



Australian  
Human Rights  
Commission

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# Working With Children Check

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**AUSTRALIAN HUMAN RIGHTS COMMISSION  
RESPONSE TO THE ROYAL COMMISSION INTO  
INSTITUTIONAL RESPONSES TO CHILD SEXUAL  
ABUSE : ISSUE PAPER 1**

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## **1 Introduction**

1. The Australian Human Rights Commission makes this submission to the Royal Commission into Institutional Responses to Child Sexual Abuse in response to its call for submissions regarding the Working with Children Check (WWCC). The Commission welcomes the opportunity to provide comment on the issue of WWCCs.
2. The issue of child sexual abuse raises important children's rights issues. WWCCs combined with other complementary measures can serve to enhance the protection of children's rights. It is likely that the Royal Commission will make recommendations in relation to WWCCs as part of its systemic issues review.
3. The Commission's comments in this submission open with a consideration of the children's rights issues that are raised by child sexual assault. It then provides brief comments on issues that arise from questions 1,2,4,6,7,8,10 and 14 in Issues Paper 1, including:
  - The advantages of a national WWCC
  - Ongoing checking and duration of clearances
  - Definitions of child-related work
  - Exemptions
  - Records to be included in a WWCC
  - Creating and maintaining child-safe environments
  - Monitoring and evaluation.

## **2 Recommendations**

This submission contains two key recommendations:

- The introduction of a simplified and standardised national scheme for checking the suitability of people for child-focused work
- The introduction of statutory requirements for the implementation of child-safe practices and risk management mechanisms in child-service organisations.

### 3 Human rights issues raised in the context of child sexual assault

4. The issue of child sexual abuse raises important human rights issues. Human rights as they relate to children are articulated in the Convention on the Rights of the Child (CRC). Most relevant of these rights is the provision set out in article 34 that:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.

5. Article 34 should be read in conjunction with article 19 of the CRC, which provides that:

(1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

(2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

6. Furthermore, article 39 of the CRC provides for measures to ensure recovery and reintegration:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and the dignity of the child.

7. Other international human rights treaties ratified by Australia, such as the *Convention on the Elimination of all forms of Discrimination against Women*,<sup>1</sup> and also the *United Nations Declaration on the Rights of Indigenous Peoples* highlight the rights of women and children to have full protection and guarantees against all forms of violence.<sup>2</sup>

8. In particular, under international human rights law member States have an obligation of due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women and the girl child whether those actions are perpetrated by the State or private persons and to

provide access to just and effective remedies and specialised assistance to victims.<sup>3</sup>

9. Article 16 of the Convention on the Rights of Persons with Disabilities also emphasises the rights of persons with disabilities (including children) to be free from abuse; to be assisted with appropriate information to avoid, recognise and report incidents of abuse; and of governments to have in place effective independent monitoring to prevent the occurrence of abuse of persons with disabilities and measures to assist victims of abuse.
10. The Commission sees one of the outcomes of this Royal Commission as identifying specific changes required to ensure the protection of children's rights and improve safeguards for children. The Commission sees a key element of this as the movement towards a national scheme for WWCCs combined with measures to facilitate child-safe organisations. The Commission believes that a national checking system or scheme cannot exist as a standalone measure but rather as complementing a wider suite of legislative and educational reforms which support the development and promotion of child-safe environments.

#### **4 A National Working With Children Check**

11. The Commission believes that the most effective way to ensure consistency and effectiveness would be to introduce a simplified and standardised national scheme for checking the suitability of people for child-focused work.
12. The movement towards a nationally consistent approach to WWCCs has already begun. The National Framework for Protecting Australia's Children (2009-2020), endorsed by the Council of Australian Governments (COAG), represents a collaborative approach by the Commonwealth, State, and Territory governments and the non-government sector to keep Australia's children and young people safe and well. Outcome 2.2 of the first plan of the framework proposed the development of 'a nationally consistent approach to working with children checks and child safe organisations across jurisdictions'.<sup>4</sup> Outcome 6 of the National Framework requires that 'child sexual abuse and exploitation is prevented and survivors receive adequate support'.<sup>5</sup> One of the priorities of this outcome is to 'implement a national framework for interjurisdictional exchange of criminal history for people working with children'.
13. A twelve month pilot for inter-jurisdictional exchange of criminal history information for people working with children was implemented in 2009 when state and territory police departments agreed to provide expanded criminal history across jurisdictions to screening agencies authorised by the Australian Government. Expanded records could only be used to make decisions relevant to the safety of children at periodic points, and operations were subject to confidentiality provisions.<sup>6</sup> This inter-jurisdictional information-sharing generated positive feedback from all governments, with state and territory screening agencies indicating that the availability of this extra information was helpful in making more thorough assessments, and enhanced confidence in the correctness of decisions.<sup>7</sup> This type of

