



*Screening of people working with children
and young people:
Issues Paper*

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Executive Summary

Over the past 10 years there has been a developing awareness of the need for organisations to look further at how best to ensure the wellbeing of children and young people with whom they work. The ACT Children Services Council has requested a review of international and national literature on issues surrounding the screening of people working with children and young people.

This paper reviews the issues related to employment screening, presenting information about alternative models, legislative schemes and frameworks, and a range of practice issues involved in this strategy. It presents a brief survey of the legislative approaches being adopted by each of the Australian States and Territories. It also discusses the limitations to screening and briefly reviews alternative strategies for safeguarding children and young people.

Over the last 5 years the number of child protection notifications and substantiations within Australia has increased (Kovac & Richardson, 2004). Abuse occurring within care organisations is even harder to estimate due to a lack of available research (Department of Families, Youth and Community Care, 1999). The extent to which people with a history of abusing children seek employment or voluntary work with children is unknown.

Because most sexual abuse is committed by a person known to the victim organisations that work with children need to specifically ensure that their employees and volunteers are appropriate candidates, as the direct contact with children increases the potential opportunities for abuse.

Work place screening for general employees is becoming more common due to the incidences of workplace violence, fraud, theft and misconduct. Further factors in recent years have been the heightened emphasis on security issues generally and the growing evidence of the extent of the damage done to workplace performance by employee behaviours (Edward, 1997; Nicholson, 2000).

In the 1990s a number of Inquiries highlighted shortcomings in the selection, screening and recruitment of staff in the community services sector. Compared with some other sectors, it

would appear that the Australian community services sector was slow to employ screening methods (Robertson & Makin, 1993).

To protect children against abuse more broadly including abuse by people who work with them two principal strategies – education and the introduction of strategies to safeguard the environment - have been used (Wilson & Beville, 2003).

The Community Services Ministers' Advisory Council (CSMAC) is currently drafting a framework aimed at providing guidelines to create safer environments for children. The Ministerial Council on Education, Training and Youth Affairs (MCEETYA) is also considering change in legislation for conducting police record checks, focussing on the release of information of criminal records across the States (MCEETYA, 2005).

Key influences that are likely to impact the future of child safety include the rights and safety of the child; a respect for natural justice; procedural fairness for applicants and the States or Territories' responsibility to ensure local needs are met yet remaining responsive to national demands (CSMAC, 2005).

A range of issues relating to competing rights and responsibilities, including several issues of scope, have emerged and engaged the attention of diverse stakeholders such as statutory child protection, foster carers, volunteers, child protection organisations, legal practitioner's, child carers and education practitioners.

In 1990 Australia ratified the United Nations Convention on Rights of the Child (Farrell, 2004). This Convention provides the wider policy context and a guideline for all signatories to develop and undertake policy in the light of the best interests of the child (Kenney & Tait, 2005). This implies that every child has the right to be safe from harm and that organisation's entrusted with the care of children or that regularly come into contact with children are required to create and provide safe environments for them. Ensuring that individuals who work with children are appropriate is encompassed within this statement.

Balancing the need to protect children from people who might be a danger to them against the rights and privacy of individuals is an issue that emerges in the screening debate. State and Territory governments require organisations to not only be child safe but also that their assessment processes are procedurally fair.

While some jurisdictions have legislated for screening to ensure procedural fairness, organisations must provide potential employees clear information about their policies and procedures regarding screening (CSMAC, 2005).

A further issue to emerge in the debate about screening revolves around the definition of what constitutes 'child related work' with different jurisdictions providing differing definitions of child related work. Consistent definition is required in order to avoid confusion for employers and employees and to ensure that only appropriate background checks are performed. How child related work is defined and identified is fundamental to any further consideration of how organisations can provide child safe environments.

Currently enacted legislation requires only persons over the age of eighteen years to be screened. There are however many young people under the age of 18 years who work in child care, after school care and holiday programs with younger children. There are some jurisdictions who are proposing screening for children aged 14 and above. This recognises the issue of the increasing rates of sexual assault offences within Australia being in the fifteen to nineteen years age group with the peak age of sexual assault offenders during 2002-2003 also being in the same age group (Australian Bureau of Statistics, 2003).

Most States and Territories in Australia carry out police checks with people who apply to work with children and young people but what varies is the type of criminal offences that preclude employment. For example does having a criminal record of any kind preclude individuals from working with children? What may be taken into account is the timing and nature of the offence and whether there have been repeat offences.

There is also the question of whether screening should include information about other legal actions such as Apprehended Violence Orders and whether this information is appropriate and/or reliable to allow judgments about individuals' suitability. The argument is that domestic violence is important to take into account in the protection of children.

Privacy and data protection is a key issue in background screening. Issues such as the transfer of data across agencies, States and countries, its storage and who has access to it are of

significant concern. Background checking is a consensual process in all State and Territory governments. Presently there is little flexibility in preventing employers accessing information provided for checking.

