applicants for child-related

employment and volunteers, as well as existing and prospective self-employed persons to be screened.

7.10 SELF-EMPLOYED PEOPLE

That the Central Screening Agency have responsibility to screen and approve self employed person who work with children.

7.11 OFFENCES

To ensure compliance with the Working With Children Check requirements, it is proposed that the following offences be included in the legislation:

- ▶ That it will be an offence to employ a person for child-related employment or volunteer work without a positive Working With Children Check Notice;
- ▶ That it will be an offence to employ a person for child-related employment or volunteer work if they are included on the register of persons prohibited from undertaking child-related work on the basis of Category 1 or Category 2 offences maintained by the Central Screening Agency;
- ▶ That it will be an offence for self-employed persons to undertake child-related employment without a positive Working With Children Check Notice from the Central Screening Agency;
- ▶ That it will be an offence to provide false or misleading information for screening purposes;
- ▶ That it will be an offence to disclose or use any information obtained during screening other than for the purposes prescribed by the legislation; and
- ▶ That it will be an offence to produce a counterfeit Tascard or provide a counterfeit Tascard to an employer or otherwise tamper or amend a Tascard.

7.12 INFORMATION GATHERING AND PRIVACY

It is proposed that the legislation contain appropriate provisions to restrict the use of the information gathered for screening purposes only and to maintain the privacy of individuals concerned.

7.13 COMPLAINTS AND DISCIPLINARY PROCEEDINGS IN PREVIOUS EMPLOYMENT

A feature of the proposal is a requirement that “child-related complaints” must be notified to the Central Screening Agency and that persons are

precluded from working in child-related employment where a “child-related complaint” has not been resolved.

A “child-related complaint” is a complaint that relates to abuse or misconduct by a person employed (paid or un-paid) against a child.

The following requirements are proposed for notifying and recording disciplinary proceedings and complaints in previous employment:

- ▶ All employers be required to inform the Central Screening Agency of the following:
 - Child-related complaints against an employee or volunteer when the complaint is received;
 - The investigation to be undertaken regarding the child-related complaint;
 - Whether the child-related complaint is resolved or unresolved;
 - Whether an employee or volunteer has left employment before a child-related complaint is resolved; and
 - Any disciplinary action taken against an existing employee or volunteer during their employment regarding a child-related complaint and the outcome.
- ▶ That the Central Screening Agency provide guidelines on these reporting obligations.
- ▶ That the Central Screening Agency inform an employer upon request of the existence or outcome of any child-related complaint and any related disciplinary proceedings against a successful applicant for child-related employment or volunteer work.
- ▶ That a person must resolve any outstanding child-related complaint from their previous employment or volunteer work before undertaking future child-related employment or volunteer work; and
- ▶ Where a prior child-related complaint remains unresolved, that an applicant for child-related employment or volunteer work be required to demonstrate to the Central Screening Agency, Government Department or approved NGO that they have taken all reasonable steps to resolve the outstanding child-related complaints made against them in previous employment or volunteer work.

7.14 APPEALS PROCESS

That existing employees, self-employed persons and successful applicants for child-related employment or volunteer work have the right to appeal their inclusion on the Central Screening Agency's register of persons prohibited from child-related employment or volunteer work to the Tasmanian Industrial Commission.

7.15 UPDATING SCREENING INFORMATION

Employees, volunteers and organisations all have a responsibility to ensure screening information is current and accurate. It is proposed:

- ▶ That approval to work with children be valid for a period of three years only. If a person is still involved in child-related employment or volunteer work at the expiration of three years, a review of their approval will be required. Persons who are no longer employed in paid or unpaid child-related work will not be required to seek a review, as their suitability will be assessed again when and if they apply for child-related employment.
- ▶ A review of approval is to be undertaken by the Central Screening Agency, Government Department or approved NGO responsible for screening employees and volunteers in the organisation at which the person works;
- ▶ That all persons who undergo screening for child-related employment or volunteer work be required to inform their employer of any changes in their criminal history;
- ▶ That employers and self-employed persons be required to inform the Central Screening Agency, Government Department or approved NGO responsible for screening of any changes in their own, an employee or a volunteer's criminal history; and
- ▶ That all criminal records obtained for the purpose of screening for child-related employment be "flagged" with Tasmania Police and that Tasmania Police alert the Central Screening Agency, Government Department or approved NGO if a person is charged or convicted of any future offences in Tasmania.

7.16 COSTS

It is presumed that Government Departments would continue to fund the screening of their employees and volunteers.

Currently, police checks obtained by NGOs are paid for by the prospective employee or volunteer.

A significant part of the cost of compliance with the proposed screening process is the fee for obtaining a National Police Record. The current fee is \$45.00 for paid employees and \$5.00 for volunteers.

At the very least, small NGOs will require assistance from the Government to develop and implement screening policies and procedures for prospective employees and volunteers.