information continues to be exchanged under the Memorandum of Understanding for a National Exchange of Criminal History for People Working with Children. However, one of the key limitations to this approach is that it occurs only at a point in time when check assessment decisions are being undertaken.

14. Community and Disability Services Ministers agreed, in December 2010, to work towards a nationally consistent approach to Working with Children Checks.
15. In March 2012, Ministers agreed that states and territories would introduce, by late 2012, national exemptions to assist volunteers and workers with a valid check in their home state or territory to participate in short-term activities (for a maximum period of 30 days) across state and territory borders without the need for additional checks.<sup>8</sup> While this is progress, short-term recognition of interstate checks do not provide a long-term solution, and focus on limited activities only. Moreover, it is understood that while in principle agreement has been reached, arrangements have not yet been fully implemented.
16. The 2011-2012 Report on the Framework emphasised that a unified and consistent national approach is the most comprehensive way to protect children, and that collaboration enhances effectiveness.<sup>9</sup> It endorsed the position paper *'Working Towards a Nationally Consistent Approach to Working with Children Checks'* which articulates the end goal as being to increase consistency of state systems and 'explore opportunity for mutual recognition across jurisdictions'.<sup>10</sup> The Second Action Plan (2012-2015) was endorsed by the Standing Council on Community and Disability Services on 17 August 2012. 'Increasing the effectiveness of working with childrens checks' was embedded in the Second Action Plan as a national priority with the aim to utilize the aforementioned position paper as a guide for future cross-jurisdictional action on working with children checks.<sup>11</sup>
17. While consistency and mutual recognition are a desirable focus, significant inconsistencies continue to exist between jurisdictions with the eight different systems operating in differing ways.<sup>12</sup> The different systems assess applicants with varying levels of stringency. Tasmania is still to put a statutory checking system in place.<sup>13</sup> There should be at least minimum requirements common to all jurisdictions.
18. However, rather than simply having a nationally consistent check, one national WWCC system would contribute significantly to achieving the following outcomes:
  - ensuring common aims and standards with respect to child protection are upheld across jurisdictions, and international obligations regarding the rights of the child are met;
  - ensuring that information is readily available across jurisdictions throughout the risk assessment process and on an ongoing basis, and that an offender who is barred in one state cannot then simply re-apply in another state with less rigorous or different screening procedures;

- enabling any change to the suitability status of a person to be promptly communicated and actioned across jurisdictions and a bar to be placed on the person nationally pending resolution;
- providing a more fluid system for movement of child-workers across jurisdictions, where checks and their significant costs will not be duplicated needlessly;
- providing the opportunity to access overseas records on an ongoing basis through the Australian Federal Police;
- enabling significant efficiencies in operating and compliance costs, and enhancing clarity for users across Australia.

Moving directly to a national scheme would also assist in avoiding the many years of protracted negotiation which will necessarily beset the establishment of a harmonised suite of check systems around the country.

19. Some of the features of an effective system include:

- carried out by a statutory agency independent of major child-related employer groups and covered by strict confidentiality and privacy provisions;
- ongoing 'live' access to all relevant records;
- portable clearances initiated by the person seeking to work with children and that travel with the individual across child related work and volunteering;
- targeting of work and volunteer categories and roles which involve frequent and personal contact with children;
- opportunities for streamlining where parallel regulatory arrangements are in place;
- use of criminal and other records that indicate a present and future risk to children based on a strong evidence base, for both automatic barring and assessments;
- assessments based on research and legal precedent and carried out by experts in child protection and related fields;
- capacity for appeals and reviews;
- targeted compliance programs, based on known risk factors and evidence;
- complementary child safe organisation programs and a criminological research program;

Moving to a national WWCC system may also provide a platform for developing a vulnerable persons check, covering workers and volunteers in aged care and disability systems.