A related but different issue to general screening is identifying the best way of monitoring sex offenders. The monitoring of child sex offenders generally involves the maintenance by a competent authority of a register of convicted offenders, updating of the register with information reported by the offender as to place of residence and other prescribed information, and protocols for access to the information contained on the register

The issue of cost to individuals and organisation requires attention depending on the level and complexity of screening. Currently background screening is free of charge in NSW. Queensland provides it free of charge for volunteers but charges forty dollars for employees. However, Victoria is proposing a fee of \$50 to \$120 with a reduction for volunteers. Other States and Territories have not proposed a fee although have made reference to fees paid. The fee charged could significantly impact on NGO's. Consultation with foster care agencies in Canberra raised concerns as the fee may significantly reduce their ability to support existing programs and services.

Because Australia is a large and diverse country divided by different jurisdictions, issues about sharing information across borders arise. Some states are proposing to recognise other screening schemes. However, NSW and Queensland do not accept other screening agencies' background checks.

There is an assumption that screening processes prevent those with relevant convictions from working with children and young people and having access to children who they may abuse or exploit (Devit, 2004). However, failures in recruitment strategies and background checks both at an organisational level and national level have been contributing factors in abuse, as the murder of two British school girls in 2002 demonstrated (Birchard, 2004).

There is no research that looks at how appropriate the checks are and if indeed they are effective or what efficiencies maybe gained by selective use of varied levels of screening. Police checks are not always reliable - for example changes of names are not always recorded, leading to offences committed under one name maybe not surfacing when another name is

checked. Statutory Declarations have been used both nationally and internationally and in both cases have been found to have been abused by perpetrators.

The literature available promotes the need for proactive participation from organisations in producing child safe organisational policy. Many organisations are considering that education programs, staff training and the implementation of child safe policies are a more effective approach in preventing child abuse rather than simply relying on screening process.

1. Introduction

Over the past 10 years there has been a developing awareness of the need for organisations to look further at how best to ensure the wellbeing of children and young people with whom they work. Attention has focused on how to more effectively “screen” people who work with children and young people and as a result there has been a significant increase in the number of people who have been screened. For example in NSW in 1993, just 269 people were assessed - with 95 assessed as being of some risk. Last financial year, 215,792 people in NSW had background checks over their suitability to work with children.

The issues for implementing an effective screening system revolve around questions of who should be screened (all people who work with children both in paid and in volunteer positions), what type and level of screening (criminal history, employment history, domestic violence history, psychological testing) and who should do the screening (eg police checks, screening by specialised organizations, in house). There are also issues about who pays for a ‘screening’ process’. Strategies for protecting children from harm outside of the family unit raises many issues including: the rights and safety of children, human rights and procedural fairness, privacy and political, administrative or organisational dilemmas.

The ACT Children Services Council has requested a review of international and national literature on issues surrounding the screening of people working with children and young people.

This paper reviews the issues related to employment screening, presenting information about alternative models, legislative schemes and frameworks, and a range of practice issues involved in this strategy. In addition, it provides a brief survey of the legislative approaches being adopted by each of the Australian States and Territories. It also discusses the limitations to screening and briefly reviews alternative strategies for safeguarding children and young people.

2. The Rationale for Screening

Background

Over the last 5 years the number of child protection notifications and substantiations within Australia has increased (Kovac & Richardson, 2004). This increase has many potential contributors including changes in legislation, definitions and reporting requirements. However, the actual extent of child sexual abuse (which forms a small proportion of overall notifications) is uncertain as it is understood that many cases are not reported and remain undetected (Australian Institute of Health and Welfare, 2005).

Abuse occurring within care organisations is even harder to estimate due to a lack of available research (Department of Families, Youth and Community Care, 1999). The extent to which people with a history of abusing children seek employment or voluntary work with children is unknown. No comprehensive research has specifically addressed this area; however there is anecdotal evidence that suggests some perpetrators of child abuse target agencies that work with children (Barter, 2003). Statistics from Victoria's Child Exploitation Squad from 1988 to 1996 reveal that 43.5% of offenders investigated gained access to the child victims through children's organisations (Employers, Workers and Volunteers – Creating Child Safe Environments, 2004). These findings are supported by a small qualitative collection of evidence from sex offenders. Even where such purpose is not apparent, there is likely to be a concern at the extent to which people with a history of abusing children seek employment or voluntary work with children for any reason.

The Australian Institute of Criminology (2004) reports that most sexual abuse is committed by a person known to the victim. Consequently organisations that work with children need to specifically ensure that their employees and volunteers are appropriate candidates, as the direct contact with children increases the potential opportunities for abuse.