Additional funding will also be required by the Central Screening Agency.

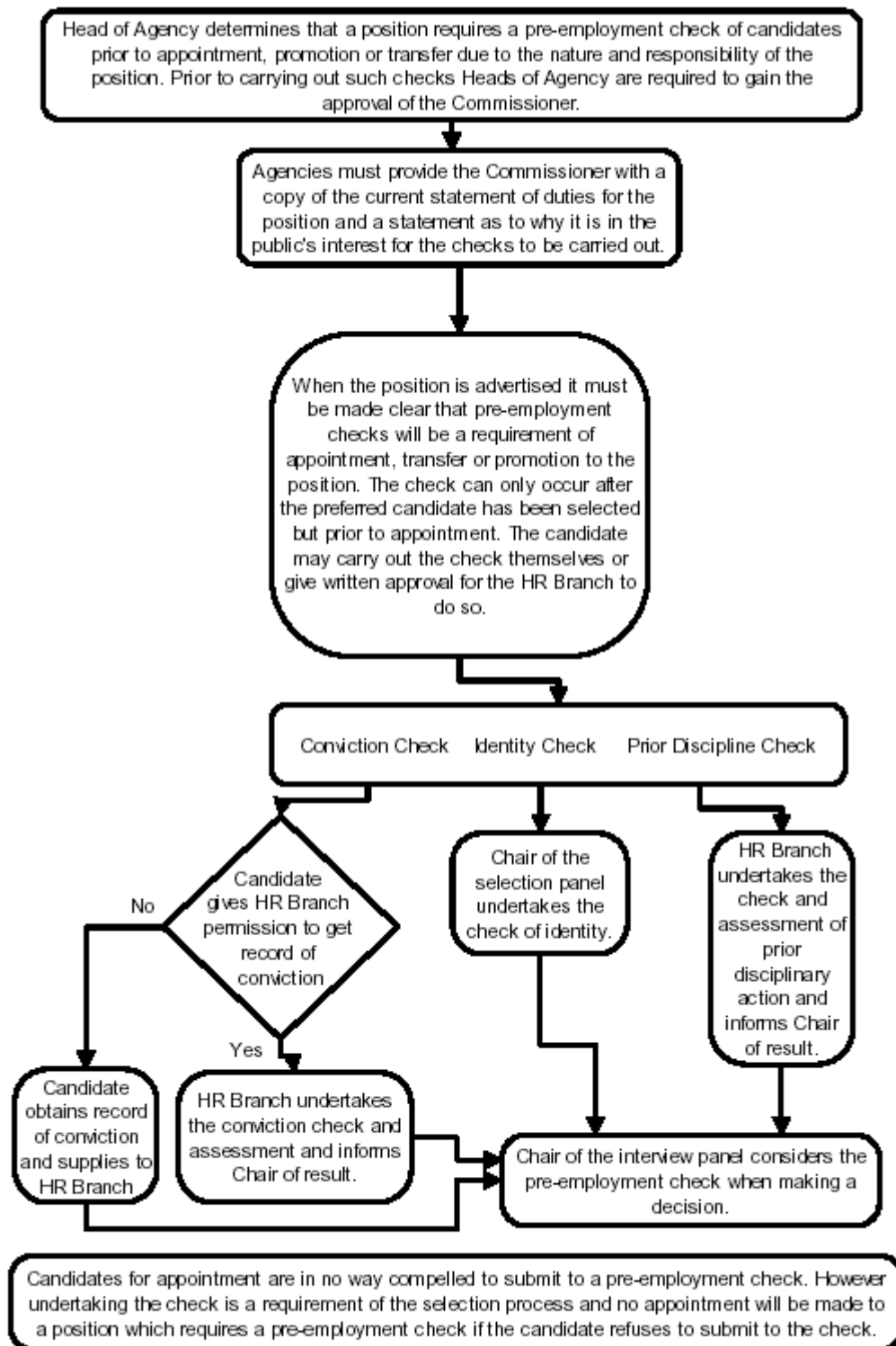
Whilst it is beyond the scope of this consultation paper to cost new screening procedures, the proposal put forward in this paper will undoubtedly cost less than the models of screening adopted in NSW and QLD. This is primarily because this proposal seeks to utilise and build upon existing screening arrangements in Tasmania. Nevertheless the proposed screening arrangements will provide a more comprehensive protection for children, especially since it goes well beyond utilising criminal records.

Clearly the implementation of any model will take time to implement, especially for small, non-Government organisations. These organisations will no doubt require increased assistance to meet screening requirements.