## **5 Ongoing checking and duration of clearance**

20. The Commission recommends that, under a national system, checking is an ongoing process. The process of ongoing checking renders frequent renewal of clearance unnecessary; periods of clearance would thus be dependent on resourcing requirements.

A continuous feed of all state and commonwealth criminal databases should be readily available to the checking body, which should engage in daily monitoring of such records. Such a system has now been implemented in several states, noting that this is for state based offences only.<sup>14</sup> Point-in-time screening only at recruitment or application phase is inadequate to ensure ongoing protection, and may be counterproductive insofar as it induces complacency.

WWCCs should be subject to reversal at any time based on new evidence, with provision of services to children by the individual suspended in the interim.

Ongoing checking of international records is also a desirable feature of a national checking scheme.

## **6 Definitions of child-related work**

21. The Commission believes only people involved directly in child-related work should undergo a WWCC. It is noted that widespread, 'blanket' checking for those not directly involved with children's work diminishes the value of a check, places a strain on resources, may unfairly prevent people from work and volunteer opportunities where they would in fact pose no threat to children, and have proven to be impossible to effectively monitor. Yet this has become commonplace in some jurisdictions.<sup>15</sup>
22. Comprehensive and clear criteria regarding what constitutes 'child-related' work should be included in relevant legislation to preclude unnecessary applications. Responsibility for determining whether a person is in scope should be on both the employer and the employee (or self-employed person) with the agreement of the checking agency. Such a check should preclude those who incidentally come into contact with children in the context of employment activities which are not related to children. These employees may be subjected to a generalised police check where the employer feels it is appropriate.
23. In cases where the duty of care in respect of confidentiality and expert assessment of risk lies with the employer, one of two outcomes is likely: the person is allowed to work with children even though they have a record which may well pose a risk, or the employer chooses not to employ the person on the basis of the record, even though there is no real risk to children. Moreover, it should be noted that police checks provide access to a more limited set of records than available through WWCC systems. Therefore it is suggested that where employers access this information they are



encouraged to undertake training and development in the use and analysis of such information.

## **7 Exemptions**

24. The class of exemptions should not be static but rather guided by evidence-based research.
25. With respect to parent-volunteers, interaction between parents and their children or their children's peers is a part of 'normal life' and is encouraged by communities. Requiring WWCCs for such purposes may impinge on parents opportunities to support the development of their children.<sup>16</sup> However, there may be some 'higher risk' activities<sup>17</sup> that could either be included in WWCC systems or where police checks are required at the cost of the agency or individual (noting the issues identified at paragraph 21).
26. Those, over 18 years, living in homes where children in out-of-home care are placed should undergo WWCCs. This is due to the high vulnerability of children placed in these situations, and the duty of the state as a legal parent or guardian. However, it may be appropriate for emergency placements to be made before these checks have occurred. This is particularly pertinent to kinship placements.

## **8 Records to be included in a WWCC**

27. The relevance of a job applicant's or employee's criminal record should be assessed on a case-by-case basis against the inherent requirements of the work he or she would be required to do and the circumstances in which it has to be carried out. A criminal record should not generally be an absolute bar to employment of a person. While child safety is always a priority, some offences are not going to impact on a person's current capacity to work with children.<sup>18</sup>

Particular charges and convictions for offences against children should result in an automatic bar, based on both community standards and evidentiary risks to children. Examples would include murder of a child and sexual assault of a child where the penalty and/or description of the offence indicated the seriousness of the behaviour. This acts as a significant deterrent for people with such records from applying in the first place. Other offences, like carnal knowledge, while technically child sexual assault, should be able to be assessed as to whether there is indeed an ongoing risk to a child.