Background screening is a response that has been offered as a way promoting child safety within organisations and can take several forms. Within Australia the most basic tool used is a prohibited employment statutory declaration made by prospective employees declaring that they are 'safe' to work with children. The most common form of background check is a

police record check that informs an employer of an employee's past convictions. In the last few years a number of States have enacted legislation that requires further background checks. These may include checking previous employment, contacting registration boards for detail on disciplinary hearings and checking previous charges and apprehended violence orders. A further option, discussed in the literature, is whether the use of psychological testing of prospective employees as part of pre-employment screening processes is an effective strategy.

The Wider Context of Employment Screening

Work place screening for general employees is becoming more common due to the incidences of workplace violence, fraud, theft and misconduct. Further factors in recent years have been the heightened emphasis on security issues generally and the growing evidence of the extent of the damage done to workplace performance by employee behaviours.

Screening of individuals may include police record checks, employment checks, the identifying of any disciplinary information held by certain professional organisations and psychological testing. There is an increasing pressure to screen candidates particularly when working with vulnerable people. The need for screening is further strengthened by the claim that 34 percent of CV's contain outright lies about experience and two percent of CV's are totally fabricated (Haul, 2005) and about 60 percent of employees do not admit to past crimes.

Screening in the Children Services Sector

In the 1990s a number of Inquiries highlighted shortcomings in the selection, screening and recruitment of staff in the community services sector (Edward, 1997; Nicholson, 2000). Compared with some other sectors, it would appear that the Australian community services sector was slow to employ screening methods (Robertson & Makin, 1993). Although in the early 1990's improvements in recruiting and selection methods for people working with children were initiated (Kiraly, 1999). The 1996 Woods Royal Commission into paedophile activity found the screening of people working with children was limited. A recommendation was made to improve screening processes (Royal Commission, 1996).

In Queensland, Project Axis (Carmody, 1999) surveyed a number of organisations for screening processes used and found that just under half of them had no screening procedure in place and where screening did take place it was limited and inconsistent. It recommended the need for a broader screening process of people working with children (Queensland Crime Commission, 2000).

To protect children against abuse more broadly including abuse by people who work with them two principal strategies have been used (Wilson & Beville, 2003). The first strategy relies on developing children's resilience through education. These include Protective Behaviours programs. These programs aim to enhance problem-solving and communication skills in children and young people. It encourages them to identify situations that are unsafe or potentially unsafe, and to develop practical strategies to counter these situations in order to preserve their physical and emotional safety.

The second strategy aims to safeguard the environment in which children and young people live, work and play in by 'eliminating or changing the environmental stressor (ie the perpetrator)' (Wurtelel and Miller-Perrion, 1992 cited in Wilson & Beville, 2003).

The Community Services Ministers' Advisory Council (CSMAC) are currently drafting a framework aimed at providing guidelines to create safer environments for children. They have identified a number of designated strategies including screening (Commissioner for Children Tasmania, 2005). The Ministerial Council on Education, Training and Youth Affairs (MCEETYA) is also considering change in legislation for conducting police record checks, focussing on the release of information of criminal records across the States (MCEETYA, 2005). Alongside this, the Australian National Child Offender Register has been developed to collate information in regard to anyone convicted of sexual or other serious offences against children. This information will be given to State and Territory designated police officers to inform relevant people, such as employers (Ellison, 2004).

The focus appears to be on **organisations** ensuring screening is in place for people who work with children and young people. For self employed workers such general practitioners or contractors there is a variety of different requirements stated in the legislation identifying different levels of assessment.

3. Rights and responsibilities

Key influences that are likely to impact the future of child safety include the rights and safety of the child; a respect for natural justice; procedural fairness for applicants and the States or Territories responsibility to ensure local needs are met yet remaining responsive to national demands (CSMAC, 2005). With the development of a national framework to deliver safe environments for children that include relevant background checking (personal communication, CSMAC, 2005) all States and Territories are required to implement legislation or strategies to ensure compliance. A range of issues relating to competing rights and responsibilities, including several issues of scope, have emerged and engaged the attention of diverse stakeholders such as statutory child protection, foster carers, volunteers, child protection organisations, legal practitioners, child carers and education practitioners.

These and other high level policy design issues are discussed further in the following sections.

Rights and safety of the child

In 1990 Australia ratified the United Nations Convention on Rights of the Child (Farrell, 2004). This Convention provides the wider policy context a guideline for all signatories to develop and undertake policy in the light of the best interests of the child (Kenney & Tait, 2005). This implies that every child has the right to be safe from harm and that organisation's entrusted with the care of children or that regularly come into contact with children are required to create and provide safe environments for them. Ensuring that individuals who work with children are appropriate is encompassed within this statement.

A respect for natural justice and procedural fairness

Balancing the need to protect children from people who might be a danger to them against the rights and privacy of individuals is an issue that emerges in the screening debate. As the Tasmanian Commissioner for Children points out '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 (2005, p. 8).