8. CONCLUSION

Tasmania and Tasmanian children in particular need comprehensive, effective and readily understood processes for the screening of persons who are working with children or who are seeking work with children, either in a paid-or volunteer capacity. Whilst the proposal in this paper seeks to build on and enhance existing processes, undoubtedly additional Government funding will be required to ensure that the machinery exists for the implementation and operation of the proposed system. Some Government Departments and NGOs are likely to have few difficulties in complying with the proposal but others will need assistance and a staged implementation should be considered. However excessive delay in the implementation of a comprehensive system will render children vulnerable to persons who prey upon them.

David K Fanning
Commissioner for Children
6 January 2005



⁷³ State Service Commissioner, Commissioner's Direction No. 10/2001 *Pre-Employment Checks*, Issued 1 May 2001 www.osscc.tas.gov.au

ATTACHMENT 2

Queensland Working With Children Check – Complete list of all “serious offences”⁷⁴

| ALL SERIOUS OFFENCES | |
|-------------------------------|--|
| CRIMINAL CODE OFFENCES | |
| s.363A | Abduction of child under 16 |
| s.216 | Abuse of intellectually impaired persons |
| s.307 | Accessory after the fact to murder |
| s.317 | Acts intended to cause grievous bodily harm and other malicious acts |
| s.311 | Aiding suicide |
| s.339 | Assault occasioning bodily harm |
| s.351 | Assault with intent to commit rape |
| s.350 | Attempt to commit rape |
| s.306 | Attempt to murder |
| s.412 | Attempted robbery |
| s.209 | Attempted sodomy |
| s.321 | Attempting to injure by explosive or noxious substance |
| s.416 | Attempts at extortion by threats |
| s.211 | Bestiality |
| s.321A | Bomb hoaxes |
| s.419(3)(b) | Burglary with a circumstance of aggravation, that is, with violence, or while armed, or in company, or |

⁷⁴ Queensland Commission for Children and Young People and Child Guardian (2004) *About the Blue Card - Decision Making Process* available at <http://www.childcomm.qld.gov.au/employment/bluecard/decisions.html#3>

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| | with damage |
| s.215 | Carnal knowledge with or of children under 16 |
| s.317A | Carrying or sending dangerous goods in a vehicle |
| s.363 | Child stealing |
| s.314 | Concealing birth of children |
| s.221 | Conspiracy to defile |
| s.309 | Conspiring to murder |
| s.238 | Contamination of goods |
| s.364 | Cruelty to children under 16 |
| s.328A | Dangerous operation of a vehicle |
| s.240 | Dealing in contaminated goods |
| s.415 | Demanding property, benefit or performance of services with threats |
| s.355 | Deprivation of liberty |
| s.315 | Disabling in order to commit an indictable offence |
| s.326 | Endangering life of children by exposure |
| s.319A | Endangering safety of persons travelling by aircraft |
| s.421(2) | Entering premises and committing indictable offences |
| s.142 | Escape by persons in lawful custody |
| s.324 | Failure to supply necessities |
| s.320 | Grievous bodily harm |
| s.239 | Hoax contamination of goods |
| s.222 | Incest |
| s.210 | Indecent treatment of children under 16 |
| s.319 | Intentionally endangering safety of persons travelling by railway |

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| s.354 | Kidnapping |
| s.354A | Kidnapping for ransom |
| s.313 | Killing an unborn child |
| s.229B | Maintaining a sexual relationship with a child |
| s.322 | Maliciously administering poison with intent to harm |
| ss.303, 310 | Manslaughter |
| s.228 | Obscene publications and exhibitions |
| s.318 | Obstructing rescue or escape from unsafe premises |
| s.213 | Owner etc. permitting abuse of children on premises |
| s.417 | Procuring execution of deeds etc. by threats |
| s.218 | Procuring sexual acts by coercion etc. |
| s.217 | Procuring young person etc. for carnal knowledge |
| s.63 | Punishment of riot |
| s.62 | Punishment of unlawful assembly |
| s.359E | Punishment of unlawful stalking |
| s.349 | Rape |
| s.411(1), (2) | Robbery |
| s.340 | Serious assault |
| s.327 | Setting mantraps |
| s.352 | Sexual assaults |
| s.316 | Stupefying in order to commit an indictable offence |
| s.219 | Taking child for immoral purpose |
| s.417A | Taking control of aircraft |
| s.75 | Threatening violence |

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| s.359 | Threats |
| s.308 | Threats to murder in document |
| s.320A | Torture |
| s.300 | Unlawful homicide |
| s.208 | Unlawful sodomy |
| s.323 | Wounding and similar acts |

Drug Misuse Act 1986 Offences

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| s.6 | Aggravated supply of dangerous drugs (to minors, intellectually handicapped people, in schools, and in correctional institutions) |
| s.8 | Producing dangerous drugs (1st schedule drug in excess of 3rd schedule quantity) |
| s.5 | Trafficking in a dangerous drug |

Corrective Services Act 2000 Offences

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| s.94(a) | Preparing to escape from lawful custody |
| s.92(2) | Taking part in a riot or mutiny whilst in custody |