Records that should be available for consideration in an assessment for suitability include:

- a. Criminal convictions (spent, unspent, or quashed)

The consideration of spent and quashed charges raises issues of equity.<sup>19</sup> However, the Commonwealth Attorney General's Department has noted that the fact that a person's conviction has been pardoned or quashed does not necessarily make the facts and circumstances of that person's

conduct irrelevant to an assessment of the risk that the person poses, particularly in circumstances where no charges were laid because the child was unwilling or unable to proceed.<sup>20</sup>

The fact that previous offences were not targeted against children should not disqualify them from consideration. Studies by the Australian Institute of Criminology into offending histories revealed that almost two-thirds of child sexual offenders have committed previous offences. However these offences were twice as likely to be non-sexual offences related to violence and property than sexual offences against children. Of the child sexual offenders with previous convictions, 82.2% had first been convicted of a nonsexual offence unrelated to children.<sup>21</sup> These findings demonstrate that sexual offenders, including sexual offenders against children, are more versatile in their criminal histories than is generally accepted.

b. Juvenile convictions

The consideration of juvenile convictions raises questions regarding the culpability of juvenile offenders. Current trends involving the exchange of digital images and messages of a sexual nature can result in young people being charged with offences that carry lifelong consequences. In some jurisdictions, young people may be placed on the sex offender's register for non violent/non-coercive crimes such as 'sexting'.<sup>22</sup> Consensual sexual 'experimentation' between young people may have similar consequences. Evidence suggests that such convictions do not necessarily predict offending behaviour later in life,<sup>23</sup> and as such, consideration should be given to potential mitigating factors where appropriate. Nevertheless, it is recommended that for adults applying for a WWCC, juvenile records should form part of any assessment.

c. Pending charges

d. Workplace disciplinary proceedings

The standard of proof in employment based disciplinary findings is 'the balance of probabilities' as opposed to 'beyond reasonable doubt'.<sup>24</sup> Thus, the Commission urges recognition of the lack of objective standards that such proceedings entail. Such records should be approached with appropriate caution given their legal standing.

Only disciplinary findings that relate to sexual behaviour towards children or serious physical harm of a child are relevant to an assessment process.<sup>25</sup> Investigations should afford procedural fairness to the subject of the investigation. Further, employers should be required to meet an acceptable standard in investigations and complaint handling.

e. Apprehended Violence Orders (AVOs)

AVOs are similarly subject to a lesser standard of proof than a criminal conviction and do not result in a criminal record. While they may be useful in determining patterns of behaviour, they have serious limitations given

their common use and the fact that they do not represent an offence per se, but rather operate as a protective measure. Thus, considering the aim of WWCCs is the protection of children, they may only be relevant where the AVO was made with respect to the protection of a child or where there was a breach of an AVO. A breach of an AVO appears on a police record.

28. Trigger offences for further risk assessment should be established on the basis of research-based evidence that links the offence in question and child abuse. The Commission suggests such offences may include:
  - a. Offences against children
  - b. Serious sexual offences
  - c. Serious violent offences
  - d. Serious drug-related offences
29. The Commission recommends that adults convicted of a serious sex offence or serious violence against a child, or with pending charges for such an offence shall be automatically barred from working with children. In the case of pending charges, a bar should remain in place until final determination.
30. 'Risk assessment' should be guided by clear principled guidelines to ensure an equitable and consistent approach with respect to the relevance of different offences to suitability for working with children.
31. 'Risk assessment' should include the consideration of circumstantial and potentially mitigating factors. The availability of such information would rely on information-sharing provisions regarding police records and court records. Factors should include:
  - Seriousness of the offending conduct;
  - Period of time since offending conduct was committed;
  - The age of the victim and the offender at the time of the offending conduct;
  - Preceding and subsequent behaviour of the person;
  - Any other matters relating to the offender's culpability or victim's vulnerability. Medical, psychiatry and psychological records may be relevant for these purposes but should be subject to strict confidentiality considerations.
  - The Commission urges principled discretion in all cases, but draws attention to the disproportionate representation of Indigenous and Torres Strait Islander people in the criminal justice system. There have been concerns that people in Indigenous communities may be disqualified due to minor alcohol or assault offences, or deterred from applying to work or take on roles with children.<sup>26</sup> In many cases these

offences do not reflect on current ability to provide care or to work with children, and evidence has shown that many of these convictions may be at least partly attributable to past policing practices.<sup>27</sup> In these circumstances a considered approach must be taken, with due regard to the right of children in these communities to benefit from culturally appropriate care and support, including youth mentoring and kinship arrangements. There must be recognition that while any adaption of assessment tools must prioritise the interests of the child, the best interests of Indigenous children have cultural and socio-political dimensions.<sup>28</sup>

32. Privacy is also a concern in this context. Article 17(1) of the *International Covenant on Civil and Political Rights*<sup>29</sup> states that 'no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not to unlawful attack on his honour and reputation', and further that everyone has the right to the protection of the law against such interference or attacks. Broadening the scope of information sharing raises concerns regarding the privacy of applicants.