Therefore State and Territory governments require organisations to not only be child safe and but also that their assessment processes are procedurally fair. Evidence based risk assessment and an informed process of appeal are essential to ensure that people are not unfairly excluded from working with children. Within legislation for background screening NSW and Queensland have provided legislation for this. While some jurisdictions have legislated for screening to ensure procedural fairness organisations must provide potential employees clear information about their policies and procedures regarding screening (CSMAC, 2005).

Different definitions of “child related work”

A further issue to emerge in the debate about screening revolves around the definition of what constitutes ‘child related work’. The research indicates that the amount of time that a person has direct contact with a child is a significant factor as in most instances child abuse occurs through individuals having direct contact with children. However, different jurisdictions provide differing definitions of child related work. For example NSW does not consider the employment of a school gardener working once a week as requiring screening. They conclude that although a gardener is working with children it is not in a unsupervised way (NSW Commission for Children and Young People, 1998). However in Queensland this type of work would be considered as child related employment due to the amount of time spent amongst children (Commission for Children and Young People and Child Guardian, 2000).

Furthermore consistent definition is required in order to avoid confusion for employers and employees and to ensure that only appropriate background checks are performed. The New South Wales Commission for Children and Young People have had a substantial amount of inappropriate background check submissions and are considering how they may address the matter. This is significant due to the associated cost and the importance of protecting individuals’ privacy.

Queensland describes not only categories of employment but also how often the worker has contact with the child. This is relevant for employment that falls outside of the categories of employment stated in legislation and provides further clarification for employers. How child

related work is defined and identified is fundamental to any further consideration of how organisations can provide child safe environments.

At what age should background screening take place?

Currently enacted legislation requires only persons over the age of eighteen years to be screened. There are however many young people under 18 years who work in child care, after school care and holiday programs with younger children. However, proposed Victorian and Northern Territory legislation states that children over the age of fourteen should be background checked. This proposal is of great significance as the rates of sexual assault offences within Australia is increasing within the fifteen to nineteen years age group with the peak age of sexual assault offenders during 2002-2003 also being in the same age group (Australian Bureau of Statistics, 2003).

4. Should criminal charges, spent convictions and Apprehended Violence Orders (AVO's) be considered in background screening?

Most States and Territories in Australia carry out police checks with people who apply to work with children and young people but what varies is the type of criminal offences that preclude employment. For example does having a criminal record of any kind preclude individuals from working children? What may be taken into account is the timing and nature of the offence and whether there have been repeat offences (Devitt, 2004). Devitt points out that the most significant factor that an employer or institution may take into account when considering past convictions is the nature of the offence(s), those involving violence, dishonesty, and class A drugs (opiates etc) (2004).

There is also the question of whether screening should include information about other legal actions such as Apprehended Violence Orders and whether this information is appropriate and/or reliable to allow judgments about individuals' suitability.

The number of individuals charged with sexual abuse is significantly higher than the number of individuals convicted of abuse (Kenny, 1997). Consequently as most perpetrators are not convicted there is an argument for **charges** of offences against children and spent convictions being considered in a background check.

NSW and Queensland legislation allows for the consideration of all criminal charges and spent convictions. Again, proposed legislation differs between States with Tasmania considering all charges whilst Victoria will consider only pending charges. Consultation with legal advisors in the Australian Child Offenders Register (ANCOR) urge that a charge is not evidence of guilt and it is the democratic right of people to be believed innocent until proven guilty, therefore great caution should be taken as charges. The Queensland Council for Civil Liberties (2004) further supports this view, reporting that there will be disastrous consequences for people who have had false allegations made against them.

There has also been some discussion about background checks including AVO's underpinned with the argument that domestic violence is important to take into account in the protection of children. In NSW and Queensland the legislation screens for the granting of AVO's. In Tasmania they screen for breaches of AVOs. However AVO's can be made as a result of personal disputes and their reliability in providing information about appropriateness of employees remains questionable. Indeed there are a range of views as to whether this level of screening should be introduced into legislation.

To 'take all reasonable measures' British organisations are required to perform background checks on three levels depending on the type of employment. These background checks are known as disclosures.

Basic Disclosure used for positions that involve working with children or regular contact with vulnerable adults

- Employers can require employees to obtain one
- Covers all conviction held in central police records
- Will state if there are no convictions

Standard Disclosure used for positions that involve working with children or regular contact with vulnerable adults

- all spent and unspent convictions
- details of any cautions, reprimands or warnings

Enhanced disclosure is for positions involving greater contact with children or vulnerable adults such as a social worker or doctor.

- involves an extra level of checking with local police force records,
- the Police National Computer (PNC) and government department lists of known individuals where appropriate.
- Same information as standard disclosure plus
- Non conviction information from local police records when a chief police officer thinks it is relevant

At present in Australia a number of methods are proposed and these are dependent on the type of employer position being considered. However, legislation in NSW and Queensland requires background checks be performed for all paid employees working with children. However NSW only requests Declarations of Prohibited Employment for volunteers. See Appendix 1 for differences between states.