The UK's centralised vetting and barring scheme, introduced in 2007, was suspended by the government in response to public outcry based on privacy and regulatory concerns.<sup>30</sup> This scheme entailed an unprecedented increase in those subject to checks as it involved a largescale expansion of the scope of those requiring the check.<sup>31</sup> These issues can be reduced by restricting the scope of those requiring checks and implementing strict safeguards for the exchange and handling of information.

The pilot for Inter-jurisdictional Exchange of Criminal History Information for People Working with Children, implemented in 2009, provided a statutory complaints mechanism through the Office of the Australian Information Commissioner. No complaints were recorded at the time of official review,<sup>32</sup> which suggests that, where handled correctly and in compliance with applicable privacy and human rights laws, information can be reviewed where appropriate without unnecessarily compromising privacy.

It is important to protect the integrity of check systems by ensuring that information used for WWCCs is used for the purpose for which it is collected, and not shared for other purposes related to broader or individual child protection concerns. In this context, further work should progress on establishing protocols and laws to allow information exchange across and within jurisdictions and between government and non-government agencies when risks to children or a class of children are identified. Such arrangements should be supported by guidelines and education for potential information sharers, including in relation to consent, confidentiality, the handling of information and recording of exchanges. Part of this work has begun under the National Framework for Protecting Australia's Children, where more information can be exchanged between child protection agencies and between relevant Commonwealth agencies and child protection agencies, however, further work is required to ensure comprehensive protection of children through information exchange.

## 9 Appeals

33. Appeal should be available to all applicants who receive a bar, without exceptions.
34. Appeals may be made to an appropriate designated body such as the Administrative Appeals Tribunal.

## 10 Creating and maintaining child-safe environments

35. A WWCC cannot be a standalone measure in the protection of children in organisational settings, and organisations should guard against checks fostering a false sense of security.<sup>33</sup> A check cannot screen out offenders who have never been caught, or those who may offend in the future. Research has also indicated that, when charged, the majority of perpetrators detected do not have prior convictions for any form of child maltreatment, and thus would not have been detected by screening processes.<sup>34</sup> Organisational procedures and the creation of positive organisational cultures is thus of vital importance.
36. The Commission believes there should be statutory requirements for the implementation of child-safe practices and risk management mechanisms in child-service organisations. A statutory system of this kind has been implemented in Queensland since July 2007 where employers and businesses that require employees to have clearances must also have a written risk management strategy in place.<sup>35</sup>

Best practice principles are outlined in the *National Framework for Creating Safe Environments for Children: Guidelines for Building the Capacity of Child-Safe Organisations*.<sup>36</sup> This was developed in 2005 and was endorsed as a statement of nationally agreed characteristics in COAG's *Working Towards a Nationally Consistent Approach to Working with Children Checks*.<sup>37</sup>

Desirable features outlined include:

- Putting a child-safe policy in place, involving:
  - a. Child protection awareness and safety training for employees and volunteers;
  - b. Processes for reporting and managing concerns/incidents;
  - c. Disciplinary processes and grievance procedures;
  - d. Provision of support for employees, volunteers, children and their families when concerns are expressed about harm to a child;
- Risk management strategies that are transparent, well understood and diverse. Research has shown that many perpetrators of child abuse are people who take advantage of situations, or who manipulate environments,

in order to abuse children.<sup>38</sup> Risk management thus involves planning the work of the organisation to reduce or minimise situations where children may be at risk or harmed, thus preventing situational risks from developing.