Who has access to the background information?

Privacy and data protection is a key issue in background screening. Issues such as the transfer of data across agencies, States and countries, its storage and who has access to it are of significant concern. Background checking is a consensual process in all State and Territory governments. Presently there is little flexibility in preventing employers accessing information provided for checking. This is important to consider for many reasons: just one illustration is the case of transsexuals who may not wish their employer to know of their previous gender (Criminal Records Bureau, 2005). However the results of a background check are restricted to the screening agencies. Current legislation in Queensland (Commission for Children and Young People and Child Guardian, 2000) determines that only the screening agency decides whether an applicant is suitable whilst NSW provides a risk assessment that gives the employer greater discretion in employing the individual (NSW Commission for Children and Young People, 1998).

A significant issue in sharing information across states is that of privacy. Mechanisms need to be put in place so that sensitive information is only handled by those necessary. Furthermore legislation and policy requires consideration of the consequences for individuals that breach this confidentiality.

5. Monitoring of Sex Offenders

A related but different issue to general screening is the best way of monitoring sex offenders. Again there are a range of arguments surrounding the treatment and ongoing monitoring of people who have sexually assaulted children or young people. Strong responses from the media about the release of child sex offenders into the community (see Courier Mail, 2005) have pressured governments to introduce measures to ensure offenders whereabouts and activities are monitored.

The monitoring of child sex offenders generally involves the maintenance by a competent authority of a register of convicted offenders, updating of the register with information reported by the offender as to place of residence and other prescribed information, and protocols for access to the information contained on the register. The Australian National Child Offenders Register (ANCOR) is used by police to track child sex offenders and others who commit serious offences against children. Under a cooperative national scheme, States and Territories laws require offenders to notify police of their address, places they frequent, car registration and other personal details. These details are recorded on the Register and used proactively by police to intervene to protect children in schools and communities. For example, the register will enable police to monitor the movements and activities of known offenders in a state and facilitate the sharing of information between jurisdictions. It will also contain an interstate movement alert function, for use only by appropriately authorised police (Ellison, 2004).

Enabling legislation has been enacted in NSW, Queensland, Victoria, Western Australia and the Northern Territory. It is anticipated that legislation will commence in the near future. Legislation has been introduced into the ACT Legislative Assembly and is expected to be debated soon. It is understood that South Australia and Tasmania are both drafting legislation.

6. Some Practical Issues

Cost

The issue of cost to individuals and organisation requires attention depending on the level and complexity of screening. Currently background screening is free of charge in NSW. Queensland provides it free of charge for volunteers but charges forty dollars for employees. However, Victoria is proposing a fee of \$50 to \$120 with a reduction for volunteers. Other States and Territories have not proposed a fee although have made reference to fees paid. The fee charged could significantly impact on NGO's.

Consultation with foster care agencies in Canberra raised concerns as the fee may significantly reduce their ability to support existing programs and services. It also became apparent that the agencies depended upon many volunteers. Their view was continuing support, screening charges would need to be paid for by the organisation as it was considered unreasonable to expect volunteers to pay. This in turn would increase the financial burden, further reducing services.

Within the UK fees are charged for standard and enhanced disclosures for paid employees, however for volunteers there is no fee. For standard and enhanced disclosures a charge is made for a counter-signature that is required to validate and check the true identity of the applicant. Counter signatures are performed by particular agencies known as umbrella bodies. A one off payment is required by the disclosure service for the umbrella body to be able to provide this service. The umbrella body then has choice over what charge it makes to unregistered organisations requiring this service. Consequently there is some flexibility in the charges organisations pay for standard and enhanced disclosures and provision for other organisations to profit (Criminal Records Bureau (a), 2005).

Will screening notices be recognised by other states?

Australia is a large and diverse country that is divided by different jurisdictions, but mobility of people between jurisdictions is high and unregulated (Farrell, 2004). State and Territory government have the responsibility for child protection. However there is a national demand to share information such as criminal records and the whereabouts of sex offenders so that

States and Territories are better informed. This sharing of information will help State and Territory governments meet their community's needs that in turn will help build the capacity of organisations in providing child safe environments.

At present Victoria is proposing to recognise other screening schemes with the ability to complete further background checks if necessary (Office for Children, Victoria, 2005). NSW and Queensland do not accept other screening agencies background checks (Commission for Children and Young People and Child Guardian, 2000 & NSW Commission for Children and Young People, 1998).

7. Performance of Employment screening

In a number of fields where people work with children and young people they are expected to undergo a minimum of a 'police check'. There is an assumption as discussed above that these processes prevent those with relevant convictions from working with children and young people and having access to children who they may abuse or exploit (Devitt, 2004).