- An open and inclusive code of conduct which promotes positive work practices and established boundaries concerning acceptable and unacceptable behaviour in relation to children with whom the organisation has contact. A code of conduct will provide guidance about the behaviour, relationships and responsibilities expected of employers and volunteers, and clearly outlines the process that will be followed upon non-observance of the code.
- Participation and empowerment of children, through:
  - a. Structures and systems which encourage children to be listened to;
  - b. Developing a culture where the knowledge, experience and contribution of children influences policies, practices and service delivery;
  - c. Using inclusive and empowering language.
- Human resources management:
  - a. Recruitment and selection practices that acknowledge the importance of child safety;
  - b. Comprehensive job descriptions/duty statements that provide employees and volunteers with a clear understanding of their responsibilities;
  - c. Staff support, supervision and performance management;
  - d. Complaints management, including guidelines for listening to children and procedures for dealing with disclosures regarding behaviour towards a child. Procedural fairness and natural justice must be ensured for any person suspected of abusing a child.
- Education and training on child safety to promote awareness and understanding of child abuse risks and organisational responsibilities, thus cultivating a sense of mutual responsibility for the wellbeing of children.
- Creating a positive and 'child-friendly'<sup>39</sup> organisational culture, one in which:
  - a. High risk offender behaviour<sup>40</sup> is not accepted and is challenged directly.
  - b. Employees and children feel empowered to raise concerns, and confident that disclosures will be promptly and appropriately acted upon. This will be dependent on the existence of effective disclosure policies, and will be undermined if poor organisational practices,

persist. Observed poor organisational practices in this context have included staff ignoring signs of abuse or risk, dismissing/failing to act upon disclosure, managers seeking to protect the reputation of institutions by not reporting abuse or risk, and whistleblowers being ridiculed or ostracised.<sup>41</sup>

37. A national voluntary or mandated accreditation system for child-safe organisations would also assist in building child-safe communities. A visible assurance that an organisation has implemented child-safe procedures to a certifiable standard is likely to be an incentive for organisations to comply with requirements and a reassurance for parents and carers. Such an accreditation must be regularly reviewed, and guidelines and resources for organisations should be clear and readily available as to what constitutes child-safe operations.

Appropriate resourcing will be required for an accreditation process; the government will need to determine the nature and extent of resourcing required in the context of existing supports and local needs, as well as developing an appropriate monitoring and compliance regime. A range of models exist on the national stage that are worthy of consideration in this regard, such as the national scheme for accrediting child care providers; National Food Safety Standards; the National Occupational Licensing Authority, the National Disability Insurance Scheme, the National Employment Standards; the National Accreditation Authority for Translators and Interpreters; and the National Heart Foundation Tick scheme.

38. No legislative measure, however, should replace ongoing vigilance on the part of all community members. Public education schemes in identifying potential risks and appropriate behaviours should be ongoing and ubiquitous, as well as ensuring the community is aware of the requirements under the relevant legislation. Creating a culture of child protection in communities is of vital importance.

## **11 Monitoring and Evaluation**

39. Evidence suggests that a considerable amount of abuse and neglect goes undisclosed making it difficult to develop an accurate picture of child abuse in organisations.<sup>42</sup> The Department of Justice in Victoria has advised that to be able to demonstrate changes in the rate of harm against children there must be a reputable base measure from which to assess performance; however, no such measure exists at this stage.<sup>43</sup>
40. The Commission suggests that an evaluation framework is developed around any reforms in this area. This would necessarily include regular compliance auditing and analysis of complaint trends.

<sup>1</sup> Violence against women and the girl child has been recognised as a form of discrimination and as a violation of the rights of women under the *Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)* (CEDAW general recommendations 12 (1989) & 19 (1992).

<sup>2</sup> Article 22 in *United Nations Declaration on the Rights of Indigenous Peoples*.

<sup>3</sup> See further: UN Declaration on Elimination of Violence against Women Article 4 (c and d).

CEDAW Committee, General Recommendation 19; A.T. v. Hungary, CEDAW, Communication No. 2/2003, UN Doc. CEDAW/C/32/D/2/2003 (2005); UN Special Rapporteur on violence against women, *The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, UN Doc E/CN.4/2006/61 (20 January 2006); Opuz v Turkey [2009] ECHR 33401/02.

<sup>4</sup> Council of Australian Governments, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020*, Department of Families, Housing, Community Services and Indigenous Affairs (2009), p 18.

<sup>5</sup> Council of Australian Governments, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020*, Department of Families, Housing, Community Services and Indigenous Affairs (2009), p 31.

<sup>6</sup> Subdivision A, Division 6, Part VIIC of the *Crimes Act 1914* (Cth).

<sup>7</sup> Australian Government Attorney General's Department, *Review of the operation of Subdivision A of Division 6 of Part VIIC of the Crimes Act 1914: Final Report* (September 2011), p. 14.

<sup>8</sup> Council of Australian Governments, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020- Annual Report to the Council of Australian Governments 2011-12*, Department of Families, Housing, Community Services and Indigenous Affairs (2013), p.164.

<sup>9</sup> Council of Australian Governments, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020- Annual Report to the Council of Australian Governments 2011-12* Department of Families, Housing, Community Services and Indigenous Affairs (2013).

<sup>10</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks* (2011), p 10.

<sup>11</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks* (2011), p15.

at [http://www.fahcsia.gov.au/sites/default/files/documents/position\\_paper.rtf](http://www.fahcsia.gov.au/sites/default/files/documents/position_paper.rtf) (viewed 24 July 2013).

<sup>12</sup> C Berlyn, P Holzer, and D Higgins, *Pre-employment Screening: Working with Children checks and police checks*, National Child Protection Clearinghouse (2011).

<sup>13</sup> Berlyn, Holzer, and Higgins, note 14.

<sup>14</sup> Berlyn, Holzer, and Higgins above.

<sup>15</sup> The NSW Auditor-General' 2010 Review found that 22% of applications were from people who did not actually work or volunteer in regulated child-related employment- and no mechanism in place to identify whether a check was required: see NSW Audit Office, *Working with Children Check: Commission for Children and Young People/ Auditor-General's Report Performance Audit* (2010), p 3

<sup>16</sup> L Guest, *Review of the Working with Children (Criminal Record Checking) Act 2004* (2012) p 15, at [www.parliament.wa.gov.au/publications/tables/papers.nsf/.../5214.pdf](http://www.parliament.wa.gov.au/publications/tables/papers.nsf/.../5214.pdf) (viewed 26 July 2013).

<sup>17</sup> See, for example, exceptions to the NSW 'parent or close relative' exemption at <http://www.kids.nsw.gov.au/Working-with-children/New-Working-With-Children-Check/Exemptions>, which include work as part of a formal mentoring program or work involving intimate, personal care of children with a disability.

<sup>18</sup> For more information, see <http://www.humanrights.gov.au/discrimination-employment-basis-criminal-record>.

<sup>19</sup> In a response to the Review of the 2009 cross-jurisdictional information sharing scheme (ECHIPWC), wherein spent, pardoned and quashed convictions were among records required to be provided to screening agencies, the Law Council of Australia submitted that: '... there should be no exception to the principle that if a person has been pardoned or their conviction has been quashed, they are entitled to the full benefit of that decision. Any exception would mean that a person's guilt cannot be expunged even if the process of securing the conviction was flawed.' See Australian Government Attorney General's Department, *Review of the operation of Subdivision A of Division 6 of Part VIIC of the Crimes Act 1914: Final Report* (2011).

<sup>20</sup> Australian Government Attorney General's Department, *Review of the operation of Subdivision A of Division 6 of Part VIIC of the Crimes Act 1914: Final Report* (2011).

<sup>21</sup> S. Smallbone & R. Wortley, 'Child Sexual Abuse: Offender Characteristics and Modus Operandi' (2001) 193 *Trends & Issues in Crime and Criminal Justice*, Australian Institute of Criminology, p.3, at

<http://www.aic.gov.au/documents/1/D/7/7B1D7F5F5E-2B6A-44CA-B2CB-9B330AE888A8%7Dt193.pdf> (viewed 19 July 2013)

<sup>22</sup> In New South Wales, Queensland, Western Australia and the Australian Capital Territory, registration for child sex offenders is mandatory.

<sup>23</sup> ABC Radio National, 'Youth Sexting and the Law' (2012), aired 3 April.

<http://www.abc.net.au/radionational/programs/lawreport/youth-sexting-and-the-law/3923218#transcript>

<sup>24</sup> See L Guest, *Review of the Working with Children (Criminal Record Checking) Act 2004* (2012), p 40. At [www.parliament.wa.gov.au/publications/tables/papers.nsf/.../5214.pdf](http://www.parliament.wa.gov.au/publications/tables/papers.nsf/.../5214.pdf) (viewed 26 July 2013).

<sup>25</sup> Guest, note 18, p 41.