However, failures in recruitment strategies and background checks both at an organisational level and national level have been contributing factors in abuse, as the murder of two British school girls in 2002 demonstrated (Birchard, 2004). The Birchard Inquiry (2004) into this tragedy made a number of recommendations that included broader screening processes, national strategies for relevant information sharing and privacy and data protection (Birchard 2004). Much of the literature on business management is now discussing pre-employment screening through specialist organisations that go beyond police, employment, education and referee checks to include psychological testing and pre-employment screening for safety, dependability and people relations (Wilson & Beville, 2001).

However, there is no research that looks at how appropriate the checks are and if indeed they are effective or what efficiencies maybe gained by selective use of varied levels of screening. Police checks are not always reliable - for example changes of names are not always recorded, leading to offences committed under one name maybe not surfacing when another name is checked (Devitt, 2004). Statutory Declarations have been used both nationally and internationally and in both cases have been found to have been abused by perpetrators (Myers and Edwards, 2003). The consensus within research is that a paedophile may present

in a many number of ways (James, 1996). Consequently screening has been employed to identify those that have offended and potentially act as a deterrent against further abuse (Wurtele and Miller-Perrin 1992.). Conversely, Finklehor and Williams (1988) state that screening is only moderately useful as it only identifies those with a record and it is acknowledged that the majority of sexual offenders remain unconvicted.

In consultations with a range of different organisations in the ACT a view emerged indicating more positive views about the effectiveness of the NSW system compared to the current ACT screening process (see Appendix 2 for a list of organisations consulted).

8. What else can be done apart from background screening?

There is little literature on screening content and strategies that are effective for child agencies and volunteers (Wilson & Beville, 2003). Nevertheless the literature available does promote the need for proactive participation from organisations in producing child safe organisational policy. As Lachnitt (2002) argues, background checks do not offer full assurance of a suitable employee or volunteer but only that they do not have a record of conviction.

Consequently many organisations are considering that education programs, staff training and the implementation of child safe policies are a more effective approach in preventing child abuse. Child Wise have created a program ‘Choose with Care’ (Child Wise, 2002) that provides training, workshops and consultancy for organisations to engage with this philosophy. The Department of Family and Community Services have provided funding for this program to provide free training through out Australia (FACS, 2004).

The NSW Commissioner for Children and Young People in NSW also provides resources to organisations to assist them to develop ‘child safe’ and ‘child friendly’ organisations. They have identified a checklist for organisations which can be used whether organisations have already developed child-friendly policies or practices or are just starting out. The Checklist provides a set of issues including

- How to carry out a risk assessment,

- Asking whether staff, volunteers and students are carefully selected and always screened?
- Do staff, volunteers and students understand what constitutes child abuse?

There are issues for organisations to discuss and the Commission has linked resources to each question on the check list.

Due to a lack of legislation ensuring appropriate background checks were done the British Home Office produced guidance for voluntary agencies detailing considerations for the well being of the children within their care (Smith and Home Office, 1993). The report recommended thirteen points for consideration

1. Adopt a policy statement on safeguarding the welfare of children.
2. Plan the work of the organisation so as to minimise situations where the abuse of children may occur.
3. Introduce a system whereby children may talk with an independent person.
4. Apply agreed procedures for protecting children to all paid staff and volunteers.
5. Give all paid staff and volunteers clear roles.
6. Use supervision as a means of protecting children.
7. Treat all would-be paid staff and volunteers as job applicants for any position involving contact with children.
8. Gain at least one reference from a person who has experience of the applicant's paid work or volunteering with children.
9. Explore all applicants' experience of working or contact with children in an interview before appointment.
10. Find out whether an applicant has any conviction for criminal offences against children.
11. Make paid and voluntary appointments conditional on the successful completion of a probationary period.
12. Issue guidelines on how to deal with the disclosure or discovery of abuse.
13. Train paid staff and volunteers, their line managers or supervisors, and policy makers in the prevention of child abuse

They have also introduced the term 'safeguarding children', defined as:

All agencies working with children, young people and their families take all reasonable measures to ensure that the risks of harm to children's welfare are minimised; and where there are concerns about children and young peoples welfare, all agencies take all appropriate action to address those concerns, working to agreed local policies and procedures in full partnership with other local agencies (Social Services Inspectorate et al, 2002).

9. Review of current Australian models.

There are inconsistencies in the level of background screening conducted by the States and Territories and this may potentially make certain States or Territories more attractive to sex offenders. Therefore particularly for the ACT that sits within another jurisdiction, it would be prudent to consider the legislation in the neighbouring States.

The following are summaries of State and Territory positions in regard to screening of people working with children. See appendix 1 for a summary table.

Australian Capital Territory

In considering the issues that surround the screening of people working with children in the ACT a broad range of organisations were contacted to discuss their current screening policies and the identification of any issues that they may have experienced. The scope of these organisations include foster care; sport; schools; professional bodies; government departments, volunteers and children's recreational organisations.

It was found that all organisations performed the Australian National Police Check and that all organisations held a strong belief that interviews and referee checks were of vital importance. Additionally foster care agencies use the Office of Children, Youth and Family Support, after receiving consent to do so from prospective foster carers, to check whether reports have been received about the individual. A range of responses could follow including: some reports don't meet the threshold for appraisal others indicate a history of substantiated reports. The suitability of the carer based on this information is then discussed between the agency and Manager of Care and Protection. When a decision has been made feedback is provided by the Agency to the carer. This approach recognises the context of reports.

Foster care organisations also discussed the usefulness of other tools in assessment such as the 'Step by Step' (comprehensive assessment package) and the 'Shared Lives, Shared Stories' (foster care training program) designed by The Centre for Community Welfare Training and the Association of Children Welfare Agencies (CCWT & ACWA).

Although non government agencies consulted for this issues paper regard screening as being very important they also think that interviews and programs as those mentioned above provide a much stronger sense of the suitability of people. Those who are not suitable often self select out through the more intense process.

NSW legislation had been accepted by some ACT organisations that deal with interstate matters. For example foster carers working in NSW from an ACT agency are required to undergo NSW screening processes. Excursion leaders for Children’s recreational services are also required to undergo NSW screening when they are leading excursions or camps in NSW.

Most organisations consulted for the paper said they did have policies in place to consider complaints of abuse. When asked what would happen if there was a complaint about a worker or volunteer within the workforce most organisations appeared very confident that their background checks would identify inappropriate people.

Organisational policies differed in the procedures for background checks on individuals, for example the number of referees required, the content of information requested and the number of interviews held. ACT Health is guided by the *Public Sector Management Act 1994* (ACT government, 1994) however the employment and other background checks of professional employees is undertaken by clinical heads. One professional body had no policy for advising their members of the implications of working with children and it assumed it was either up to the employer or university to check with out any consideration for the self employed.

New South Wales

The Acts that apply to the “working with children check” legislation are *Child Protection (Prohibited Employment) Act 1998*, *Commission for Children and Young People Act 1998*. Anyone working in a paid or unpaid capacity with children is required to sign a prohibited employment declaration. However, only foster carers, ministers of religion and the organisations defined in the Acts are mandated to perform a full background check. This check includes a national criminal record check, relevant AVO and relevant employment proceedings check. A risk assessment framework is used to determine suitable applicants. The criminal information assessed is all charges and offences.

The Commission for Children and Young People are the central agency who delegate to approved screening agencies the ability to perform background checks on adults, they are not retrospective and do not need to be performed again whilst in continuous employment. The background check is free. The Commission acts as a point of reference for employers and employees and collates information in regard to individuals who have been subject to relevant employment proceedings and those that have been refused employment due to an adverse risk assessment. The Act also promotes the establishment of child safe policy for organisations (NSW Commission for Children and Young People, 1998).

Queensland

The legislation in place is the *Commission for Children and Young People and Child Guardian Act 2000*. The legislation specifies all paid or unpaid employee's working with children over a specified amount of time require a working with children check. The Commissioner has the responsibility to issue approvals or "blue cards" as they are known. The background check involves a national police check with charges and convictions considered; employment proceedings check for those over eighteen years and are not retrospective. It is free to volunteers but employees and self employed must pay forty dollars. The Act further promotes the creation of child safe policy for organisations (Commission for Children and Young People and Child Guardian, 2000).

Western Australia

Proposed legislation *Working with Children (Criminal Record Checking)* draws upon the models used in New South Wales and Queensland. The screening is limited to the national criminal record check. It is retrospective and screens all persons paid or unpaid that have sustained contact with children. The cost is undecided (The Department for Community Development, 2004).

Northern Territory

Proposed legislation *Care and Protection of Children and Young People Act 2005* is currently being discussed. The legislation specifies child related employment as employment involving contact with a child, however it does not define the amount of contact. Certain types of employment are noted for example, foster care, volunteers, persons under the age of eighteen, self employed and parents of children working in related employment. It further

includes professional workers such as teachers and some health care professionals. The legislation is not retrospective.

A screening agency is to be established and a Commissioner will be appointed. The screening process includes a national criminal record check that will look at all criminal history of a person. However, it does not include charges or investigations into child related offences, professional body disciplinary hearing proceedings and other child related complaints whilst in employment. It does not include community education or the participation of organisations in creating awareness of safe child organisations (Northern Territory Department of Health and Community Services, 2005).

Tasmania

Current legislation requires background screening for some employment, however there are proposed changes for screening for child related work. These changes include a central screening agency that will be established which may delegate some responsibility to other departments such as approved NGO's or government departments. The legislation specifies types of paid and unpaid child related employment and is done retrospectively for those already employed, though only checks for over eighteen year old people will be done. Charges and breached AVO's will be considered. The cost of the check is undecided; however it is thought that government departments will continue to fund checks for their employees and volunteers. A positive check will result in a 'Tascard' (Commissioner for Children Tasmania, 2005).