<sup>26</sup> Bravehearts, *Submission to the Queensland Child Protection Commission Child Protection Inquiry* (2012) at [www.childprotectioninquiry.qld.gov.au/\\_data/assets/.../Bravehearts.pdf](http://www.childprotectioninquiry.qld.gov.au/_data/assets/.../Bravehearts.pdf) (viewed 27 July 2013).

<sup>27</sup> L Bromfield, J Higgins, N Richardson, & D Higgins, *Why standard assessment processes are culturally inappropriate: perspectives of professionals from Aboriginal and Torres Strait Island organisations, non-government agencies and government departments*, Australian Institute of Family Studies (2007), p 4.

<sup>28</sup> Bromfield, Higgins, Richardson, & Higgins, note 30, p 5.

<sup>29</sup> Australia is signatory to the *International Covenant on Civil and Political Rights*, 1966.

<sup>30</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks* (2011) at [http://www.fahcsia.gov.au/sites/default/files/documents/position\\_paper.rtf](http://www.fahcsia.gov.au/sites/default/files/documents/position_paper.rtf) p.3 (viewed 24 June 2013).

<sup>31</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks* (2011) at [http://www.fahcsia.gov.au/sites/default/files/documents/position\\_paper.rtf](http://www.fahcsia.gov.au/sites/default/files/documents/position_paper.rtf) p.3 (viewed 24 June 2013).



<sup>32</sup> Attorney General's Department, 'Review of the operation of Subdivision A of Division 6 of Part VIIC of the Crimes Act 1914: Final Report' (September 2011)

<sup>33</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks* (2011) at

[http://www.fahcsia.gov.au/sites/default/files/documents/position\\_paper.rtf](http://www.fahcsia.gov.au/sites/default/files/documents/position_paper.rtf) (viewed 24 June 2013).

<sup>34</sup> M Inrenyi, L Bromfield & D Higgins, 'Child Maltreatment in Organisations: Risk Factors and strategies for prevention', (2006) 25 *Child Abuse Prevention Issues*, Australian Institute of Family Studies, at

<http://www.aifs.gov.au/nch/pubs/issues/issues25/issues25.html> (viewed 26 July 2013).

<sup>35</sup> *Child Protection Regulation 2011* in *Child Protection Act 1999 (QLD)* Commission for Children and Young People and Child Guardian, *Child and youth risk management strategies*

<http://www.ccyprg.qld.gov.au/bluecard/risk-management.html> .

<sup>36</sup> Community and Disability Services Ministers' Conference, *Creating Safe Environments for Children- Organisations, Employees and Volunteers: National Framework, Schedule: Guidelines for Building the Capacity of Child-Safe Organisations* (2005) at [www.dhcs.act.gov.au/\\_data/assets/pdf\\_file/.../NCSF\\_Schedule1.pdf](http://www.dhcs.act.gov.au/_data/assets/pdf_file/.../NCSF_Schedule1.pdf) (viewed 1 August 2013).

<sup>37</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks* (2011), p 15, at

[http://www.fahcsia.gov.au/sites/default/files/documents/position\\_paper.rtf](http://www.fahcsia.gov.au/sites/default/files/documents/position_paper.rtf) (viewed 24 June 2013).

<sup>38</sup> Inrenyi, Bromfield & Higgins, above n 36.

<sup>39</sup> NAPCAN focuses on creating environments which are not just child-safe, but 'child-friendly'. See NAPCAN, *Child friendly communities: A whole of community approach to preventing child abuse and neglect*, NAPCAN Foundation National Office at <http://www.napcan.org.au/play-a-part> (viewed 3 August 2013).

<sup>40</sup> For example, touching or tickling. See C. Van Dam, 'Identifying child molesters: Preventing child sexual abuse by recognising the patterns of the offender' (2001) London: Haworth Press, cited in M Inrenyi, L Bromfield & D Higgins, 'Child Maltreatment in Organisations: Risk Factors and strategies for prevention', (2006) 25 *Child Abuse Prevention Issues*, Australian Institute of Family Studies.

<sup>41</sup> Inrenyi, Bromfield & Higgins, above n 36.

<sup>42</sup> A. Lamont, *Who Abuses Children?* National Child Protection Clearinghouse (2011).

<sup>43</sup> Victorian Auditor-General, *Report: Working With Children Check* (2008).