South Australia

At present there is no overriding legislation that ensures that organisations create safe environments for children. In 2003 recommendations were made for a reform within child protection (Layton, 2003) of which the government has responded with a program 'keeping them safe' that has a number of initiatives including that of screening (Government of South Australia, 2004).

Victoria

There is existing legislation that requires certain child care services to undertake national police checks, however, future legislation changes are being considered with the *Working with Children Bill 2005* to be introduced by the end of the year. The Bill proposes that the amount

of contact with children will decide whether volunteers are required to have a background check. Screening will be conducted by a central agency within the Department of Justice. Professional employees will be required to have checks although the legislation will not require all health professionals to be checked.

Children over the age of fourteen will be background checked. The legislation considers pending charges; adult sexual crimes and professional teaching bodies disciplinary proceedings. An assessment notice will be granted with the screening agency having some discretion over employment suitability. (Office for Children, Victoria, 2005)

10. Appendix 1 Summary of state and territory legislation

	Name of policy	Relevant Legislation	Applicant	Information Considered	Screening Agency	Charge
Queensland	Working with Children Check Or 'Blue Card'	<i>Commission for Children and Young People and Child Guardian Act 2000</i>	<p>Regulated employment is any paid employment or voluntary work that is defined within the <i>Commission for Children and Young People and Child Guardian Act 2000</i></p> <p>Dependent on how often a person is working with children</p> <p>Those that do not require screening; Parents of children who are involved in the school or activity</p> <p>Government entities and Government service providers are exempt by the Act</p>	<p>Reviewed every two years</p> <p>Detailed national check of criminal history</p> <p>Charges and convictions</p> <p>Qld Board of Teacher Registration hearings</p> <p>Can request additional information from the Police Commissioner</p> <p>Provides a Blue card for suitable people</p> <p>And negative notice for those who are not suitable</p>	Qld Commission	<p>Volunteers are free</p> <p>Employee's are \$40</p>

	Name of policy	Relevant Legislation	Applicant	Information Required	Screening Agency	Charge
Victoria	Proposed: The Working with Children Check	Proposed: Working with Children Bill 2005	Proposed: It will apply to all employees, self-employed persons and volunteers who are engaged in defined categories of 'child-related work'. Children over the age of fourteen	Proposed Valid for 5 years Detailed national check of criminal history Will look at relevant professional disciplinary proceedings Provision of a Negative notice or Assessment notice Pending charges only	Proposed: The Working with Children Check will be carried out by a new agency to be created within the Department of Justice.	Proposed: \$50-\$120 for employees Although significantly reduced for volunteers

	Name of policy	Relevant Legislation	Applicant	Information Required	Screening Agency	Charge
Western Australia	Proposed: Working with Children Check	Proposed: <i>Working With Children (Criminal Record Checking) Act 2004</i>	Proposed: It will be required by people who carry-out work that involves or is likely to involve contact with children, where that contact occurs as part of their usual duties or as defined in the Act.	Proposed: Valid 3 years National police record checks Charges and convictions are considered Professional body discipline proceedings are considered	Proposed: A new screening unit (Jan '06) is to be located within the Office for Children and Youth, of the Department for Community Development. It is proposed that major public sector agencies already screening large numbers of employees and other people working with children will be approved to carry-out Working With Children Checks. This is likely to occur from 2007.	Yes but not specified

Screening of people working with children and young people

	Name of policy	Relevant Legislation	Applicant	Information Required	Screening Agency	Charge
Tasmania	Tasmania released in January 2005 Screening of Individuals Who Work with Children in Tasmania Working with Children Check		Prospective and existing paid employees, volunteers and self employed people in child related employment Employment is defined in legislation	National criminal history information Breached AVO's Child related complaints in previous employment Disciplinary action against a person in previous employment Tascard issued for suitable person renewable every three years	Central Screening agency Government Departments Approved NGO's	Government Departments will continue to fund their employees and volunteers There is planned Government assistance for NGO's
South Australia	Keeping Them Safe	Proposed: <i>The Children's Protection (Keeping Them Safe) Amendment Bill 2005</i>	Employee in any capacity, volunteer,	criminal history	Yet to be determined	Yet to be determined

11. Appendix 2 Organisations Consulted

Attorney Generals Office – Criminal Law Reform

Australian National University

Australian Medical Association and Registration Board

Australian Institute of Sport

Barnardos

The Community Services Ministers' Advisory Council

Canberra Hospital

Canberra Girls Grammar School

Child Wise

Commission for Children and Young People NSW

Crimtrac

Marymead

Royal College of Nursing

Scouts

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